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The Tulalip Tribes of Washington

**REQUEST FOR QUALIFICATIONS AND PROPOSALS**

**Tulalip Tribes Health Clinic  
Mechanical Systems Repair and Upgrade**

**September 30, 2024**

**TULALIP TRIBES OF WASHINGTON**

**6406 Marine Drive, Tulalip, WA 98271**

## 1. INTRODUCTION

The Tulalip Tribes is requesting Design/Build qualifications and proposals for building-wide mechanical systems upgrade/replacement for the Health Clinic located at **7520 36<sup>th</sup> AVE NW, Tulalip, WA 98271**.

**Proposals are to be addressed to:**

Sam Davis, COO  
The Tulalip Tribes of WA  
6406 Marine Drive, Tulalip, WA 98271

**Point of contact for the RFP process is:**

Sam Hyatt, Project Manager, Wenaha Group  
[samh@wenahagroup.com](mailto:samh@wenahagroup.com)

**Point of contact to schedule site visits is:**

Sam Hyatt, Project Manager, Wenaha Group  
[samh@wenahagroup.com](mailto:samh@wenahagroup.com)

**Proposal Requirements:**

- Provide a Design/Build proposal that includes an existing facility evaluation and design for a building-wide mechanical systems repair or upgrade to include assessment, engineering and construction of and all systems required to have a fully functioning HVAC system that complies with ASHRAE-170 and the Joint Commission standards for health care organizations. These systems include but are not limited to controls, boilers, chillers, pumps and air handlers. The current system is not fully operational.
- The Design/Builder will be required to provide a Guaranteed Maximum Price (GMP) for the system installation and implementation. The GMP will be developed concurrently with the design phase.
- The system should include interfaces that can be utilized by the Tribes' maintenance staff. The cost of the work is to include training in the operation and maintenance of the system.
- Potential design-builders shall have no unauthorized contact with the Owner's staff during the proposal and selection process. All questions will be directed in writing to the Owner's Representatives, Sam Hyatt, via email.

**Work Requirements:**

Working conditions will be addressed in more detail with the awarded team. The work must be conducted after regular business hours and will not be allowed to significantly impact the ongoing and day-to-day operations of the clinic staff.

**TERO fees will be paid by the design/builder:**

The contractor should provide evidence of its commitment to the TERO program, demonstrated through its efforts in both the current project and in previous projects. The design builder will work with the Owner to establish TERO goals.

**Work by Others:**

Identify any work that will need to be performed by others. The contract requires that 80% of the work be self-performed.

**Schedule:**

- RFP issued: 9/30/2024

- Proposals due: 11/22/2024
- Review by Owner: 12/2024
- Project start: TBD

**Contract Structure:**

The design and construction will be executed under the **attached** AIA A104. Phase 1 will be for the system design and development of the construction scope. Phase 2 will be to execute a contract amendment for a lump sum GMP. The GMP will include the cost for all labor, materials, equipment, subcontractors, insurance, overhead, management and fee for the work.

The successful Proposer acknowledges and accepts that the specifications, terms and conditions and contract provided in this RFP and no others will control any contract awarded unless the successful Proposer expressly states, in whole or by reference, alternate terms or conditions which the successful Proposer wishes the Owner to consider. Any such alternate terms or conditions will constitute a variance and, if found material, may subject the Proposal to rejection. Any referenced alternate terms or conditions shall be attached to the Proposal for consideration by the Owner.

Refer to the included contract and exhibits for additional information and project requirements.

**2. SCHEDULE**

Issue RFP	September 30,2024
Last day for site visits.	October 30, 2014
Last Day for Questions	November 8, 2024
Proposal Due	November 22, 2024 @ 2:00 pm PT
Anticipated Award	January, 2024

**3. SITE VISIT**

Site visits are required and necessary to fully clarify the scope of work and will occur individually by proposer to limit the disruption to the ongoing operations in the work area. Please contact Sam Hyatt at [samh@wenahagroup.com](mailto:samh@wenahagroup.com) or 253-388-3323 to schedule site visits.

- Site visits must be scheduled 2 working days in advance.
- Site visits are limited to 4 person teams and between the hours of 9:00 am and 3:00 pm.
- Only invited bidders will be allowed site visits. Invited bidders may include any team member but independent visits will not be accommodated.

**4. SUBMITTAL REQUIREMENTS**

The following categories will be used to evaluate the proposals received. The proposal will be organized to align with the categories below and only information specific to the project will be reviewed.

Section	Description	Page Limit	Evaluation Points
1.	Cover Letter	1	0
2.	Mandatory Attachments: <ul style="list-style-type: none"> <li>• Proposal Form</li> <li>• Affidavit of non-collusion</li> <li>• Certificate of Compliance</li> <li>• Certificate of Non-discrimination</li> <li>• Debarment Form</li> </ul>	5	0
2.	Qualifications/expertise of the proposed team: <ul style="list-style-type: none"> <li>• Experience in design and construction of complete HVAC systems.</li> <li>• Working in an existing active medical clinic.</li> <li>• Tribal work experience.</li> <li>• Joint working experience of the proposed design and construction team.</li> </ul>	3	20
3.	Qualifications of proposed staff: <ul style="list-style-type: none"> <li>• Experience with mechanical systems design and construction.</li> <li>• Working in an active medical clinic.</li> <li>• Identification of proposed staff with an organizational chart identifying lines of authority and communication.</li> </ul>	3	10
4.	NAOB status and/or utilization of NAOB's for the project: <ul style="list-style-type: none"> <li>• NAOB status of the proposing team.</li> <li>• Efforts to include of NAOB or Tulalip Tribal businesses and labor in the project.</li> </ul>	1	10
5.	Proposed project approach: <ul style="list-style-type: none"> <li>• Structure of the contractor's project management team and interface with the Owner.</li> <li>• Maintaining continuous clinic operations.</li> <li>• Schedule, provide a general schedule of design and implementation including, identify long lead items, time frames for Owner approval of design and the proposed system. (A detailed schedule will be required of the awarded team)</li> <li>• Approach to ensure ease of use, maintenance.</li> <li>• Long term service agreement structure.</li> </ul>	3	20
6.	Proposer's needs from the Tribes (Identify scope to be performed by others. Less 3 <sup>rd</sup> party support will result in higher score.)	1	20
7.	Cost proposal based upon the Scope of Work items and certified by signature as being valid for at least 90 days is required: <ul style="list-style-type: none"> <li>• Include provided Proposal form.</li> <li>• Provide a lump sum, design/preconstruction team cost.</li> <li>• Construction team cost structure:</li> <li>• Provide cost for 100% payment and performance bond.</li> </ul>	3	20

Proposals must be delivered electronically via email to the Owner's Representative, Sam Hyatt, Project Manager for the Wenaha Group, at [samh@wenahagroup.com](mailto:samh@wenahagroup.com) no later than **2:00 PM, Pacific Time, November 22, 2024**. The official time will be the receiving computer's clock. No hard copy proposals will be accepted. Faxed submittals will not be accepted. If the file size is larger than 15 MB, contact the project manager for alternative submission options. It is the **responsibility** of the proposer to ensure that electronic submissions are received by

the established deadline. For questions about the electronic submittal process contact Sam Hyatt Project Manager, Wenaha Group.

## **5. INTERVIEW**

After reviewing the submissions, the selection committee may elect to conduct interviews with a short-list of proposers.

## **6. FINAL SELECTION**

The Tulalip Tribes of Washington intends to select the proposer that best meets the needs of the Tribes and the criteria set above as determined by the evolution of the submissions received and the interview (if needed). Final selection must be approved by and shall be at the sole discretion of the Tulalip Tribes' Board of Directors. The Tulalip Tribes reserve the right to select any responsive and responsible proposer they determine.

## **7. ADDITIONAL SERVICES**

The Tulalip Tribes reserves the right to request additional services for future phases depending on the results of the design and construction.

## **8. ATTACHMENTS**

*The following attachments are incorporated in the RFP:*

- Attachment A - AIA A104-2017, Agreement between the owner and contractor
- Attachment B - TERO Requirements
- Attachment C - Code of Conduct
- Attachment D – Affidavit of Non-Collusion
- Attachment E – Certificate of Compliance
- Attachment F – Certificate of Non-Discrimination
- Attachment G - Certificate of Debarment
- Attachment H – Proposal Form
- Attachment I – Existing Facility Plans

# DRAFT AIA® Document A104™ - 2017

## Standard Abbreviated Form of Agreement Between Owner and Contractor

AGREEMENT made as of the «      » day of «      » in the year «20  »  
(In words, indicate day, month and year.)

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

«The Tulalip Tribes of Washington  
6406 Marine Dr.  
Tulalip, WA 98271»

If not specifically listed as “Owner” in this Agreement, The Tulalip Tribes of Washington shall be considered an Owner-Related Party.

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

«  »  
[ ]»

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

«[Tulalip Administration Building – Lighting and Lighting Controls Upgrade  
6406 Marine Drive, Tulalip, WA 98271]»

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

«[None]»

The Owner may perform some of the obligations of the Architect for the purposes of this Agreement. In such instances, reference to the “Architect” shall mean “Owner or Architect.”

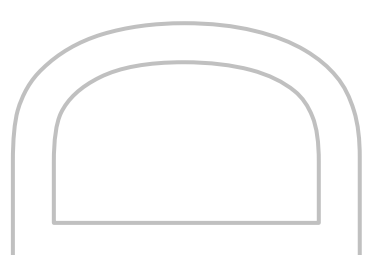
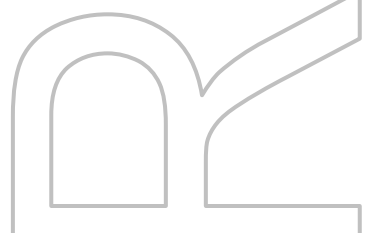
**Add below if Contractor is performing work on a Project where a general contractor is also performing work!**

The General Contractor:  
N/A]»

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.

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



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- 20 TERMINATION OF THE CONTRACT
- 21 CLAIMS AND DISPUTES

**EXHIBIT A DETERMINATION OF THE COST OF THE WORK**

**ARTICLE 1 THE WORK OF THIS CONTRACT**

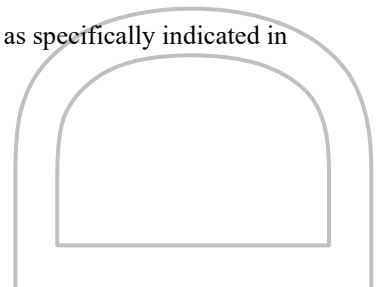
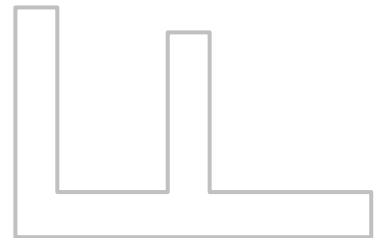
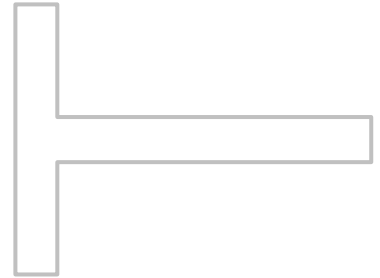
The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

**ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

**§ 2.1** The date of commencement of the Work shall be:  
(Check one of the following boxes.)

[ « » ] The date of this Agreement.

[ «X» ] A date set forth in a Notice to Proceed issued by the Owner.



Established as follows:  
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement. Any design and engineering Work (pre-construction services) being completed by the Contractor shall be performed in accordance with and subject to the terms and conditions of this Agreement. Such pre-construction services are set forth in **Exhibit D**.

§ 2.1.1 If the box for "Notice to Proceed" is checked, the Contractor shall commence Work within seven (7) days of receipt of a Notice to Proceed issued by the Owner, and issuance of the first, partial, or full permit for construction.

§ 2.1.2 Not used.

§ 2.1.3 Not used.

§ 2.2 The Contract Time shall be measured from the date of commencement. All times stated in this Contract with regard to completion of the Work by Contractor are of the essence. Contractor agrees that the above stated times are reasonable for performing and completing the Work and any delays will result in damages to the Owner.

### § 2.3 Substantial Completion

§ 2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:  
(Check the appropriate box and complete the necessary information.)

Not later than ( ) calendar days from the date of commencement of the Work.

The schedule will be determined during the GMP pricing phase of the work.

§ 2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
Pre-Construction	120 days from NTP
Construction	To be agreed to during GMP pricing development.

§ 2.3.3 The Contractor shall achieve Final Completion within thirty (30) days of the Substantial Completion Date set forth above, subject to adjustments of the Contract Time as provided in the Contract Documents.

§ 2.3.4 If the Contractor fails to achieve Substantial Completion or Final Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.5.

## ARTICLE 3 CONTRACT SUM

§ 3.1 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 one of the following:  
(Check the appropriate box.)

Stipulated Sum, in accordance with Section 3.2 below

When the Contractor is providing Preconstruction Services or Design-Build Services, in accordance with Section 3.3 below

Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below



(Based on the selection above, complete Section 3.2, 3.3 or 3.4 below.)

**§ 3.2 Stipulated Sum** – Not used.

**§ 3.2.1** Not used.

**§ 3.2.2** Unit prices, if any:

(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
NA		

**§ 3.2.3** Allowances included in the Stipulated Sum, if any, shall clearly indicate whether they are for labor, material, or both:

(Identify each allowance.)

**§ 3.3 Preconstruction Services or Design-Build Services**

**§ 3.3.1** When the Contractor is providing Preconstruction Services or Design-Build Services, the Contract Sum shall be based upon the following:

(Check the appropriate box(es).)

- A stipulated amount for design and pre-construction phase services, in accordance with Section 3.3.2.1 below
- Hourly to a Not to Exceed amount for design and pre-construction phase services, in accordance with Section 3.3.2.2 below
- Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below, once the GMP Amendment as set forth in Section 3.3.3 has been executed
- Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below. GMP is established at the execution of this Agreement. No GMP Amendment will be executed.

**§ 3.3.2.1 Stipulated Sum for Pre-Construction or Design Services.** For all design phase and pre-construction services through completion of Construction Documents, the Owner shall pay the Contractor the Stipulated Sum of \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents (\$ \_\_\_\_\_), subject to authorized adjustments as provided in the Contract Documents.

**§ 3.3.2.2 Hourly to a Not-To-Exceed Amount for Pre-Construction or Design Services.** Not used.

**§ 3.3.3 The Guaranteed Maximum Price Will be Established after Execution of this Agreement**

The Contractor shall submit a Guaranteed Maximum Price Proposal (GMP Proposal) for the Work to the Owner, which must include all of the following:

- .1 An itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Contractor's Fee, and other items that comprise the Guaranteed Maximum Price.
- .2 A schedule of alternates, if any, which are described in the Contract Documents, and their respective prices along with the deadline by which each such alternate must be accepted by the Owner.
- .3 A schedule of Unit Prices, if any.
- .4 The Construction Documents, which are set forth in detail and attached to the GMP Proposal.
- .5 A list of assumptions and clarifications made by the Contractor in the preparation of the Guaranteed Maximum Price.
- .6 If applicable, a list of allowances items, allowance values, and a statement of their basis. All unused allowances shall revert to the Owner, and the Guaranteed Maximum Price shall be reduced by that

unused amount. The Contractor shall separately account for allowances in each Application for Payment.

- 7 If applicable, a statement of Additional Services that may be performed, but which are not included in the Guaranteed Maximum Price and which, if performed, shall be the basis for an increase in the Guaranteed Maximum Price and/or Contract Time.
- .8 Any and all costs authorized and incurred by signed Letters of Authorization by Owner preceding the execution date GMP Amendment, are to be included in the Guaranteed Maximum Price.
- .9 The scheduled Substantial Completion Date upon which the Guaranteed Maximum Price is based, to the extent said date has not already been established under Section 2.3, and a schedule upon which the scheduled Substantial Completion Date is based.
- .10 The time limit for acceptance of the GMP Proposal.

#### **§ 3.3.3.1 Review and Adjustment to the GMP Proposal**

After submission of the GMP Proposal, Contractor and Owner shall meet to discuss and review the GMP Proposal. If the Owner has any comments regarding the GMP Proposal or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Contractor of such comments or findings. If appropriate, Contractor shall, upon receipt of the Owner's notice, make appropriate adjustments to the GMP Proposal.

#### **§ 3.3.3.2 Acceptance of the GMP Proposal**

If the Owner accepts the GMP Proposal, as may be amended by Contractor, the Guaranteed Maximum Price and its basis shall be set forth in a GMP Amendment to this Agreement.

#### **§ 3.3.3.3 Failure to Accept the GMP Proposal**

If the Owner rejects the GMP Proposal or fails to notify the Contractor in writing on or before the date specified in the GMP Proposal that it accepts the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, the Owner shall have the following options:

- .1 The Owner may suggest modifications to the GMP Proposal; whereupon, if such modifications are accepted writing by Contractor, the GMP Proposal shall be deemed accepted and the parties shall execute a GMP Amendment to this Agreement incorporating the GMP Proposal as modified;
- .2 The Owner may authorize the Contractor to continue to proceed with the Work on the basis of reimbursement for time and materials without a Guaranteed Maximum Price, in which case all references in this Agreement to Guaranteed Maximum Price shall not be applicable; or
- .3 The Owner may terminate this Agreement in accordance with Section 20.3, provided that in no event shall Contractor be entitled to lost profit or Fee on Work not completed.

If the Owner fails to exercise any of the above options within 30-days of the date specified in the GMP Proposal, Contractor shall have the right to: (i) continue with the Work as if Owner had elected to proceed in accordance with Section 3.3.3.2 above, and be paid by Owner accordingly, unless and until the Owner notifies it in writing to stop the Work; or (ii) suspend performance of the Work.

#### **§ 3.4 Cost of the Work Plus Contractor's Fee with a Guaranteed Maximum Price – Not used.**

#### **§ 3.5 Liquidated Damages, if any:**

**§ 3.5.1** Contractor acknowledges and agrees that in the event Contractor fails to complete the entire Work by the Substantial Completion Date, Owner will incur significant damage resulting from Owner's inability to use the completed Work. The parties agree that the amount of Owner's damages arising solely from such delay are difficult to ascertain and, therefore, should Contractor fail to complete the entire Work by the Substantial Completion Date, and such delay is not caused by the failure of Owner to fulfill its obligations under this Agreement, Contractor agrees to pay Owner as liquidated damages for such delay the sum of **\$500** per calendar day from the Substantial Completion Date until such Work is complete. For purposes of assessment of liquidated damages under this section, the Contractor will be considered to have achieved Substantial Completion of the its Work upon the occurrence of both of the following: (1) the Work has passed all testing, commissioning, and inspections required by the Owner's Representative, Design-Builder, Owner, or Authority Having Jurisdiction and (2) when the Owner has beneficial use of the Work.

**§ 3.5.2** Contractor shall achieve Final Completion within thirty (30) days of Substantial Completion. Should the Contractor fail to achieve Final Completion as set forth herein and such delay is not caused by the failure of the Owner to fulfill its obligations under this Agreement, Contractor agrees to pay Owner as liquidated damages for such delay the sum of \$250.00 per calendar day from the per calendar day from the Substantial Completion Date until such Work is finally complete, which is agreed to be a reasonable approximation of the damages that Owner would sustain if Final Completion is delayed.

**§ 3.5.3** For purposes of assessment of liquidated damages under this Section, the Contractor will be considered to have achieved Substantial Completion of the entire Project Work upon the occurrence the later of the following: (1) the earlier of Architect's issuance of a Certificate of Substantial Completion for the entire Project or issuance of a Temporary Certificate of Occupancy (or final inspection and sign offs) for the entire Project by the appropriate authority having jurisdiction, (2) when the Work has passed all testing, commissioning, and inspections required by the appropriate authority having jurisdiction; and (3) when the Owner has beneficial use of the Work.

**§ 3.5.4** Such liquidated damages shall not preclude Owner from declaring Contractor in default of this Agreement on account of such delay, nor shall it preclude Owner from pursuing any other remedy (including, without limitation, damages) for Contractor's default or breach of any other term or condition of this Agreement. With respect to any liquidated damages due Owner from Contractor, Owner may deduct and retain such amounts from any payments due contractor, and if such amounts due Contractor are not sufficient to satisfy Contractor's obligations to Owner, Contractor shall pay such excess to Owner promptly upon demand. This Section 3.5 shall survive termination of this Agreement. Should a court of competent jurisdiction find that an assessment of liquidated damages to be unenforceable or unavailable under applicable law, any waiver of consequential damages included in this Agreement shall be void and Owner shall be entitled to its actual damages.

#### **ARTICLE 4 PAYMENT**

##### **§ 4.1 Progress Mobilization, Insurance, and Logistics Payments**

**§ 4.1.1** Based upon the approved Applications for Payment submitted to the Architect or Owner's Representative by the Contractor and Certificates for Payment issued by the Architect and/or Owner's Representative, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents. If the Project does not have an Architect performing Construction Contract Administration, Applications for Payment shall be submitted to the Owner's Representative, who shall fulfill the role of Architect with regard to reviewing, processing, and approval or denying Applications for Payment.

**§ 4.1.2** Provided that a draft Application for Payment is received by the Architect as provided for this this Agreement and a final Application for Payment is received by the Architect and/or Owner's Representative not later than the last day of the month, the Owner shall make payment of the certified amount to the Contractor not later than the 25th day of the following month. If an Application for Payment is received by the Architect and/or Owner's Representative after the date fixed above, payment shall be made by the Owner not later than one calendar month after the Architect and/or Owner's Representative receives the Application for Payment.

**§ 4.1.3** For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold retainage from the payment otherwise due as follows:

«Five percent (5%). Retainage shall be paid with Owner's final payment. »

**§ 4.1.4** No progress payments, nor final payment, nor any partial or entire use or occupancy of the Work by Owner, nor any other act or failure to act, shall constitute acceptance of any Work not in accordance with the Contract Documents. Contractor acknowledges that Owner may commence occupancy of portions of the improvements prior to Substantial Completion, which occupancy shall not be deemed an acceptance of the Project or any aspect of the Work, a waiver of any of Owner's rights hereunder or a release of Contractor of any duties or obligations hereunder with respect to the Work.

**§ 4.1.5** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or if otherwise required by applicable law, at the legal rate prevailing required at the place where the Project is located.

«Five percent » (5%) «per annum »

**§ 4.1.6 Progress Payments for Pre-Construction Services or Design Work – Hourly, Not-to-Exceed. – Not used.**

**§ 4.2 Final Payment**

**§ 4.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract, including all punch list items, except for the requirements, if any, which extend beyond final payment (including Contractor's warranty obligations to correct Work following Substantial Completion Date pursuant to Section 18.2);
- .2 the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a Guaranteed Maximum Price (which the Owner may elect to audit); and
- .3 a final Certificate for Payment has been issued by the Architect and/or Owner's Representative or Owner in accordance with Section 15.7.1.
- .4 the Contractor has submitted all close-out documents and materials to Owner, including, but not limited to, As-Built Drawings, O&M Manuals, Warranty Letters, final Lien Releases, finalized Building Permit, final approved Submittals, owner Stock Material (if applicable), etc.

**§ 4.2.2** The Owner's final payment to the Contractor shall be made no later than 30 days after the Contractor has fully performed the Contract, including the requirements in Section 15.6 and 15.7 and after completion of Owner's audit, if Owner elects to do so prior to final payment, except for the Contractor's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment and the presentation of a final invoice by the Contractor in compliance with the Contract Documents.

**§ 4.2.3** In the event that Owner suffers any damages as a result of Contractor's actions, Owner shall be entitled to offset and withhold from the final payment of the Contract Sum due Contractor the amount of damages Owner has sustained and for any other reason allowed by applicable law. Such offset shall not exceed 150%, unless a lesser amount required by applicable law.

**§ 4.3 Accounting Records.** The Contractor shall keep full and detailed records concerning all aspects of the Work and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract in order to substantiate all costs incurred and in accordance with generally accepted accounting practices. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's project financial records and accounts relating to this Contract and the Work. The Contractor shall maintain during the project and shall be required to provide job cost transaction detail in a form compatible with Microsoft Excel. The Contractor shall maintain during the Project and shall be required to provide a Subcontractor tracking log that tracks the total contract value of all Subcontractors on the Project as compared to Subcontractor invoicing. The Contractor shall preserve these records for a period of three (3) years after final payment, or for such longer period as may be required by law. In this time period, the Owner may request copies of any portion of Contractor's financial books and records pertaining to the Project and/or elect to conduct an audit of such books and records. All such books and records of the Contractor must be made available for inspection and copying by Owner at an office of Contractor within ten (10) miles of the Project and will be subject to audit examination by the Project auditor designated by Owner. The cost of the audit will be paid for by Owner unless the audit reveals an overpayment by Owner of more than one-half percent (1%) in the reported Cost of Work, in which case the Contractor will pay for all costs associated with the audit.

**ARTICLE 5 DISPUTE RESOLUTION**

**§ 5.1 Binding Dispute Resolution**

For any claim subject to, but not resolved by, mediation pursuant to Section 21.6, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

- [  ] Arbitration pursuant to Section 21.7 of this Agreement
- [  ] Litigation in a court as specified in Section 19.2
- [  ] Other *(Specify)*

§ 5.2 If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved in a court of competent jurisdiction.

**ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS**

§ 6.1 The Contract Documents are defined in this Article 6 and further described in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 6.1.1 The Agreement is this executed modified AIA Document A104™–2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

Document	Title	Date	Pages
RFP	Request for Proposals	June 13, 2024	

§ 6.1.2 The Specifications:  
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

« Specifications to be added in GMP amendment »

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

« See Exhibit I »

§ 6.1.4 The Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are enumerated in this Article 6.

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

.1 Other Exhibits:

(Check all boxes that apply.)

Exhibit A - Determination of the Cost of the Work (check box if used)

Exhibit B – Not used.

Exhibit C – Not used.

Exhibit D – Contractors Pre-Construction or Design-Build Scope of Services

Exhibit E – Project Schedule – (Provided by Contractor)

Exhibit F – Labor/Trade Rates – (Provided by Contractor)

Exhibit G – Contractor’s Equipment Rates – (Provided by Contractor)

Exhibit H – Approved Pay Application Format

Exhibit I – Contract Drawings – (Provided by Contractor)



- Exhibit J** – Owner’s Request for Proposal/Qualifications
- Exhibit K** – Contractor’s Proposal, excluding any terms and conditions set forth therein
- Exhibit L** – Code of Conduct (check box if used)
- Exhibit M** – Contractor’s Interim Mechanical and Final Lien/Claim Waiver
- Exhibit N** – List of Design-Build or Pre-Construction Services Consultants and Subcontractors
- Exhibit O** – GMP Amendment Form

- .2 Other documents, if any, listed below:  
*(List here any additional documents that are intended to form part of the Contract Documents.)*

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**§ 6.2** In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based upon the following priorities in descending order:

- .1 Contract Modifications or Change Orders;
- .2 Articles 1 through 5 of this Agreement;
- .3 Approved revisions and addenda, with those of a later date taking precedence over those of earlier date or original documents;
- .4 Where payment is based upon the Cost of the Work, Exhibit A.
- .5 When Design-Build or Preconstruction Services are provided under Section 3.3, Exhibit D;
- .6 the General Provisions, set forth in Articles 7 through 21 below;
- .7 Drawings and Specifications or within either document not clarified by Addendum (provided, however, that in the case of conflict or ambiguity, the Drawings shall govern Specifications for quantity, arrangement, details and location, and the Specifications shall govern Drawings for materials, quality, workmanship, installation, and performance); then
- .8 All other Exhibits to this Agreement.

In the event of a conflict or ambiguity that is not resolved by the order of precedence above, the Contractor shall (i) provide the best quality and the most reasonable quantity as applicable; and (ii) follow the stricter standard requiring the greatest measure of performance on Contractor. Work described in the Specifications that is not specifically located on the Drawings is nonetheless include in the Work. Items reasonably inferred from the Drawings but not in the Drawings shall be deemed part of the Drawings. In conflicts between the Drawings and Specifications, the Drawings shall govern the Specifications for quantity and location; the Specifications shall govern the Drawings for quality and performance. Figured dimension govern scale dimension, and large-scale Drawings govern small scale Drawings.

**ARTICLE 7 GENERAL PROVISIONS**

**§ 7.1 The Contract Documents**

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents and exhibits listed in this Agreement, and Modifications issued after execution of this Agreement. 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 and/or Owner’s Representative or Owner. 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 to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

**§ 7.2 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. In entering into this Agreement, neither party has relied upon any statement, estimate, forecast, projection, representation, warranty, action, or agreement of the other party except for those expressly contained in this Agreement. 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 between any persons or entities other than the Owner and the Contractor.

### § 7.3 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.

### § 7.4 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.

### § 7.5 Ownership and use of Drawings, Specifications, and Other Instruments of Service

**§ 7.5.1** Except as may be set forth otherwise in the agreements between Owner, the Architect and any Architect consultants, the Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. The Contractor, General Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Any Instruments of Service prepared or created by Contractor or its Subcontractors shall be jointly owned by Owner and Contractor, and Contractor shall execute any transfer of ownership documents evidencing such co-ownership. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of any of the Contractor's, Architect's, Architect's consultants', or Owner's reserved rights.

**§ 7.5.2** The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, and if applicable, the Architect and the Architect's consultants.

**§ 7.5.3** The Owner, through the Architect, may from time to time make certain base documents, including BIM or other 3D-models ("Building Information Model"), available in conventional or electronic media form to the Contractor and its Subcontractors and consultants for use in preparing shop drawings and submittals or in providing professional design services, delegated design services, or certifications required under the Contract Documents. Base documents shall be issued for recipient's convenience only. Such base documents are not Contract Documents, are not intended for use in construction, and may be used only at the user's risk subject to the Architect's reasonable restrictions, waivers, releases, and disclaimers.

### § 7.6 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

### § 7.7 Building Information Models Use and Reliance

The Architect will prepare protocols governing the BIM Design Model, which will outline the level of development at various design milestones of the Project, authorized uses of the BIM Design Model, and requirements for archival. The Contractor shall timely communicate as-built and as-existing conditions of the building so that the information can be incorporated into the BIM Design Model. The Contractor shall produce its own BIM model and will coordinate the work of its Subcontractors, design-build/delegated design Subcontractors, and deferred submittal Subcontractors via comprehensive BIM modeling, clash detection, and other means and methods that assign the location of project elements. The Contractor and Architect shall endeavor to agree on a plan for transferring the Design BIM Model to the Contractor and Contractor shall sign and execute Architect's standards electronic release form prior to receipt or use of the Design BIM Model or any CADD files prepared by the Architect, Architect's Consultants, or Owner's Consultants. Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in writing, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## § 7.8 Severability

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

## § 7.9 Notice

**§ 7.9.1** Except as otherwise provided in Section 7.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by certified mail, by courier, or overnight delivery service, or as otherwise set forth below:

**§ 7.9.2** Notice of Claims shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified mail, or by courier or overnight delivery service providing proof of delivery. If notice is sent by certified mail, it shall be deemed delivered at the later of three business days after deposited in the mail or upon receipt by the party to whom the notice is addressed.

## § 7.10 Relationship of the Parties

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and/or Owner's Representative and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

## § 7.11 Confidentiality

**§ 7.11.1** The Contractor shall maintain the confidentiality of information of the Owner and Owner-Related Entities, unless withholding such information would violate the law, create the risk of significant harm to the public, or prevent the Contractor from establishing a claim or defense in an adjudicatory proceeding. Contractor shall provide sufficient prior written notice to Owner prior to making any such disclosure of confidential information. Contractor shall require similar agreements to maintain the confidentiality of information of the Owner and Owner-Related Entities in all subcontracts at any tier.

**§ 7.11.2** Contractor shall not disclose, either directly or indirectly, data and information of Owner, its account holders or employees or residents, which Contractor may come into contact with in performing the Scope of Work; unless, the information is already in the public domain, is court ordered, or is authorized in writing. The provisions stated herein shall survive termination of this agreement. Contractor shall fully disclose any breach in security resulting in unauthorized intrusion of the Contractor's records, or the Owner's confidential material that is under the control of the Contractor, that may materially affect the Owner or its customers or employees; when the intrusion occurred, the potential effect on the Owner or its customers or employees or residents; and corrective action to respond to the intrusion.

## ARTICLE 8 OWNER

### § 8.1 Information and Services Required of the Owner

**§ 8.1.1** The Owner shall furnish all necessary surveys and a legal description of the site.

**§ 8.1.2** The Contractor shall be entitled to reasonably rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Any errors reasonably known to, or identified by, the Contractor shall promptly be brought to the attention of Owner and Contractor shall have no right to rely thereon. The Contractor shall verify utilities locations prior to commencing the Work. The Contractor shall assume that the locations of any hidden utilities, plumbing, or electrical runs indicated in the surveys or Contract Documents are shown in approximate locations only, and the Contractor is responsible for making all utility location checks.



**§ 8.1.3** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities and shall provide such reasonable assistance as the Contractor may request in securing such documents. Should any re-testing or re-inspection of work be required due to the Contractor for any reason, the cost of such work, or costs of any schedule delay resulting therefrom, shall be paid for by the Contractor and shall not increase the Contract Sum.

**§ 8.1.4** 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 shall be entitled to reasonably rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. The Contractor shall verify utilities locations prior to commencing the Work. The Contractor shall assume that the locations of any hidden utilities, plumbing or electrical runs indicated in the surveys or Contract Documents are shown in approximate locations only, and the Contractor is responsible for making all utility location checks.

### **§ 8.2 Owner's Right to Stop the Work**

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or fails to carry out the 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 is 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. Owner shall not be responsible for costs associated with stopping Work.

### **§ 8.3 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 notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor may, pursuant to Section 15.4.3, include withholding or nullifying a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including the Owner's expenses and compensation for the Architect's or any other consultant's additional services made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner or the Architect and/or Owner's Representative, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 21. The rights of the Owner under this Section 8.3 and elsewhere in this Agreement shall not give rise to a duty on the part of the Owner to exercise the right, and shall not excuse any default by Contractor.

### **§ 8.4 No Waiver of a Right**

All waivers of any right under this Contract by Owner must be made in writing, and the failure of Owner at any time to require Contractor's performance of any obligation under the Contract Documents shall not affect the right subsequently to require performance of that obligation. Any waiver of any breach of any provision of this Agreement by Owner shall not be construed as a waiver of any continuing or succeeding breach of such provision or a waiver or modification of any other provision.

## **ARTICLE 9 CONTRACTOR**

### **§ 9.0 Pre-Construction or Design Build Services**

If the Contractor is providing Pre-Construction or Design-Build Services for this Project, the scope of those services shall be set forth in **Exhibit D**. To the extent the Contractor is providing Design-Build Services, the term "Work" shall also include all design services required to fulfill the Contractor's obligations under the Contract Documents, and includes without limitation providing all stamped design Drawings and Specifications. In such instances, all reference to Drawings and Specifications in this Agreement shall refer to the Drawings and Specifications produced by the Contractor. To the extent the Contractor is providing Design-Build Services, the term "Project" shall also include the total design and construction of the Work, and may include design and construction by the Owner.

### **§ 9.1 Review of Contract Documents and Field Conditions by Contractor**

**§ 9.1.1** 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. Contractor shall visit the site during construction in

order to measure the as-built conditions, including in all rough-ins, and verify that such as-built conditions will accommodate the equipment to be provided and installed. No adjustment to the Contract Time shall be made on account of Contractor's failure to acquaint himself with conditions of the Site which are evident or discoverable through normal preconstruction diligence. Contractor shall provide notice to Owner of any adjustments or modifications to the as-built conditions that are necessary for the proper performance of Contractor's Work, including installation and connection of equipment.

**§ 9.1.2** 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 8.1, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. 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, except for any systems which are designed (design-build, deferred submittal, delegated design, or other) by the Contractor and or its Subcontractors; however, the Contractor shall promptly report to the Architect and Owner any errors, inconsistencies, or omissions, or variances from applicable laws, codes, or regulations, discovered by or made known to the Contractor as a request for information in such form as the Architect, Owner's Representative, or Owner may require and sufficiently in advance of the planned work to allow for a response prior to the day the work is to be performed, except for any systems which are designed (design-build, deferred submittal, delegated design, or other) by the Contractor and or its Subcontractors which shall be directed to such Subcontractors. 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. Incorporation of any design work performed or prepared by Contractor or its Subcontractors (including delegated design, design-build, or deferred submittals) into the Construction Documents by the Owner or Architect for the purpose of permitting or providing the Contractor with a complete set of Construction Documents for the Project shall not relieve the Contractor of its responsibility for such design services.

**§ 9.1.3** Except for any delegated design, deferred submittals or design-build services or as part of its obligations during preconstruction services, 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 Architect and/or Owner's Representative any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect and/or Owner's Representative may require.

**§ 9.1.4** If the Contractor performs any construction activity and knows or, using due care, should have known that the Contract Documents contained an error, inconsistency or omission, the Contractor shall be responsible for the performance of, and shall bear the cost and time for, its correction.

## **§ 9.2 Supervision and Construction Procedures**

**§ 9.2.1** 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, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, 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/or Owner's Representative and shall not proceed with that portion of the Work without further written instructions from the Architect and/or Owner's Representative. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences, or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences, or procedures.

**§ 9.2.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors 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. Contractor has the responsibility to ensure that all material suppliers and Subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions and that they provide materials on

time. Contractor shall coordinate its Work with that of all others on the Project including deliveries, storage, installations, and construction utilities.

**§ 9.2.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

**§ 9.2.4** Prior to the commencement of construction, Contractor shall prepare and obtain the Owner's approval of a construction site management plan, which will take into account requirements contained in the Specifications, and the Owner's requirements and restrictions concerning access and parking for construction personnel, maintaining access into the building, Code of Conduct (see **Exhibit** ), staging areas and material delivery times, traffic flow requirements of the Owner and local government authorities, and work hours, among other things.

### **§ 9.3 Labor and Materials**

**§ 9.3.1** 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, phone, cable, internet, 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 until Substantial Completion and turnover of the Work to the Owner.

**§ 9.3.2** The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor's obligations under Article 9 shall include, without limitation, the obligation to pay all Subcontractors and any other person or entity having construction lien rights regarding the Project due to their performance of the Contractor's obligations under the Contract and in accordance with all applicable prompt payment statutes. The Contractor agrees to keep the Project and the Project site free and clear of any and all such lien claims filed by any person or entity at any tier performing the Work or the Contractor's obligations under the Contract, excluding any lien filed by Contractor.

**§ 9.3.3** The Contractor agrees to indemnify, hold harmless, reimburse and defend (with counsel approved by the Owner) the Owner, General Contractor, and any other person or entity with an interest in the Project or Project site from, for and against any and all liens referenced in Section 9.3.2, actions, suits or proceedings relating to such liens, and any and all related costs and expenses incurred by the Owner, including without limitation attorneys' fees.

**§ 9.3.4** 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 skilled in tasks assigned to them.

**§ 9.3.5** The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Architect and/or Owner's Representative, if any, and in accordance with a Modification.

### **§ 9.4 Warranty**

**§ 9.4.1** The Contractor warrants to the Owner and Architect and/or Owner's Representative 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 workmanlike manner, and will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. All other warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 15.6.3. Warranties provided herein are in addition to rights and remedies provided by law and nothing in this Section 9.4 shall be construed to vitiate, void, limit, or adversely affect any rights or remedies otherwise available to Owner by law.

**§ 9.4.2** The Contractor further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. If the Owner attempts to enforce a claim based upon a manufacturer's or supplier's warranty and such manufacturer or supplier refuses to honor such warranty based, in whole or in part, on a claim of defective installation by the Contractor, the Contractor shall be responsible for any resulting loss or damage incurred

by the Owner as a result of the manufacturer's or suppliers' refusal to honor such warranty. The Contractor's obligations under this Section shall survive the expiration or earlier termination of the Contract.

### § 9.5 Taxes

No sales, consumer, use and similar taxes, including any state or local B&O taxes, shall be passed through to the Owner or included in the Contract Sum or in Contractor's fee, nor shall Owner reimburse such costs. Contractor shall provide reseller permits to all Subcontractors who are purchasing materials or providing Work on the Project.

### § 9.6 Permits, Fees, Notices, and Compliance with Laws

**§ 9.6.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit. The Contractor shall secure and pay for any other permits, fees, 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. No Fee shall be charged on the building permit.

**§ 9.6.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, including the TERO Code, applicable to performance of the Work, including but not limited to ADA regulations. Contractor shall include reasonable tolerances in construction with regard to ADA and/or FHA (as applicable) regulations to ensure that as-built conditions comply with all such accessibility codes and regulations. The Contractor shall require its Subcontractors and Design-Build Subcontractors, such as mechanical, electrical, and plumbing (MEP), and Subcontractors responsible for delegated design and/or deferred submittals, to coordinate with Architect to ensure that their design and work meet accessibility requirements). If the Contractor performs Work it knows or reasonably should have known to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume responsibility for such Work and shall bear all costs and damages attributable to correction, including without limitation any fines or penalties assessed.

**§ 9.6.3 Native American Preference.** The Contractor is aware the Tulalip Tribes Board of Directors has the authority to require those employers subject to Tulalip Tribal Code Chapter 9.05 (TTC Chapter 9.05) and applicable federal laws and guidelines, to give preference to Indians in hiring promotions, training and all other aspects of employment contracting and subcontracting and must comply with the TTC Chapter 9.05 and the rules, regulations and orders of the TERO Commission. The preference requirements contained in the TTC Chapter 9.05 shall be binding on all contractors and subcontractors, regardless of tier, and shall be deemed a part of all resulting subcontract specifications.

**§ 9.6.3.1** The Contractor and all Subcontractors shall give preference in the hiring of qualified Native Americans or Native American owned businesses ("Tribal") to carry out all activities under the Contract in the following priority: (1) Tulalip Tribal veteran; (2) enrolled tribal member of the Tulalip Tribes; (3) Native spouse of a Tribal member; (4) Non-Native spouse of a Tribal member; (5) Enrolled members of other federally recognized Indian Tribes; (6) Spouses of other Natives; and (7) all other persons. Contractor shall provide the Owner with a written report on a monthly basis that provides information concerning the numbers of tribal workers hired for the Work by Contractors and Subcontractors. The Contractors, Subcontractors, and Suppliers shall comply with all TERO regulations and ordinances, including the payment of all applicable taxes, specifically excluding payment of TERO taxes. The Owner shall remit the TERO tax, on behalf of the Contractor, directly to the tribal governmental authority. The Contractor shall include the provisions of Section 9.6.3 in this Agreement in the contracts with all of its Subcontractors and Suppliers.

### § 9.7 Allowances

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents and identify any contingencies for Work not fully defined by the Construction Documents included within the Contract Sum. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered to the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, for overhead and profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance.



## **§ 9.8 Contractor's Construction Schedules**

**§ 9.8.1** The Contractor, within five (5) days after being awarded the Contract, shall submit for the Owner's, General Contractor's, and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be submitted in updated form with Contractor's monthly payment applications, shall be revised at appropriate intervals as required by the conditions of the Work and Project to demonstrate the Project will be completed within the Contract Time, 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 work with the Owner and General Contractor to make revisions to its construction schedule.

**§ 9.8.2** The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Owner and Architect and/or Owner's Representative.

## **§ 9.9 Submittals & Construction Schedule**

**§ 9.9.1** The Contractor, within ten (10) days after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule ("Schedule") for the Work in MS Project or similar. The Schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates ("Milestone Dates"), duration, percentage complete, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; (3) the time required for completion of each portion of the Work; (4) logic / logic ties; and (5) float. The Schedule shall provide for the orderly progression of the Work to completion, shall not exceed time limits current under the Contract Documents, and shall be submitted in updated form with Contractor's monthly payment applications. The Schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project to demonstrate the Project will be completed within the Contract Time, shall maintain the same logic as originally accepted by the Owner in the Schedule, shall resolve any conflict between actual work progress and schedule logic, 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. When out of sequence activities develop because of actual construction progress, Contractor shall submit revisions to schedule logic to conform to current job status and directions, without changing the Construction Schedule activity identification or Contract Time. In no event shall Contractor be entitled to an adjustment of the Contract Sum for non-realization of an anticipated early completion prior to the Contract Time. Contractor shall provide Owner with an electronic version of the original Construction Schedule, including all subsequent electronic schedule revisions and updates (by disk or CD), created without any password protection, in a format approved by Owner. Such schedules shall be capable of being fully reviewed and inspected by the Owner and Owner's Representative. Upon review and approval by the Owner of the Milestone Dates, the Construction Schedule shall be deemed part of the Contract Documents. If not accepted for reasonable cause, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and Architect and resubmitted for acceptance.

**§ 9.9.2** The Owner may authorize construction activities to commence prior to completion of the Drawings and Specifications. If the Drawings and Specifications require further development at the time an initial construction schedule is prepared, the Contractor shall (1) allow time in the schedule for further development of the drawings and Specifications by the Architect, including time for review by the Owner and the Contractor and for the Contractor's coordination of Subcontractor's Work, and (2) furnish to the Owner in a timely manner information regarding anticipated market conditions and construction costs; availability of labor, materials and equipment; and proposed methods, sequences and time schedules for construction of the Work.

**§ 9.9.3** The Contractor shall review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Owner and Architect and/or Owner's Representative reasonable time for review. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect and/or Owner's Representative 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. The Work shall be in accordance with approved submittals. The Contractor shall be solely responsible for errors or omissions in all submittals and Shop Drawings, whether or not the submittals and Shop Drawings have been reviewed or approved by the Architect or Owner.

**§ 9.9.4** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

**§ 9.9.5** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities (such as design-build, delegated design, or deferred submittals). If professional design services, design-build, deferred submittals, delegated design services, or certifications by a design professional are specifically required, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. Contractor shall participate in a preconstruction meeting with the Architect to review the delegated design, design-build, and deferred submittal services required by the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, and in a manner such that these systems are functioning and properly integrated into the remainder of the Work. Contractor shall require its Design-Build and Delegated Design Subcontractors to coordinate their construction documents, drawings, and other instruments of service with those of the Architect and to advise the Architect of any potential conflict. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Architect and/or Owner's Representative will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Architect's or Owner's Representative's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect and/or Owner's Representative will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals. Neither Architect nor Owner shall be required to review or verify any such computations or designs for compliance with applicable laws, statutes, ordinances building codes, or rules and regulations.

**§ 9.9.6 Recovery Plan.** In the event that the Owner reasonably determines that Contractor is two (2) weeks (or more) behind the approved Schedule, Contractor shall promptly furnish to Owner at its own cost and expense, a Recovery Schedule, which depicts the Contractor's plans and measures the Contractor will take for achieving the completion of the Work in accordance with the Contract Time. Such measures may include an increase in: (a) the number of construction workers, equipment, materials, (b) in the number of shifts, (c) use of overtime operations, (d) supplement any lagging crew or sub-trade, or (e) re-sequencing Work. If the Contractor desires to carry on Work at night or outside the normal working hours the Contractor must obtain approval from the appropriate jurisdiction (refer to City rules governing this work). Owner has the right to direct Contractor to take such measures, and other reasonable acceleration measures deemed necessary by Owner. Prior to accelerating its forces, the Contractor shall submit to the Owner and Architect such supplementary schedule or schedules to demonstrate the manner in which the agreed rate of progress will be regained and the anticipated costs of such acceleration. The Contractor's Recovery Schedule shall be subject to reasonable approval of the Owner. Contractor will be entitled to an extension of time, as provided elsewhere in this Agreement, only if Owner approves of the extension and adjustment through the Change Order process. Providing a Recovery Schedule as set forth in this Paragraph shall not be deemed as notice of any delays. All notice of delays must comply with Article 21. For delays that are not excusable under the terms of this Agreement, any and all costs related to delays, or the costs of any acceleration, disruptions, or inefficiencies due to such delay(s) shall be borne by the Contractor. Contractor's refusal to make reasonable efforts to complete the Work within the Contract Time is a material breach of this Agreement and a basis for Owner terminating Contractor for cause.

**§ 9.9.7** The Contractor shall manage savings realized in the performance of activities and events detailed in the Schedule for the overall benefit of the Project. In the event that Contractor is ahead of schedule with respect to certain activities or events detailed in the Schedule, such time savings shall benefit Owner and shall not work to allow additional time for the completion of other activities or events.

**§ 9.9.8** Owner's and Architect's review, comment, and/or approval of the Contractor's Construction Schedules, updated schedules, or Recovery Schedule(s) shall not constitute a change of any portion of the Work or the Schedule or relieve Contractor of any of its obligations. Failure of the Contractor to include any element of the Work required by the Contract Documents in its construction schedules shall not relieve the Contractor from completing the Work in full accordance or compliance with the Contract Documents. The Contractor alone shall remain responsible for the workflow and schedule logic, how early to start activities, adjusting forces, equipment, and work schedules to ensure completion of the Work within the time(s) specified in the Contract.

## § 9.10 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Contractor shall also comply with all of Owner's and, where applicable, General Contractor's rules and regulations, respecting the Site/Building (see **Exhibit L**) and shall confine its operations at the Site to only those areas permitted by the Owner.

**§ 9.10.1** The Contractor shall send proper notices, make all necessary arrangements, and perform all other services required in order to protect and maintain all marked, identified, locatable, or known public entities such as fire lines and hydrants, electric, gas, water lines, sewer pipes, mechanical systems, and all other items of this nature, and assume all responsibility and pay all costs and damages for which the Owner may be liable if said services are interrupted by actions of the Contractor or subcontractor.

**§ 9.10.2** The Contractor shall bring and store on the Project site only materials and equipment which are to be used directly in the Work. After such equipment is no longer required for the Work, it should be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage and other similar occurrences are solely the responsibility of the Contractor and the Contractor shall mitigate any adverse impacts to the Project, including those caused by authorized changes, which may affect cost, schedule, or quality. The Contractor shall not erect or permit the erection of any sign on the Project site without the prior written consent of the Owner, which consent may be withheld or revoked in the Owner's sole direction.

**§ 9.11** Not used.

## § 9.12 Cutting and Patching

**§ 9.12.1** The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise directed by the Contract Documents. Fitting of all materials shall be done to preserve the strength and durability of the material and to present a clean, well-worked appearance.

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

## § 9.13 Cleaning Up

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus material from and about the Project; and shall properly dispose of waste materials. If a dispute arises among the Contractor, General Contractor, a Separate Contractor, 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 will allocate the cost among those responsible.

## § 9.14 Access to Work

The Contractor shall provide the Owner and Architect and/or Owner's Representative with access to the Work in preparation and progress wherever located.

## § 9.15 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 indemnify and hold the Owner, Owner-Related Entities, and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor,

the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect and/or Owner's Representative.

### **§ 9.16 Indemnification**

**§ 9.16.1** To the fullest extent permitted by law the Contractor shall defend, indemnify and hold harmless the Owner, Owner-Related Entities, the General Contractor, Owner's Representative, Architect, Architect's consultants, and the agents, members, affiliates, subsidiaries, employees, officers, principals, directors of any of them ("Indemnified Party") from, for, and against every kind and character of claims, damages, losses, actions, causes of action, liabilities, costs, fines, and expenses, (including but not limited to actual attorneys' and expert fees and costs, and costs and expenses of consultation, preparation, and review of claims and related documents and in enforcing the defense and indemnity obligations hereunder, and including those events covered by the blanket contractual liability coverage required under the Contract Documents) ("Loss"), arising out of, related to, or resulting from, or alleged to relate to or arise from: any act or omissions in the performance of the Work, including the work of all the Subcontractors and their employees or anyone for whom they are legally liable, provided that any such Loss is caused or contributed to, alleged to be caused or contributed to, in whole or in part by (i) the negligent, wrongful, or intentional act or omission of the Contractor, any Subcontractor, and their employees or the agent of any of them, or anyone for whose acts any of them may be liable, (ii) any determination by a court or agency that Contractor is not an independent contractor or that Owner or the General Contractor is the employer or joint employer of any of Contractor's or any Subcontractor's employees or personnel, (iii) any claim, action, suit or proceeding by Contractor or a Subcontractor's employees, including but not limited to worker's compensation, unemployment and wage-and-hour claims, (iv) any violation or infraction by Contractor of any law, order, citation, rule, regulation, standard, ordinance or statute in any way relating to the occupational health or safety of employees, or (v) infringement of any patent rights, which may be brought against Owner arising out of Contractor's Work, regardless of whether or not such Loss is caused in part by a party indemnified hereunder. Contractor's obligation to defend, indemnify, and hold harmless under this Section applies regardless of whether or not such Loss is groundless, false, or fraudulent. The Contractor shall defend all actions brought upon such matters to be indemnified hereunder and pay all costs and expenses incidental thereto, but the indemnified party shall have the right, at its option, to participate in the defense of any such action without relieving the Contractor of any obligation hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person under the Contract Documents. The indemnification and defense provisions of this Agreement shall survive any termination of this Agreement.

**§ 9.16.2** Notwithstanding the foregoing, to the extent any such Loss is a claim, damage, loss, or expense attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property the Contractor's obligation to defend, indemnify, or hold harmless under Section 9.16 applies only to the extent such Loss arises out of the negligence or fault or, with regard to the duty to defend alleged negligence or fault, of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights, or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.16.

**§ 9.16.3** In claims against any person or entity indemnified under this Section 9.16 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 9.16.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts. Solely for the purposes of the foregoing indemnification provision only Contractor and its Subcontractors specifically waive immunity it or they may be granted under applicable workers' or workmen's compensation act, including RCW Ch. 51.

**§ 9.16.4 OWNER AND CONTRACTOR ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS SECTION WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.** Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person under the Contract Documents. The indemnification and defense provisions of this Agreement shall survive any termination of this Agreement.

### **ARTICLE 10 ARCHITECT / OWNER'S REPRESENTATIVE**

**§ 10.1** The Architect or Owner's Representative will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until the date the Architect and/or



Owner's Representative issues the final Certificate for Payment. The Architect or Owner's Representative will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract. To the extent Owner designates an Owner's Representative to administer the Contract, all of the obligations of the Architect in this Article 10 shall be performed by the Owner's Representative. The presence of the Architect, Owner, or Owner's Representative at the Site shall not in any manner be construed as assurance that the Work is completed in compliance with the Contract Documents, nor as evidence that any requirement of the Contract documents of any kind, including Notice, has been met or waived.

**§ 10.2** Not Used.

**§ 10.3** The Architect and/or Owner's Representative will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect and/or Owner's Representative will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect and/or Owner's Representative will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

**§ 10.4** On the basis of the site visits, the Architect and/or Owner's Representative will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect and/or Owner's Representative will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect and/or Owner's Representative will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

**§ 10.5** Based on the Architect's and/or Owner's Representative's evaluations of the Work and of the Contractor's Applications for Payment, the Architect and/or Owner's Representative will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts. The Owner has the same authority to reject Work, require inspection or testing, and reject Applications for Payment as does the Architect and/or Owner's Representative.

**§ 10.6** The Architect and/or Owner's Representative has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

**§ 10.7** The Architect and/or Owner's Representative will review and approve 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.

**§ 10.8** The Architect may make recommendations to the Owner on matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor.

**§ 10.9** No action, approval or omission to act by the Owner (including Owner's Representative) or Architect, or failure to advise Contractor as to any matter, shall in any way relieve Contractor from its responsibility for the performance of the Work in accordance with the Contract Documents. In reviewing the quality and progress of the Work and submittals received from the Contractor, the Architect and/or Owner's Representative is acting solely for the convenience of the Owner. Neither the Owner nor the Architect nor the Owner's Representative has any responsibility, duty, or obligation to the Contractor to assist the Contractor in the supervision or performance of the Work.

**ARTICLE 11 SUBCONTRACTORS**

**§ 11.1** 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.

§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect and/or Owner's Representative of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was 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. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the 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 the Contract Documents, assumes toward the Owner and Architect.

§ 11.4 Contractor shall pay each Subcontractor, upon receipt of payment from the Owner, an amount equal to the amount paid by Owner to Contractor on account of such Subcontractor's work, less the percentage retained and in accordance with any applicable prompt payment statutes. Contractor shall require each Subcontractor to make similar payments to its Sub-subcontractor.

§ 11.5 Each Application for Payment shall be accompanied by Contractor's release of lien claims and by similar releases of lien claims of all subcontractors and all material suppliers who were included in the Application for Payment in the form of **Exhibit M**. Application for final payment shall be accompanied by final waivers and final releases of liens from Contractor, subcontractors and material suppliers who have not previously furnished such final waivers and releases, in form of **Exhibit M**.

#### § 11.6 Contingent Assignment of Subcontracts

Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that (a) assignment is effective only after termination of the Contract by the Owner and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and (b) assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract. If the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract for the period after such acceptance. Upon assignment to the Owner under this Section, the Owner may further assign the subcontract to a successor contractor or other entity, who shall be legally responsible for all of the successor contractor's obligations under the subcontract.

### ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 12.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements, but do not include utility providers or similar vendors or the General Contractor. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 12.1.1 The Owner has contracted with a General Contractor for the overall project of which this Project is included. Contractor agrees to coordinate its efforts with that of the General Contractor and agrees to have its Work managed by the General Contractor.

§ 12.2 The Contractor shall afford the Owner, the General Contractor, 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 activities with theirs as required by the Contract Documents. The Contractor understands that the General Contractor and Separate Contractors may be continuing work at the Project and agrees to provide access to the Separate Contractors and General Contractor as necessary to accommodate on-going construction activities.

§ 12.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to the General Contractor or a Separate Contractor because of delays, improperly timed activities, or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of

delays, improperly timed activities, damage to the Work, or defective construction of the General Contractor or a Separate Contractor.

## **ARTICLE 13 CHANGES IN THE WORK**

**§ 13.1** By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized only by written Change Order signed by the Owner, and an authorized representative of Contractor, or by written Construction Change Directive signed by the Owner. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive. No additional work shall begin and no additional costs or time shall be incurred without Owner's prior written approval.

**§ 13.2** Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Architect, by the Contractor's cost of labor, material, equipment, and reasonable overhead, general conditions and profit (not to exceed 10% or Contractor's Fee, whichever is less), unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Architect and/or Owner's Representative will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Owner will prepare a Change Order. The execution of a Change Order shall constitute full satisfaction and a waiver of any and all claims by the Contractor arising out of, or relating in any way to, the Work to be performed or deleted pursuant to Change Order except as specifically described in the Change Order.

**§ 13.3** Within ten (10) days of first notification of a potential Change Order, unless otherwise agreed to in writing by Owner, Contractor shall provide an ROM (rough order of magnitude) estimate of the amount of the adjustment in Contract Time and/or Contract Sum/Guaranteed Maximum Price. Within fifteen (15) days of first notification of a potential Change Order, unless otherwise agreed to in writing by Owner, Contractor shall provide Owner with a final estimate of the amount of adjustment in Contract Time and/or Contract Sum/Guaranteed Maximum Price. Failure to give the amount of the adjustment or estimate thereof, as set forth in this Section, shall constitute an absolute and complete waiver, bar, and release of such right to seek an increase in Contract Sum/Guaranteed Maximum Price or Contract Time for Work related to or arising under any potential Change Order.

**§ 13.4** Only the Architect or Owner may 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 an order for minor changes shall be in writing. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum/Guaranteed Maximum Price or Contract Time, the Contractor shall notify the Architect and Owner and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect and Owner that such change will affect the Contract Sum/Guaranteed Maximum Price or Contract Time, the Contractor waives any adjustment to the Contract Sum/Guaranteed Maximum Price or extension of the Contract Time.

### **§ 13.5 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 and that could not reasonably have been discovered by the Contractor, the Contractor shall promptly provide notice to the Owner and the Architect, if applicable, before conditions are disturbed and in no event later than two (2) business days after first observance of the conditions. The Architect or Owner will promptly investigate such conditions and, if the Architect or Owner determines that they differ materially and cause an increase or decrease in the time required for performance of any part of the Work, will recommend an equitable adjustment in the Contract Time. If the Architect or Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Contractor shall be notified in writing with the reasons. During the investigation, the Contractor and Owner will work together to prevent delays to other portions

of the Work or other work on the Project as a result of such notice. If Contractor disputes the determination or recommendation, it may proceed as provided in Article 21.

## **ARTICLE 14 TIME**

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

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

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

**§ 14.4** The date of Substantial Completion is the date determined by the Architect or Owner's Representative in accordance with Section 15.6.3. The Contractor shall proceed expeditiously and shall achieve Substantial Completion within the Contract Time. The Contractor shall furnish sufficient forces and equipment, and shall work such hours, including night shifts, overtime operations, and weekend and holiday work as may be necessary to perform the Work in accordance with the date of Substantial Completion and the approved Contractor's Construction Schedule. If the Contractor fails to perform in a timely manner in accordance with the Contract Documents and, through the fault of the Contractor or Subcontractor(s) fails to meet the Contractor's Construction Schedule, the Contractor shall take such steps as may be necessary to immediately improve its progress by increasing the number of works, shifts, overtime operations, or days of work, as a Cost of the Work within the Contract Sum and in accordance with the Contract Documents.

### **§ 14.5 Delays, Extensions of Time, and Force Majeure**

**§ 14.5.1** Subject to the limitations and requirements set forth in this Section 14.5, if the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, the General Contractor, or of a Separate Contractor; or (2) changes ordered in the Work, then the Contractor shall be entitled to an equitable adjustment in the Contract Time for that portion of delay solely caused by such events, and may be entitled to an equitable adjustment in Contract Sum/Guaranteed Maximum Price, if the time of Contractor's performance is impacted due to such delays, provided the Contractor submits a Notice of Claim in accordance with Article 21. To the extent any delay or failure of performance was concurrently caused by the Owner and Contractor, Contractor shall be entitled to an adjustment in the Contract Time for that portion of the delay or failure of performance that was concurrently caused, provided it submits Notice of Claim in accordance with Article 21, but shall not be entitled to any adjustment in Contract Sum. When the Contract Time has been extended solely due to the fault or negligence of the Owner as set forth in this Section 14.5.1, charges to Owner for delay-related damages or compensation, if any, shall not exceed the lesser of (a) the average daily charge for general conditions over the course of the Project without the extension, or (b) Contractor's actual costs directly attributable to such delay ("Compensable Delay Damages").

**§ 14.5.2** Subject to the limitations and requirements set forth in this Section 14.5, if the Contractor is delayed at any time in the commencement or progress of the Work by (1) unavoidable labor disputes, including strike or defensive lockout (which the Contractor has used all reasonable efforts to prevent and avoid); (2) delay in deliveries that are unusual or could not have been reasonably anticipated at the time the Agreement is executed; (3) unusual disruptions in the supply chain for materials and equipment that could not have been reasonably anticipated at the time the Agreement was executed and which the Contractor has used all reasonable efforts to prevent and avoid, including monitoring supply chain and proposing timely substitutions to mitigate any delays; (4) a Force Majeure Event as defined below; or (5), unavoidable casualties not caused by the Contractor or those under its control, and not otherwise specified herein, and that could not have been reasonably anticipated at the time the Agreement is executed, then the Contractor shall be entitled to an equitable adjustment to the Contract Time for that portion of delay solely caused by such events, but shall not be entitled to an adjustment in the Contract Sum/Guaranteed Maximum Price.

**§ 14.5.2.1** As used herein, a Force Majeure Event is an event, circumstance or condition that was unforeseeable at the time the Agreement (or amendment setting Contract Sum or GMP) was executed and beyond the control of either party or their respective contractors, consultants, subcontractors, or suppliers at any tier below them, and are limited to following: (1) Acts of God or public enemy, including terrorism and malicious mischief, insurrection, or riot; (2) acts or omissions of any government entity; (3) natural fire, tornadoes, floods, hurricanes, landslides,

earthquakes, tidal waves/tsunamis, blizzards, or other physical natural disasters; (4) quarantine, epidemic, or pandemic; and (5) Unusually Severe Weather Conditions.

**§ 14.5.3** The Contractor shall be required to use best efforts to mitigate both the necessity of the delay and the period of the delay. If more than one event causes concurrent delays, and the cause of at least one of those events is a cause of delay that would not entitle Contractor to an extension of time, then to the extent of such concurrency, Contractor shall not be entitled to an extension of time. Such extension of Contract Time shall not be for any delays caused by or due to the fault or negligence of the Contractor or which are otherwise the responsibility of the Contractor. No delay shall be recognized unless it extends the time required to complete a task that is on the Construction Schedule for the Project, and no delay shall be recognized unless it alone increases the overall critical path duration of the schedule in effect at the time of the delay.

**14.5.4** Each and any claim relating to any request for time or alleging delay, including increased costs associated therewith, shall be made in accordance with applicable provisions of Article 21. Contractor's failure to provide Notice of Claim in accordance with Article 21 constitutes a complete waiver and absolute bar to any Claim associated with delay or alleged delay.

**§ 14.5.5** Contractor's extension of Contract Time and Compensable Delay Damages, as outline in this Section 14.5, shall be the Contractor's sole remedy for any delay.

**§ 14.5.6** "Unusually Severe Weather Condition" as used in this Agreement means weather that is more severe than the adverse weather anticipated for the Project Site during any given season. Unusually Severe Weather Condition as used in the prior sentence means the atmospheric conditions at the definite time and place, as measured by the National Climatic Data Center station closest to the Site, that are unfavorable to construction activities. Unusually Severe Weather Conditions must actually cause a delay to the completion of the Work and the critical path. The delay must be beyond the control and without the fault or negligence of the Contractor.

**§ 14.5.7** No Claim for delay shall be allowed the Contractor on account of the Architect's or Owner's failure to return drawings and shop drawings to the Contractor until the later of (i) ten (10) working days after Architect's receipt of a demand for such drawings or (ii) a reasonable time for review and comment after such demand for such drawings, and not then, unless such claim is just and allowable as provided above. Disapproval of incomplete or defective submittals shall not be a claim for delay.

**§ 14.5.8** The Contractor shall not in any event be entitled to damages arising out of actual or alleged loss of efficiency or productivity; morale, fatigue, attitude, or labor rhythm; constructive acceleration; home office overhead; expectant underrun; trade stacking; reassignment of workers; concurrent operations; dilution of supervision; learning curve; beneficial or joint occupancy; logistics; ripple; season change; extended overhead; profit upon damages for delay; impact damages; or similar theories of damages.

## **ARTICLE 15 PAYMENTS AND COMPLETION**

### **§ 15.1 Schedule of Values**

**§ 15.1.1** Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to Section 3.2 or 3.4, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Architect and/or Owner's Representative or Owner. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 15.1.2** The allocation of the Stipulated Sum or Guaranteed Maximum Price under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

### **§ 15.2 Not Used**

### **§ 15.3 Applications for Payment**

**§ 15.3.1** At least ten days before the date established for each progress payment, The Contractor shall submit to the Architect and/or Owner's Representative an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 15.1, for completed portions of the Work. The application shall be



notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect and/or Owner's Representative require; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by the Contract Documents. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay. The Application for Payment shall constitute a representation by the Contractor that except as otherwise specifically stated, there are no mechanics', materialmen's or laborers' liens or claims outstanding or known to exist at the date of the Application; all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Application, and the waivers and releases have been obtained from the Subcontractors, Sub-subcontractors and suppliers that have provided the Contractor any pre-lien notice(s) or whom Contractor has actual knowledge has been on site for Work done and materials furnished.

**§ 15.3.2** With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

**§ 15.3.3** All materials and equipment related to the Work shall be shipped to and stored at a receiving warehouse. No materials or equipment shall be shipped directly to the Project site unless such has been coordinated directly with the General Contractor. The General Contractor shall not be responsible for the receipt or acceptance of any equipment or materials (including small wares). General Contractor will reject any shipments of equipment and/or materials should Contractor's personnel not be on site to receive, unload, handle, inspect, and store such equipment and materials. 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 advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

**§ 15.3.4** 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 other encumbrances adverse to the Owner's interests. Conditional and unconditional claim waiver and release of liens shall be provided by Contractor and all first-tier subcontractors and suppliers with each payment application.

#### **§ 15.4 Certificates for Payment**

**§ 15.4.1** The Architect or Owner's Representative will, within ten business 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 is determined properly due, or notify the Contractor and Owner of the reasons for withholding certification in whole or in part as provided in the Contract Documents.

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

**§ 15.4.3** The Architect and/or Owner's Representative 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 and/or Owner's Representative's opinion the representations to the Owner required by Section 15.4.2 cannot be made. If the Architect and/or Owner's Representative is unable to certify payment in the amount of the Application, the Architect and/or Owner's Representative will notify the Contractor and Owner as provided in Section 15.4.1. If the Contractor and the Architect and/or Owner's Representative cannot agree on a revised amount, the Architect and/or Owner's Representative will promptly issue a Certificate for Payment for the amount for which the Architect and/or Owner's Representative is able to make such representations to the Owner. The Architect and/or Owner's Representative may also withhold a Certificate for Payment or, because of subsequently discovered evidence, 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 and/or Owner's Representative's opinion to protect the Owner from loss for which the Contractor is responsible, including

- .1 defective Work not remedied, 150% of the estimated value of such defective Work may be withheld, unless a lesser amount is required by applicable law;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials, or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner, the General Contractor, or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure to carry out the Work in accordance with the Contract Documents; or
- .8 any other reason for withholding allowed by the Contract Documents;

Owner shall have the same rights of withholding as Architect and/or Owner's Representative. The Owner may also withhold a payment, in whole or in part, if the Contractor's Application for Payment seeks payment for a Change Order that has not been signed by the Owner, or for any other reason allowed by applicable law.

**§ 15.4.4** When either party disputes the Architect's and/or Owner's Representative's decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21.

### **§ 15.5 Progress Payments**

**§ 15.5.1** 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. Contractor shall be responsible for obtaining lien releases from all subcontractors and sub-subcontractors.

**§ 15.5.2** Neither the Owner nor Architect and/or Owner's Representative shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

**§ 15.5.3** 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 not in accordance with the Contract Documents.

**§ 15.5.4** Upon reasonable evidence of the actual or pending nonpayment of a Subcontractor or to otherwise protect itself as provided by applicable law, the Owner shall have the right to make payments to Subcontractors by direct or multiple-payee checks of amounts owned to Subcontractors under the governing subcontracts, purchase orders and similar agreements, and then deduct the amount of such payments from the amount of the final payment otherwise owed to the Contractor; provided that, prior to making direct or multiple-payee check payments under this Clause, the Owner shall provide reasonable written notice to the Contractor.

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

§ 15.5.6 The Owner may condition any payment otherwise due to Contractor upon the Contractor's prior submission of unconditional lien waivers from Subcontractors and suppliers covering any Work for which Contractor has received payment from the Owner.

### § 15.6 Substantial Completion

§ 15.6.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. For Substantial Completion to be achieved, the Owner must have received a temporary or final certificate of occupancy and all other governmental approvals as necessary and required for the Owner to occupy or utilize the Work, or portion thereof which the Owner agrees to accept separately, for its intended purpose. In addition, the only remaining Work after Substantial Completion shall be minor and "punch list" in nature so that the Owner could occupy the Project on that date and the completion of the Work by the Contractor would not materially interfere with or hamper the Owner's normal business operations.

§ 15.6.2 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 and/or Owner's Representative a comprehensive list of items to be completed or corrected prior to final payment. 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.

§ 15.6.3 Upon receipt of the Contractor's list, the Architect and/or Owner's Representative will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Architect and/or Owner's Representative determines that the Work or designated portion thereof is substantially complete, the Architect and/or Owner's Representative will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Owner shall have the same right of inspection and right to demand completion and correction as Architect. If more than two inspections by the Architect or Owner are required to determine Substantial Completion, not due to the fault of either the Architect or Owner, the Contractor shall reimburse Owner for any additional costs associated with such additional inspections, including costs of the Architect.

§ 15.6.4 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. The Owner shall make payment of retainage upon Final Completion. Contractor shall bill retainage separately from Final Payment.

### § 15.7 Final Completion and Final Payment

§ 15.7.1 The term "Final Completion" as used in the Contract Documents shall mean that (1) Substantial Completion of the Work or designated portion thereof has been achieved and the Owner has certified that the Project is finally complete; (2) the Owner has received a final certificate of occupancy and all other governmental approvals as necessary and required for the Owner to occupy or utilize the Work or designated portion thereof for its intended purpose; and (3) the Contractor has performed all of its obligations under the Contract (including, but not limited to, submission of O&M manuals, as-built drawings, warranty letters, approved submittals, permit sign-offs, and resolution of all punch list work to Owner's satisfaction), except for those obligations which by their nature continue or arise after final payment. Notwithstanding the foregoing, Final Completion shall be deemed achieved if all construction, submittals and other performance by the Contractor required for issuance of the permanent certificate of occupancy has been completed but the certificate has not been issued solely because of factors beyond the reasonable control of the Contractor. A delay in the applicable governmental agency's issuance of a certificate of occupancy, following the Contractor's completion of construction, submittals, and other performance that is of normal duration for that agency shall not constitute a factor "beyond the reasonable control of the Contractor" as that phrase is used in the prior sentence.

§ 15.7.1.1 Section 15.7.1 subpart (2) shall not apply to designated portions of the Work to the extent certificates of occupancy and other approvals are not required by governmental authorities with jurisdiction in order for the Owner to occupy or utilize the designated portions for their intended uses.



**§ 15.7.2** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect and/or Owner's Representative will promptly make such inspection and, when the Architect and/or Owner's Representative finds the Work acceptable under the Contract Documents and the Contract fully performed (including, but not limited to, submission of O&M manuals, as-built drawings, warranty letters, approved submittals, permit sign-offs, and resolution of all punch list work to Owner's satisfaction), the Architect and/or Owner's Representative will promptly issue a final Certificate for Payment stating that to the best of his or her knowledge, information and belief, and on the basis of on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's and/or Owner's Representative's final Certificate for Payment will constitute a further representation that conditions stated in this Section as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 15.7.3** Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or 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 costs and reasonable attorneys' fees.

**§ 15.7.4** Acceptance of final payment by the Contractor, a Subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the final Application for Payment.

#### **§ 15.8 Construction Lender Requirements**

**§ 15.8.1** This Agreement may be amended in any respect, including without limitations procedures for payment, assignment, change orders, lien releases, and termination, as may be reasonably required by any construction or permanent lender who may from time to time have a mortgage or deed of trust on the jobsite or have outstanding a loan commitment on the jobsite upon agreement by the Contractor, such agreement to not unreasonably be withheld, provided that such revisions to the Agreement shall not materially affect Contractor's rights or obligations. To the extent that Contractor must take on any obligation that would increase its costs or delay the schedule, Contractor shall be entitled to an equitable adjustment of the Contract Time or the Contract Price or Guaranteed Maximum Price, provided Contractor provides notice as required in Article 21. Contractor also agrees to timely provide any such lender with any documents and information it reasonably requires within the limits afforded the Owner in this Agreement. The Contractor shall make every reasonable effort to conform its documentation in support of progress payments to the requirements of the lender under the construction loan agreement. If requested by the Owner, Contractor agrees to (a) execute a reasonable "Contractor's Letter of Consent of Assignment," and (b) provide to the construction lender such certificates or such other reasonable documents relating to the completion of the Work in compliance with applicable codes, ordinances, rules and regulations, in such form as may be required by the Owner's lender.

**§ 15.8.2** It is understood that funding to pay the Contractor under this Contract is or will be subject to the terms and conditions of a certain construction loan agreement between the Owner and its lender, however, nothing therein shall reduce the Owner's obligations in strict accordance with the Contract requirements, or appreciably change the terms and conditions of payment under this Agreement. The Contractor agrees to cooperate with the Owner and the lender to the extent administratively possible in meeting the Lender's requirements under the construction loan agreement.

**§ 15.8.3** Contractor hereby subordinates all contractual and statutory liens and security interests (whether choate or inchoate) which Contractor may be (or may become) entitled to assert against the Property to all of the liens and security interests securing any financing obtained by Owner, and Contractor fully and completely waives any and all rights that the Contractor may have, now or in the future, to claim, directly or indirectly, a priority of lien or security interest, in whole or in part, against or in the Property over any assignments, liens and security interests that Owner's or Owner's lender (current or future) may claim against the Property under the lender's applicable security instruments (including any future amendments thereto). This subordination shall be self-operative, and no further instrument of subordination shall be required. However, in further confirmation of such subordination, Contractor shall promptly, upon the request of Owner or its lender(s), execute, acknowledge and deliver such additional instruments as may be reasonably required to confirm such subordination. Contractor shall obtain subordination of lien rights in substantially the same form (as herein) from each of its Subcontractors.

## ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

### § 16.1.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract and to comply with any safety programs or precautions required by applicable law. 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 or Project and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 16.1.2 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 and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property 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 16.1.2 and 16.1.3. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.16.

§ 16.1.3 Contractor, in all cases, shall comply and cause its subcontractors at all tiers to comply with all Governmental Requirements. The term "Governmental Requirements" as used in the Contract Documents shall mean building traffic, environmental, occupancy health, accessibility for disabled and other applicable laws, statutes, ordinances, regulations or decrees, of any federal, state, county, municipal or governmental or quasi-governmental authority or agency pertaining (a) to the Project or the Work, (b) to the use and operation of the Project or the Work for their intended purposes, or (c) if the context of the sentence establishes this term is being used in connection with a different subject than those described in clauses (a) or (b), then to the subject matter described in the Section in which the term is used.

### § 16.2 Hazardous Materials and Substances

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor recognizes or 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 notify the Owner and Architect and/or Owner's Representative of the condition. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 16.2.1.2 [add when/where applicable] Owner and Contractor acknowledge that asbestos and/or lead paint may be encountered at certain locations at the Project site for reasons the parties do not attribute to Contractor. Such conditions may be present on the original steel in the building. If such conditions are encountered and prior to disturbing such conditions, Contractor will immediately stop Work in the affected area and report the circumstances to Owner. Upon receipt of Contractor's notice, Owner shall render such conditions harmless or specify the means and methods to be used by Contractor and its Subcontractors to perform Work in proximity to such conditions. Work in the affected area will resume upon agreement of Owner and Contractor after the area is deemed acceptable to proceed. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum or Guaranteed Maximum Price shall be increased in the amount of Contractor's reasonable additional costs of shutdown, delay and start-up.

§ 16.2.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact, the material or substance presents the risk of bodily injury or death as described in Section 16.2.1 and has not been

disclosed to Contractor or rendered harmless after notice from Contractor as provided above, provided that such claim, damage, loss, or expense is (i) attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), and (ii) is not covered by insurance, except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

**§ 16.2.3** The Contractor shall not use, generate, transport, dispose of, or install any materials containing asbestos, lead, or hazardous materials, and shall indemnify the Owner and Owner-Related Parties for the cost and expense the Owner or Owner-Related Parties incur (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 16.2.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. Contractor will be solely responsible for compliance with any "Right to Know" law relating to notice to its employees and others concerning Hazardous Substances to which they could be exposed in the course of the conduct of the Work, including the labeling of such materials, the filing of any necessary reports relating thereto, and related requirements.

**§ 16.2.4** If, without negligence or other fault 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.

**§ 16.2.5** Contractor shall not cause or permit, except as required by the Specifications or other Contract Documents, the presence, use, generation, release, discharge, storage, or disposal of any Hazardous Materials on, under, in or about, or the transportation of any Hazardous Materials to or from the Project, except in strict accordance with all applicable laws and regulations.

## ARTICLE 17 INSURANCE AND BONDS

### § 17.1 Contractor's Insurance

**[insurance must be reviewed and updated to match project requirements. Any projects that are subject to a TCIP, this needs to be reviewed by the TCIP Administrator]**

**§ 17.1.1** The Contractor shall purchase and maintain at Contractor's expense insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 17.1 or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance for a minimum six (6) years following issuance of the final certificate of occupancy for the entire Project or the expiration of the applicable statute of repose, whichever is longer.

**§ 17.1.2** Commercial General Liability insurance for the Project written on an occurrence form. Such policy shall contain limits of not less than «Two Million Dollars» (\$ «2,000,000.00 ») each occurrence, «Two Million Dollars» (\$ «2,000,000.00 ») general aggregate, and «Two Million Dollars» (\$ «2,000,000.00 ») aggregate for products-completed operations hazard, providing coverage for claims including:

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

Coverage will extend to the indemnification by Contractor as set forth in the Contract Documents subject to specific policy conditions, limitations, and exclusions. Any deductible or self-insured retention must be commercially reasonable, disclosed, and is subject to written approval of Owner. The policy for the Contractor shall include without limitation coverage for the hazards commonly referred to as "XCU" and shall contain a severability of interests provision.

The Contractor shall provide umbrella and/or excess liability coverage as set forth in Section 17.1.5.

**§ 17.1.3** The Contractor's Commercial General Liability coverage shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under this Contract arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .10 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ 17.1.4 Automobile Liability covering vehicles owned by the Contractor, and non-owned vehicles used by the Contractor with policy limits of not less than « One Million Dollars » (\$ «1,000,000.00» ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

§ 17.1.5 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance. Contractor shall also carry excess/umbrella insurance over its Employer's Liability/Stop Gap, Commercial General Liability, and Automobile Liability Policies, in an amount not less than \$5,000,000 per occurrence and in the aggregate, such that there is a minimum of \$6,000,000 in primary and excess or umbrella coverage (\$1,000,000 primary/\$5,000,000 umbrella/excess). Such primary and excess/umbrella insurance policies result in the same or greater coverage as the coverages required under Sections 17.1.2, 17.1.3, and 17.1.7, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 17.1.6 Workers' Compensation at statutory limits.

§ 17.1.7 Employers' Liability or Stop Gap coverage with policy limits not less than «One Million Dollars» (\$ «1,000,000.00 ») each accident, «One Million Dollars» (\$ «1,000,000.00 ») each employee, and «One Million Dollars » (\$ «1,000,000.00») policy limit.

§ 17.1.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than «Two Million Dollars» (\$ «2,000,000.00 ») per claim and «Two Million Dollars» (\$ «2,000,00.00») in the aggregate. All Mechanical, Plumbing, Electrical, and Fire Protection, or any other design-build Subcontractors shall have similar professional liability coverages, unless approved by Owner in writing, but not less than the amounts set forth in this Section. Coverage shall be either on an "occurrence" form or on a "claims made" form. If coverage is on a "claims made" form, said coverage shall be maintained for a minimum of six (6) years after issuance of a final certificate of occupancy for the entire Project. Any loss within the deductible shall be borne by the Contractor.

§ 17.1.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than «Five Million Dollars» (\$ «5,000,000.00 ») per claim and «Five Million Dollars » (\$ «5,000,000.00 ») in the aggregate.

§ 17.1.10 Coverage under Sections 17.1.8 and 17.1.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less those set forth in 17.1.8 and 17.1.9.

§ 17.1.11 Property Insurance. A policy covering all material, equipment, and tools (owned, borrowed, or leased) of the Contractor or its employees for one hundred percent (100%) of the full replacement value thereof. The insurance policy shall be written under a standard Special causes of Loss perils insurance policy.

§ 17.1.12 The Contractor shall provide certificates of insurance and endorsements acceptable to the Owner evidencing compliance with the requirements in this Section 17.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate or endorsements evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 17.1.1. The certificates will show the Owner, General Contractor, and Owner-Related Entities as an additional insured on the Contractor's Commercial General Liability, Umbrella, Automobile, Pollution, Worker's Compensation (to the extent allowed by law), and excess or umbrella liability policy or policies. Information concerning reduction of coverage on account of revised limits, significant claims paid under the general aggregate or both, shall be furnished by the Contractor with reasonable promptness.

§ 17.1.13 The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor. Contractor shall be responsible for payment of all deductibles incurred as a result of its or its Subcontractors or Suppliers' negligence or fault.

§ 17.1.14 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 17.1.1 to include (1) the Owner, General Contractor, Owner's Representative, Owner's agents or representative, the Tulalip Tribes of Washington, Wells Fargo Bank (its successors and/or assigns), Key Bank N.A. (its successors and/or assigns), Bank of America (its successors and/or assigns), and any subsequent owner or lender to the Project, and the Architect and its Consultants, and their respective officers, directors, members, agents, employees and volunteers ("Owner-Related Entities"), 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, Owner-Related Entities, and General Contractor as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's Consultants, CG 20 32 07 04. No insurance that is required to add Owner or Owner-Related Parties shall contain a cross-suit exclusion. The Contractor shall obtain the written agreement on the part of each insurance company to notify Owner at least thirty (30) days prior to cancellations or non-renewal of any such insurance, except ten (10) days' notice of cancellation due to non-payment of premium. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

All certificates, endorsements, or policy termination notices should be delivered to the Owner, in addition to those entities listed below:

The Tulalip Tribes of the Tulalip Reservation, Washington  
6404 Marine Drive  
Tulalip, WA 98271  
Attn: Valerie Marshall  
vmarhsall@tulaliptribes-nsn.gov

§ 17.1.15 Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 17.1.16 Contractor agrees that the insurance specified in this Section shall be primary and non-contributory over any insurance or self-insurance program maintained by the Owner or Owner-Related Party.



§ 17.1.17 Insurance effected or procured by Contractor shall not reduce or limit the Contractor's obligation to indemnify and defend the Owner anyone required to be defended or indemnified by this Agreement for claims made or suits brought which result from or are in connection with the performance of this contract.

§ 17.1.18 If the Contractor maintains higher insurance limits than the minimums shown herein, the Owner shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this Contract or whether any certificate of insurance furnished to the Owner evidences limits of liability lower than those maintained by Contractor.

## § 17.2 Owner's Insurance

### § 17.2.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

### § 17.2.2 Property Insurance

§ 17.2.2.1 The Owner will purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on "course of construction," or a builder's risk "all-risks" completed value, or equivalent policy form sufficient to cover the total value of the entire Project on a replacement cost basis. Contractor shall be responsible for reimbursement of any deductibles under Owner's policy to the extent such deductible results from the negligence or fault of Contractor or those for whom Contractor is responsible.

### § 17.2.2.7 Waiver of Subrogation

§ 17.2.2.7.1 The Contractor waives all rights against (1) the Owner any of its Separate Contractors, subcontractors, sub-subcontractors, agents, employees and Owner's Representative; (2) the Architect and Architect's consultants; (3) the Owner-Related Entities; and (3) the General Contractor, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by this Agreement or other property insurance applicable to the Project, except such rights as it has to proceeds of such insurance. The Contractor shall require similar written waivers in favor of the individuals and entities identified above from its consultants, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 17.2.2.7 shall not prohibit this waiver of subrogation. Such policies shall provide waivers of subrogation by endorsement or otherwise. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 17.2.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner and made payable to the Owner for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Owner shall pay the Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the Contractor shall make payments to their consultants and Subcontractors in similar manner.

## § 17.3 Performance Bond and Payment Bond

§ 17.3.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the bidding documents or specifically required in the Contract Documents on the date of execution of the Contract.

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

§ 17.3.3 Each party agrees that electronic signatures (whether digital or encrypted) and/or scanned copies of original signatures on any such bond is intended to authenticate the bond and shall have the same force and effect as manual signatures and original copies. Such electronically signed or scanned/PDF versions of the AIA Document A312TM, Payment Bond and Performance Bond shall be fully enforceable against the surety.

**§ 17.3.4** The Contractor shall include the following or similar language in any surety bond: "Surety agrees that electronic signatures (whether digital or encrypted) and/or scanned copies of original signatures on this document is intended to authenticate this bond and shall have the same force and effect as manual signatures and original copies. Such electronically signed or scanned/PDF versions of the AIA Document A312™, Payment Bond and Performance Bond shall be fully enforceable against the Surety."

## **ARTICLE 18 UNCOVERING AND CORRECTION OF WORK**

### **§ 18.1 Uncovering of Work**

**§ 18.1.1** If a portion of the Work is covered contrary to the Architect's or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect or Owner, be uncovered for the Architect's or Owner's examination and be replaced at the Contractor's expense without change in the Contract Time. If a portion of the Work has been covered that the Architect or Owner has not specifically requested to examine prior to its being covered, the Architect or Owner 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, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense unless the condition was caused by the Owner, the General Contractor, or a Separate Contractor in which even the Owner shall be responsible for payment of such costs.

**§ 18.1.2** The Contractor shall promptly correct Work rejected by the Architect and/or Owner's Representative or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion or termination 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 and/or Owner's Representative's services, or Owner's other consultants services, costs incurred by the General Contractor or Separate Contractors (including delay-costs and stand by if applicable) and expenses made necessary thereby, shall be at the Contractor's expense. Owner shall not be obligated to accept defective or non-conforming Work, or damages for the difference in value between conforming and defective or nonconforming Work, and in all cases Owner, in its sole and absolute discretion, shall be entitled to full removal and correction of defective or non-conforming Work. At all times, Owner shall be entitled to offset against any sum due and owing Contractor under the Contract amounts associated with the removal and correction of defective or non-conforming Work.

**§ 18.2** In addition to the Contractor's obligations under Section 9.4, if, within two years after the date of Substantial Completion of the Work or such longer period 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 (at no cost to Owner) shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition with express acknowledgement from the Owner that such condition is not in accordance with the Contract Documents. 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 the Contract Documents. If the Owner terminates this Agreement for cause, Owner shall not be required to provide Contractor with notice of or opportunity to cure such nonconforming or defective work prior to correcting such nonconforming or defective work and, in such instance, shall be entitled to collect from Contractor reimbursement for the costs of correction or repair of such work.

**§ 18.3** If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

**§ 18.4** The 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.

**§ 18.5** The period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Article 18, but only for that portion of the corrected Work so that such corrective Work itself receives at least a one-year warranty from the date of correction.

**§ 18.6** Nothing contained in this Article 18 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the period for correction of Work as described in this Article 18 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 the time in 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. The obligation under this Article 18 shall survive termination of the Contract.

§ 18.7 The Contractor shall conduct a warranty walkthrough with the Owner one month prior to the expiration of the warranty period set forth in this Section.

## ARTICLE 19 MISCELLANEOUS PROVISIONS

### § 19.1 Assignment of Contract

The Contractor shall not assign this Contract without written consent of the Owner.

### § 19.2 Governing Law

The Contract shall be governed by the law of the Tulalip Tribes and any applicable federal laws and regulations. The Owner does not hereby consent to jurisdiction under any tribal, state, or federal law that would not otherwise apply to the Owner as a Tulalip Tribes governmental entity or activity occurring within Indian Country.

### § 19.3 Tests and Inspections

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect and/or Owner's Representative and Owner timely notice of when and where tests and inspections are to be made so that the Architect and/or Owner's Representative and Owner may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require. Should any re-testing or re-inspection of Work be required due to the fault of the Contractor, the cost of such work, including any associated schedule delay, shall be reimbursed by the Contractor and shall not be considered a Cost of the Work.

#### § 19.4.1 The Owner identifies the following representative:

(Sam Davis, COO Tulalip Tribes of WA  
6406 Marine Drive, Tulalip WA, 98271]

»

#### § 19.4.2 The Owner identifies the following Owner's Representative:

*(Name, address, email address and other information)*

[Jason Crain, Sr. Project Manager, The Wenaha Group  
505 S 336<sup>th</sup> Street, Federal Way, WA, 98003]

»

#### § 19.5 The Contractor's representative:

*(Name, address, email address, and other information)*

«[insert]

«Email: [insert] »

§ 19.6 The Contractor's representative shall not be changed without ten days' prior notice to the other party.

### § 19.7 Authority

The individual executing this Agreement on behalf of Contractor represents and warrants that such individual has the full power, authority, and legal right to execute and deliver this Agreement on behalf of the Contractor.

### § 19.8 Independent Contractor



Contractor at all times is acting as an independent contractor under the Contract Documents. Nothing in the Contract Documents is intended or shall be construed as creating any other relationship or designating Contractor as an agent for or joint venturer with Owner.

#### **§ 19.9 Severability**

If any clause or provision of the Contract Documents is determined to be illegal, invalid, or unenforceable under present or future laws, the remainder of the Contract Documents shall not be affected by such determination, and in lieu of each clause or provision that is determined to be illegal, invalid or unenforceable, there shall be added as a part of the Contract Documents a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

#### **§ 19.10 Counterparts / Electronic Signatures**

This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument and shall be binding on the parties, but all such counterparts shall constitute one agreement. This Agreement may also be executed and made binding through the use of signatures sent via facsimile and/or PDF through e-mail and whether digital or encrypted, which signatures shall be treated and effective as originals.

#### **§ 19.11 Covenant of Good Faith and Fair Dealing**

This Agreement imposes an obligation of good faith and fair dealing in the relationship between the Owner and Contractor. The Contractor will proceed to fulfill its obligation under this Agreement diligently and honestly and cooperate with the Owner in the common endeavor of completing the Work in a timely and efficient manner. By entering into this Agreement, as part of the covenant of good faith and fair dealing, Contractor further agrees that it will supply accurate, complete and current cost or pricing data for purposes of supporting or documenting Change Orders, requests for contract modification, compensation, and/or payments under this Agreement.

#### **§ 19.12 Indian Traders License**

Contractor shall obtain an Indian Traders License and comply with any requirements related thereto in order to conduct business with the Tulalip Tribes of Washington.

#### **§ 19.13 Survival**

If the full performance of an obligation is not required prior to the termination of this Contract, such obligation shall survive the termination and be fully enforceable thereafter.

#### **§ 19.14 Minimum Security Screening Standards [to be included where necessary]**

Contractor shall ensure that no employee ever convicted of a crime involving dishonesty and/or violence and/or sexual assault, or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense will have access to Owner's premises, information or will perform any part of the Scope of Work. Prior to performance of any part of the Scope of Work, Contractor, at Contractor's expense, shall perform a security screening of employees who will have access to Owner's premises, information or who will perform any part of the Scope of Work. Upon request, Contractor shall furnish the results of the security screenings to Owner.

### **ARTICLE 20 TERMINATION OF THE CONTRACT**

#### **§ 20.1 Termination by the Contractor**

If Owner fails to make payment of undisputed as provided in Section 4.1.3 for a period of 60 days through no fault of the Contractor, a Subcontractor (of any tier), or their agents or employees, the Contractor may, upon fifteen additional days' notice to the Owner and the Architect (and Owner's Lender as applicable), terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit on Work satisfactorily performed, and costs incurred by reason of such termination. In no event shall the total amount of the costs recovered exceed the balance due of the Stipulated Contract Sum or Guaranteed Maximum Price, including any revisions by Change Order, and the Contractor shall not be entitled to payment for overhead, profit or Fee on unperformed Work.

#### **§ 20.2 Termination by the Owner for Cause**

##### **§ 20.2.1** The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials;

- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or Suppliers;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority, including failure to comply with the TERO Code; or
- .4 otherwise is guilty of substantial or material breach of a provision of the Contract Documents;
- .5 refuses to comply with requests to cure from the Owner or Architect;
- .6 is adjudged bankrupt or insolvent or makes a general assignment for the benefit of Contractor's creditors, or a trustee or receiver is appointed for Contractor or for any of its property, or files a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar law;
- .7 fails to timely provide a recovery Schedule when requested by the Owner; or
- .8 for any other reason provided for under the Contract Documents.

**§ 20.2.2** When any of the reasons described in Section 20.2.1 exists, the Owner may, upon seven (7) days' prior written notice to Contractor and without prejudice to any other remedy the Owner may have, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon 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.

**§ 20.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§ 20.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's and/or Owner's Representative'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. This obligation for payment shall survive termination of the Contract.

**§ 20.2.5** If an arbiter or judge determines that the Owner wrongfully terminated the Contract for cause, the termination shall be turned into a termination for convenience under Section 20.3.

### **§ 20.3 Termination by the Owner for Convenience**

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work executed plus the Fee; and costs actually incurred by reason of such termination, including costs attributable to termination. Where the Contract Sum is based a Stipulated Sum, Contractor shall be entitled to reasonable overhead and profit on Work completed. Where the Contract Sum based on the Cost of the Work to a Guaranteed Maximum Price, the Contractor shall be entitled to its Fee on Work completed. In no event shall Contractor be entitled to payment for overhead, profit or Fee on unperformed Work, and in no event shall the total amount of the costs recovered exceed the balance due of the Contract Sum/Guaranteed Maximum Price.

## **ARTICLE 21 CLAIMS AND DISPUTES**

**§ 21.1** Claims, disputes, and other matters in question arising out of or relating to this Contract or the Work performed hereunder ("Claim(s)") except those waived as provided for in the Contract Documents, shall be subject to mediation as a condition precedent to binding dispute resolution.

### **§ 21.2 Notice of Claims**

**§ 21.2.1** In the event that the Contractor believes it has a Claim against Owner for additional compensation, additional time or some other remedy arising out of or in connection with the Contract, the Work or the actions or omissions of Owner (or the parties for whom Owner is responsible), Contractor shall give notice to Owner of such Claim within fourteen (14) days of when the Contractor first knew or reasonably should have known, of the event, condition, action or inaction giving rise to the apparent claim ("Initial Notice of Claim"). The Initial Notice of Claim shall describe the nature of the Claim along with a reasonable ROM estimate of the amount of the adjustment in Contract Sum and/or Contract Time sought by the Contractor, along with any backup known to the Contractor as of the date of the Initial Notice of Claim.

**§ 21.2.2** Within thirty (30) days' of providing the Initial Notice of Claim, the Contractor shall supplement its Notice of Claim by providing the following information, to the extent ascertainable by the Contractor: (1) a description of the date and time of the event giving rise to the request for an adjustment or interpretation of Contract terms,

payment of money, an extension of time, or other relief with respect to the terms of the Contract; (2) a statement to the nature of the impacts to the Contractor and its Subcontractors, if any; (3) the amount of the adjustment or an estimate thereof in Contract Sum and/or Contract Time, if any, sought by the Contractor; (4) the contractual provisions on which the Claim is based; and (5) if the Claim includes any pass-through of claims and/or damages incurred, to be incurred, or alleged to be incurred by a Subcontractor or Supplier of any tier such that the Contractor is sponsoring the pass-through claim or damage, the Contractor shall certify that it has performed due diligence on the validity of Subcontractor's or Supplier's claim and that the amount requested by the Subcontractor or Supplier has appropriate supporting documentation and that there is good ground under the Contract Documents to support its claim against the Owner. If the Contractor is unable to provide any of the aforementioned information because such information is not ascertainable the Contractor shall explicitly state why or how such information is not ascertainable and provide monthly updates to the Owner of the status of such information.

**§ 21.2.3** The Contractor shall provide the following certification on any Claim over \$100,000: "I certify that the Claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the Tulalip Tribes of Washington is liable; and that I am duly authorized to certify the Claim on behalf of the Contractor." The certification shall be executed by an officer or partner of the Contractor with proper authority.

**§ 21.2.4** Failure to give an Initial Notice of Claim within the fourteen (14) day period and in strict compliance with this paragraph and/or failure to supplement and provide all of the information required herein, shall constitute an absolute and complete waiver, bar, and release of such Claim.

### **§ 21.3 Audit of Claim**

All Claims made against the Owner by Contractor shall be subject to audit at any time following the receipt of the Notice of Claim. Failure of the Contractor, Subcontractors, or sub-tier subcontractors to maintain and retain sufficient records to allow the auditor to reasonably verify all or a portion of the Claim or to permit the auditor to timely access to the books and records of the Contractor, Subcontractors, or sub-tier subcontractors shall constitute an absolute waiver of the affected portion of the Claim, and shall bar any recovery thereunder.

### **§ 21.4 Claims for Additional Time**

**§ 21.4.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, in addition to the information required above for the supplemental Notice of Claim, a Notice of Claim for an increase in the Contract Time shall also set forth in detail the circumstances that form the basis for the Claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work, and the number of days' increase in the Contract Time claimed as a consequence of each such cause of delay, the usage of any Project Schedule Float as of the date of the Notice of Claim, and shall contain a complete time impact analysis based upon a fragmentary CPM analysis (Fragnet) illustrating how Contractor proposes to incorporate the change or alleged delay into the current updated Construction Schedule. The Contractor shall provide such additional supporting documentation as the Owner may require including, where appropriate, a revised construction schedule indicating all the activities affected by the circumstances forming the basis of the Claim. Failure to comply with this Section 21.4.1 or to provide this additional information within 14 days of the request by Owner shall result in an absolute bar, release, and waiver of the Claim.

**§ 21.4.2** The Contractor shall not be entitled to a separate increase in the Contract Time for each one of the numbers of causes of delay which may have concurrent or interrelated effects on the progress of the Work, or for concurrent delays due to the fault of the Contractor.

**§ 21.4.3** If Unusually Severe 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.

### **§ 21.5 Time Limits on Claims**

**§ 21.5.1** The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement, whether in contract, tort, breach of warranty, or otherwise, and within the period specified by applicable law or this Agreement. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section.

§ 21.5.2 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 21.6 Any claim, dispute, or other matter in question arising out of or related to this Agreement, unless waived as set forth in this Agreement, shall be subject to Litigation in court of competent jurisdiction.

**§ 21.7 Mediation**

The parties shall endeavor to resolve their disputes 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 demand for mediation. A request for mediation shall be made in writing and delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, 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.

**§ 21.8 Joinder**

The Contractor agrees and consents to be included by joinder into any arbitration, mediation, or legal proceeding in which Owner is involved and where there is a dispute regarding, related to, or arising out of Contractor's Work. To the fullest extent allowed by applicable law, Contractor consents to the jurisdiction of such tribunal (both personal and subject matter).

**§ 21.9 Continuing Contract Performance**

Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

**§ 21.10 Waiver of Claims for Consequential Damages**

To the extent uninsured, 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, as set forth above, is applicable, without limitation, to all uninsured consequential damages due to either party's termination in accordance with Article 20. Nothing contained in this Section shall be deemed to preclude (i) an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents; or (ii) any claims, losses, damages, or other liabilities covered or that would be covered by the insurance required to be maintained by Contractor pursuant to the Contract Documents; (iii) any claims, losses, damages, or other liabilities resulting from a breach of Contractor's confidentiality obligations under this Agreement; or (iv) for claims by Owner for loss revenue or income to the extent arising out of or related defects in construction discovered after Final Completion. In addition, and notwithstanding anything to the contrary contained herein, the foregoing waiver shall not apply to, limit, or affect any express indemnity obligations under the Contract to the extent such indemnify obligation(s) relate to a loss asserted by a third party against an indemnified party.

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

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

« »« »

(Printed name and title)

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

« »« »

(Printed name and title)

# DRAFT AIA® Document A104™ - 2017 Exhibit A

## Determination of the Cost of the Work

for the following PROJECT:  
(Name, location and brief description)

«[Insert] »« »  
« »  
« »  
« »

**THE OWNER:**  
(Name, legal status, address and other information)

«[Insert] »« »  
« »  
« »  
« »

**THE CONTRACTOR:**  
(Name, legal status, address and other information)

«[Insert] »« »  
« »  
« »  
« »

**THE ARCHITECT:**  
(Name, legal status, address and other information)

«[Insert] »« »  
« »  
« »  
« »

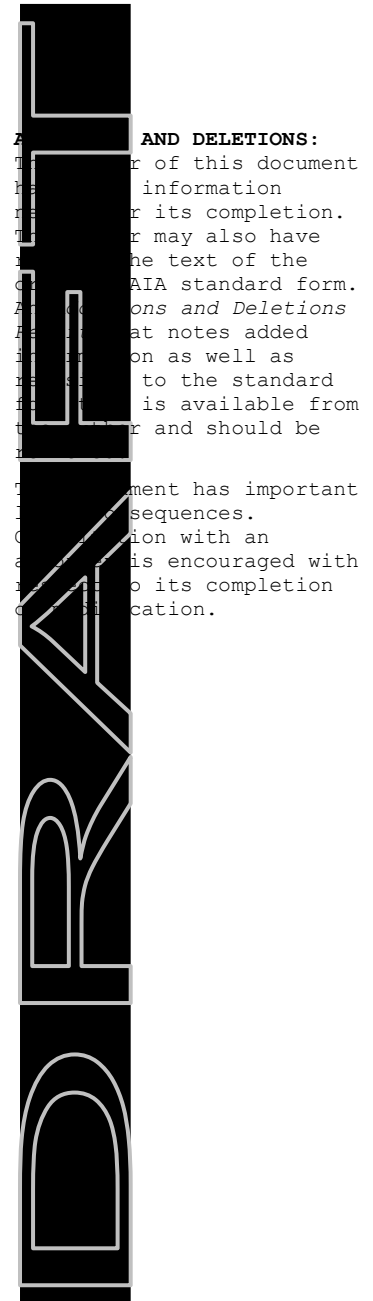
### ARTICLE A.1 COSTS TO BE REIMBURSED

#### § A.1.1 Cost of the Work

§ A.1.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. The Cost of the Work shall include only those items set forth in this Article A.1. No costs incurred prior to the date of this Agreement is reimbursable as a Cost of the Work or otherwise without Owner's express written approval.

§ A.1.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Contractor shall obtain this approval in writing prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing this Agreement.

§ A.1.1.3 Such costs shall be at rates not higher than the standard competitive rates paid at the place of the Project, except with prior written consent of the Owner.



**AND DELETIONS:**  
This document contains information for its completion. The Contractor may also have the text of the AIA standard form. Additions and Deletions at notes added to the standard form as well as information available from the Contractor and should be used. This document has important consequences. Consultation with an architect is encouraged with its completion and its completion.

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§ A.1.1.4 Throughout the performance of the Work, the Contractor will seek to identify and work with the Architect, Owner, and Owner's Representative (if any) in implementing cost savings opportunities to reduce the Cost of Work.

## § A.1.2 Labor Costs

§ A.1.2.1 Wages or salaries of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops. All labor costs shall be based on standard rates as shown in **Exhibit F**.

§ A.1.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel who are stationed at the site and performing Work, with the Owner's prior approval, and only for that portion of the time required for the Work. See **Exhibit F**.

§ A.1.2.2.1 Wages or salaries of the Contractor's supervisory and administrative personnel who are performing Work and stationed at a location other than the site, but only for that portion of time required for the Work and limited to the personnel and activities listed below:

*(Identify the personnel, the type of activity, and, if applicable, any agreed percentage of time required to be allocated to the Work.)*

«See **Exhibit F**. »

§ A.1.2.3 Wages or salaries of the Contractor's supervisory or administrative personnel engaged in expeditions, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work, as approved in writing by the Owner.

§ A.1.2.4 Costs paid or incurred by the Contractor, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits, and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacation and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under § A.1.2. (Rates set forth in **Exhibit F** are fully loaded).

§ A.1.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, such rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification. The intent of the parties that neither wages nor labor burden of construction workers will include a mark-up for small tools, consumable supplies, or other non-labor related element of cost. The parties agree that such costs are to be directly charged to the Project at actual cost or as provided in this **Exhibit A**, which shall be billed for Work under any Change Order. Contractor shall not authorize any overtime, whether of its own or that of its Subcontractors of any tier and their workers, without the prior written consent of the Owner. Overtime will not increase the Contractor's Fee under this Agreement without Owner's prior written approval. Contractor shall include a comparable provision in its subcontracts with its Subcontractors. Costs for vacation days, and sick leave shall be prorated to the Cost of the Work of this Project based on the time spent by each worker on this Project as opposed to other projects as part of Contractor's fully burdened rates set forth in **Exhibit F**.

§ A.1.2.5 All self-performed Work must be agreed upon in advance and in writing by Owner. Contractor shall specifically agree in advance and in writing by Owner, amounts for overhead and profit on Work self-performed by the Contractor may not exceed Contractor's Fee percentage set forth in this Agreement. All self-performed Work will be billed at labor rates included in this Agreement as **Exhibit F**. Should the Owner agree to allow the Contractor to self-perform Work, at its discretion Owner may require the Contractor to provide sealed bids for Work returned to Owner for scopes of work. There shall be no adder for small tools or consumable supplies or for consumable supplies.

## § A.1.3 Subcontract Costs

Payments made by the Contractor to Subcontractors in accordance with the requirements of their subcontracts and this Agreement, but in no event shall markup on Subcontractors' and sub-Subcontractors' work, material, or labor exceed an aggregate of fifteen percent (15%). Any aggregate markup on Subcontractor's and sub-Subcontractors' work, material, or labor that exceed such amount shall not be considered a Cost of the Work and shall not be paid for or reimbursed by Owner. Labor rates per the self-performed labor schedule attached (**Exhibit F**) shall be used for all subcontracted labor.



**§ A.1.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ A.1.4.1** Costs, including transportation and storage at the site, of materials and equipment incorporated or to be incorporated in the completed construction.

**§ A.1.4.2** Costs of materials described in the preceding Section A.1.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amount realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

**§ A.1.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ A.1.5.1** Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. For items over \$2,000, Contractor shall provide an itemized list to the Owner detailing all such items, including description and cost. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project. For items not fully consumed, Contractor shall mean fair market value. Small tools and equipment owned or purchased by the Contractor and included in the Cost of the Work, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amount realized from such sales shall be credited to the Cost of the Work. Any and all office equipment or supplies charged to the Cost of the Work shall become the property of the Owner upon completion of the Work or, at Owner's direction, shall be sold by the Contractor and the proceeds credited to the Cost of the Work.

**§ A.1.5.2** Rental charges for temporary facilities, jobsite office and shanties, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site shall include costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, structures, and hand tools. The cost of all Contractor-owned rental equipment, machinery, and temporary structures shall include insurance, repair and maintenance costs, except wear and tear. Rental equipment shall be obtained from the lowest cost rental source, whether it is the Contractor or a third party.

**§ A.1.5.2.1** Rates and quantities of equipment owned by the Contractor are set forth in Exhibit A. Rates shall not (a) exceed 60% of the replacement cost of any comparable item; and (b) shall be based on market rates, but prorated on a daily basis and shall not exceed 60% of equivalent third party rates. The rental rates and quantities of equipment owned by a related party, as defined in Section A.1.8.1, shall be subject to the Owner's prior approval, but shall be subject to this Section. The Owner shall have the right to purchase such equipment from the Contractor at fair market value as an added Cost of the Work. Within fourteen (14) days after the Notice to Proceed, Contractor shall provide Owner a schedule of Owner rental equipment, rental rates, replacement cost, date to be off, rental rate and cumulative charges from inception of Project construction.

**§ A.1.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§ A.1.5.4** Costs of document reproductions, facsimile transmissions, postage and parcel delivery charges, internet service at the site, and reasonable petty cash expenses of the site office, including general office equipment and supplies.

**§ A.1.5.5** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior written approval.

**§ A.1.6 Miscellaneous Costs**

**§ A.1.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents can be directly attributed to this Contract. Insurances allowed to be billed per the schedule of fixed rates below shall be applied to such costs.

General Liability Insurance, actual costs not to exceed: \_\_\_\_%

Builder's Risk Insurance, actual costs not to exceed: \_\_\_\_% Builder's Risk Insurance will be provided by the Owner.

Bonds, actual costs

§ **A.1.6.1.1** Costs of self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior written approval.

§ **A.1.6.1.2** Costs of insurance through a captive insurer owned or controlled by the Contractor, with the Owner's prior written approval.

§ **A.1.6.2** Should Owner add the requirement of Payment, Performance, and Maintenance Bonds, the cost thereof shall be charged at actual cost. No Contractor Fee shall be paid on Bond costs.

§ **A.1.6.3** Fees and assessments for other permits, licenses, and inspections for which the Contractor is required by the Contract Documents to pay. **Owner shall pay for the building permit**, for building and site improvement fees and permits, and city connection and utility franchise connection fees. For permits that are required by the Tulalip Tribes, Contractor shall pay for all trade-related and design-build permits and deferred materials as well as all permits related to site utilization.

§ **A.1.6.4** Owner shall pay Fees of laboratories for tests and inspections required by the Contract Documents, which may include those required by the Owner's testing agents, geotechnical inspections required by the Owner's testing agents, environmental testing for soils and dewatering, window, envelope, waterproofing, Acoustic, and acoustical tests/inspections required for the Work, except those related to defective or nonconforming Work, which reimbursement is excluded under Article 18 of the Agreement or by other provisions of the Contract Documents, and which do not fall within the scope of Section A.1.7.3. All other tests and inspections required by the Contract Documents are Contractor's responsibility.

§ **A.1.6.5** Royalties and license fees paid for the use of a particular design, process, or product required by the Contract Documents.

§ **A.1.6.5.1** The cost of defending suits or claims for infringement of patent rights arising from the requirements of the Contract Documents, payments made in accordance with legal judgments against the Contractor resulting from such suits or claims, and payments of settlements made with the Owner's written consent, unless the Contractor had reason to believe that the required design, process, or product was an infringement of a copy righted patent, and the Contractor failed to promptly furnish such information to the Architect as required by Section 9.14 of this Agreement. The costs of legal defenses, judgments, and settlements, shall not be included in the Cost of the Work used to calculate the Contractor's Fee or subject to the Guaranteed Maximum Price. If such fees and costs are excluded by the last sentence of Section 9.14 of this Agreement or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ **A.1.6.6** Unless otherwise included in Contractor's labor burden, costs for communications equipment, electronic equipment, and software directly and solely related to the Work and located at the site, with the Owner's prior written approval.

§ **A.1.6.7** Deposits lost for causes other than the Contractor's negligence or failure to fulfill a responsibility or requirement in the Contract Documents.

§ **A.1.6.8** Subject to the Owner's prior written approval, expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work.

§ **A.1.6.9** Subject to the Owner's prior approval, that portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ **A.1.7 Other Costs and Emergencies**

§ **A.1.7.1** Other costs incurred in the performance of the Work if, and to the extent, approved in writing by the Owner.

§ A.1.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss in case of an emergency affecting the safety of persons and property, to the extent allowed under this Agreement.

§ A.1.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors, or suppliers shall not be a reimbursable cost. However, the correction of any work which is damaged by any event actually covered by any available insurance will be paid for from the proceeds of such insurance.

### § A.1.8 Related Party Transactions

§ A.1.8.1 For purposes of this Section A.1.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with the Contractor; (2) any entity in which any stockholder in, or management employee of, the Contractor holds any equity interest of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Contractor; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Contractor.

§ A.1.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated. If the Owner, after such notification, authorizes the proposed transaction in writing, then the costs incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods, or service from the related party, as a Subcontractor, according to the terms of Article A.4. If the Owner fails to authorize the transaction in writing, the Contractor shall procure the Work, equipment, goods, or service from any person or entity other than a related party according to the terms of Article A.4. The Owner may require competitive bidding of any such work as set forth in the A104-2017.

## ARTICLE A.2 COSTS NOT TO BE REIMBURSED

§ A.2.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section A.1.2.2;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, unless specifically approved in writing prior approval;
- .3 Expenses of the Contractor's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Article A.1.2.2;
- .5 The Contractor's capital expenses, including interest on the Contractor's capital expenditures used for the Work;
- .6 Costs due to the default, negligence, or failure of the Contractor, Subcontractor, or suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, or failure to fulfill a responsibility of the Contract Documents, except to the extent such costs are covered by available insurance;
- .7 Any cost not specifically and expressly described in Article A.1 or otherwise specifically excluded from reimbursement under the terms of the Contract Documents;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .9 Bonuses paid to Contractor's or Subcontractor's personnel;
- .10 Food or entertainment, unless specifically agreed to in writing by Owner;
- .11 Adjustments to the labor rates of the Contractor's or Subcontractor's personnel;
- .12 Costs incurred to remove or bond around liens, unless the lien arises from the Contractor's failure of payment when due;
- .13 Costs associated with procuring a retainage bond; and
- .14 Sales, use, or similar taxes, including B&O tax, imposed by a governmental authority other than the Tulalip Tribes of Washington, that are related to the Work and for which the Contractor is liable.

## ARTICLE A.3 DISCOUNTS, REBATES AND REFUNDS

§ A.3.1 Contractor shall provide Owner with seven (7) days' prior written notice of any potential discounts, rebates, or refunds and an opportunity to furnish funds necessary to obtain the same. Cash discounts obtained on payments

made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ A.3.2 Amounts that accrue to the Owner in accordance with Section A.3.1 shall be credited to the Owner as a deduction from the Cost of the Work. Contractor shall make Owner aware of any such program or advance, so that Owner may elect to take advantage of the savings, discount, or rebate.

#### ARTICLE A.4 SUBCONTRACTS AND OTHER AGREEMENTS

§ A.4.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. Unless otherwise provided for by TERO, the Contractor, for Work exceeding \$25,000 in value and, if possible, shall obtain no less than three bids from Subcontractors and from suppliers of materials or equipment. The Contractor shall especially for the Work who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Contractor shall deliver such bids to the Architect and Owner with an indication as to which bids the Contractor intends to accept. The Owner then has the right to review the Contractor's list of proposed subcontractors and suppliers in consultation with the Architect, if any, object to any Contractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents.

§ A.4.1.1 Bids shall only be obtained from companies pre-qualified by Contractor to ensure that they are financially responsible, has successfully completed equivalent work for others in a quality manner and has adequate resources and staff. Contractor will provide to Owner a monthly buyout log of subcontracts. Owner shall then determine, with the advice of the Contractor and Architect, which bids will be accepted. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection, provided the Contractor objects in writing within (7) days.

§ A.4.1.2 Relative to the Owner's receipt of the bid analysis spreadsheets, as described in in the Contract Documents, it shall be understood that the Owner will not have responsibility to review or respond to any of the technical aspects of the bids or bidders qualifications or determine whether all bids are complete and in compliance with the Contract Documents. The Owner is relying exclusively on the Contractor's expertise in such review and analysis, and filling holes, coordination of bids with other trades, and establishing the GMP. Under no circumstances shall any Owner review relieve the Contractor of obligations under the Contract Documents.

§ A.4.1.3 Contractor shall notify Owner if it intends to self-perform any Work and obtain prior written consent in. Contractor shall bid all Work prior to self-performing any Work if such Work is not customarily performed with Contractor's own personnel. Should the Owner agree to allow the Contractor to self-perform any Work, in its discretion the Owner may require Contractor to provide sealed bids to be returned to Owner for scopes of Work.

§ A.4.2 When a specific subcontractor or supplier (1) is recommended to the Owner by the Contractor (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price to the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ A.4.3 Subcontracts or other agreements shall conform to the applicable payment provisions of the Contract Documents and comply with any applicable prompt payment statute governing payment to Subcontractors, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost-plus a fee, the Contractor shall provide in the subcontract for the Owner to receive the same credit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article A.3.

## ARTICLE A.5 ACCOUNTING RECORDS

**§ A.5.1** The Contractor shall keep full and detailed records concerning all aspects of the Work and accounts related to the Cost of the Work and exercise such controls and generally acceptable accounting principals as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's project records and accounts, including, but not limited to, complete copies of all invoices, supporting accounting entries, books, job cost reports, correspondence, e-mails, photos, schedules, construction drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract and the Work. The Contractor shall maintain during the Project and shall be required to provide job cost transaction detail in a form compatible with Microsoft Excel. The Contractor shall maintain during the Project and shall be required to provide a Subcontractor log that tracks the total contract value of all Subcontractors on the Project as compared to Subcontractor invoices. The Contractor shall preserve these records, for a period of three years after final payment, or for such longer period as may be required by law. In the event the Contractor submits a Claim under the terms of this Agreement and the Owner requests an audit in response to such Claim, should Contractor fail to provide the information requested in this Section within thirty (30) days of Owner's request, Contractor's failure shall result in a complete denial and release of any claimed amount for costs for which backup documentation was not provided.

**§ A.5.2** When the Contractor believes that all the Work required by the Contract Documents has been fully performed, the Contractor shall deliver to the Owner a final accounting of the Cost of the Work.

**§ A.5.3** The Owner will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of Work as substantiated by the Contractor's final accounting and review of Project Documents, and provided that other conditions of Section 4.2.1 of the Agreement have been met, the Architect will either issue to the Contractor a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 15.4.3 of the Agreement. Neither the Architect nor the Owner is responsible for verifying the accuracy of the Contractor's final accounting.

**§ A.5.4** Additionally, at any time during this Agreement or up to one (1) year following termination or completion of this Agreement, whichever is later, Owner may request copies of any portion of Contractor's books and records pertaining to the Project and/or elect to conduct an audit of such books and records. All such books and records of the Contractor must be made available for inspection and copying by Owner at an office of Contractor within ten (10) miles of the Project or as otherwise agreed to by the Owner and will be subject to audit and review by the Project auditor designated by Owner. The cost of the audit will be paid for by Owner unless the audit reveals an overpayment by Owner of more than one-half percent (0.5%) in the reported Cost of Work, in which case the Contractor will pay for all costs associated with the audit.

**§ A.5.5** If, subsequent to final payment and at the Owner's request, the Contractor incurs costs in connection with the correction of defective or non-conforming work as described in Article A.1, Costs to be Reimbursed, and not excluded by Article A.2, Costs Not to be Reimbursed, the Owner shall reimburse the Contractor for such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price, if any. If the Contractor has participated in the savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the amount to be paid by the Owner to the Contractor.



## Exhibit D

### Contractors Pre-Construction and Design-Build Scope of Services

The Scope of Contractor's pre-construction services is attached hereto as **Article D**.

If the Contractor is providing Design-Build Services, the following shall apply:

#### **ARTICLE D Preconstruction / Design-Build Services**

**§ D.1.1** The Contractor shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Contractor performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Contractor shall assume responsibility for such Work and shall bear the costs attributable to correction.

**§ D.1.2** Neither the Contractor nor any Subcontractor, consultant, or architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Contractor determines that implementation of any instruction received from the Owner would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall notify the Owner in writing.

**§ D.1.3** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, architect, consultants, subcontractors, and their agents and employees, and other persons or entities performing portions of the Work.

**§ D.1.4 General Consultation.** The Contractor shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

**§ D.1.5** When applicable law requires that services be performed by licensed professionals, the Contractor shall provide those services through qualified, licensed professionals. The Contractor shall require that the services of the Contractor's architect and the Contractor's other consultants are performed for the benefit of the Owner as well as the Contractor.

**§ D.1.6** The Contractor shall prepare, and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

**§ D.1.7** The Contractor shall carefully study and compare the documents, materials and other information provided by the Owner, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the Owner any errors, inconsistencies or omissions discovered.

**§ D.1.8** The Contractor shall provide construction cost estimates at the end of Design Development phase of the design. The Contractor shall provide updated detailed cost estimates during preparation of the Construction Documents.

**§ D.1.9** The Contractor shall comply with the requirements of the Owner's insurers, lenders, or landlord, or their successors, in good faith. If, during the course of the Project, the Owner's insurers, lenders, or landlord require significant changes to design or construction, or significantly reduce the Contractor's ability to perform the Work in an efficient manner, the Contractor may seek equitable adjustment of the schedule and the Contract Sum, but only through the Change Order process outlined in this Agreement.

**§ D.1.9.1 Certifications.** Upon the Owner's written request, the Contractor shall obtain from the architect, consultants, and subcontractors, and furnish to the Owner, certifications with respect to the documents and services provided by the architect, consultants, and subcontractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Contract Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes,

rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Contractor's architect, consultants, and subcontractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

#### § D.2 Contractor's Submittals

All professional design services or certifications to be provided by the Contractor, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

#### § D.3 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 defend, indemnify, and hold the Owner and its separate contractors and consultants harmless from any loss, claim, damage, or suit (including reasonable attorneys' fees) 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 Owner, or where the copyright violations are required by the Owner. However, if the Contractor has reason to believe that the design, process or product required by the Owner 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 Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Contractor, the Owner shall give prompt written notice to the Contractor.

### ARTICLED.4 DESIGN WORK

#### § D.4.1 General

§ D.4.1.1 Any information submitted by the Contractor, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process.

§ D.4.1.2 The Contractor shall advise the Owner in writing on proposed site use and improvements, selection of materials, and building systems and equipment. The Contractor shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

#### § D.4.2 Evaluation of the Owner's Criteria

§ D.4.2.1 The Contractor shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's criteria. The Contractor shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Contractor's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ D.4.2.2 After the Contractor meets with the Owner and presents the preliminary evaluation, the Contractor shall provide a written report to the Owner, summarizing the Contractor's evaluation of the Owner's Facility. The report shall also include

- .1 Detailed inventory of devices, fixtures and other miscellaneous devices related to the lighting controls an evaluation of current condition, efficiency, and performance. Identification any deficiencies, risks or safety issues and provide a detailed report of findings and recommendations for improvements;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Contractor's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:

*(List additional information, if any, to be included in the Contractor's written report.)*

«None»

§ D.4.2.3 The Owner shall review the Contractor's written report and, if acceptable, provide the Contractor with written consent to proceed to the development of the Preliminary Design as described in Section D.4.3.

#### § D.4.3 Preliminary Design

§ D.4.3.1 Upon the Owner's issuance of a written consent to proceed under Section D.4.2.3, the Contractor shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of system functions;
- .2 Not used.
- .3 Electrical plans updated to reflect proposed changes
- .4 Not used.
- .5 Outline specifications and or sufficient drawing notes to fully describe equipment, materials and performance requirements.
- .6 Not used.

§ D.4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Contractor with written consent to proceed to development of the Contractor's Proposal.

§ D.4.3.3 The Preliminary Design Phase shall include a Design Development Phase.

#### § D.4.4 Construction Documents

§ D.4.4.1 The Contractor shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Contractor will design to ADA, or any other applicable accessibility code ("Accessibility Requirements") and require the Contractor to incorporate reasonable construction tolerances during construction of the Project. Contractor will check and confirm specified product dimension and verify that they meet Accessibility Requirements.

§ D.4.4.2 The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include drawings and specifications that establish the quality levels of materials and systems required. The Construction Documents will meet all requirements of applicable codes, regulations, and industry standards, as well as Owner, insurer, Landlord, or lender. The Contractor will respond to all comments, requests, or changes requested by any state or local governments, or certification or permitting agencies with jurisdiction over the Project or its use, the Owner's or insurers or Landlord, including, when required, the modification of Construction Documents. Construction Documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

- .1 be consistent with the approved design documents;
- .2 provide sufficient information for the use of those in the building trades; and
- .3 include documents required for regulatory agency approvals.

§ D.4.4.3 The Contractor shall meet with the Owner periodically to review progress of the design and Construction Documents

#### § D.4.5 Contractor's GMP Proposal

§ D.4.5.1 The Contractor shall prepare and submit the Contractor's GMP Proposal to the Owner based upon the Design Development documents. The Contractor's GMP Proposal shall include the following, as well as all documents and information outlined in Section 3.3.3 of the Agreement.

- .1 A list of the Preliminary Design documents and other information, including the Contractor's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Contractor's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Contractor's Fee, and other items that comprise the Contract Sum, including prior pre-authorized expenses or costs;
- .3 The proposed date the Contractor shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Contractor's key personnel, Contractors and suppliers; and

.6 The date on which the Contractor's Proposal expires.

**§ D.4.5.2** Submission of the Contractor's Proposal shall constitute a representation by the Contractor that it has visited the site and become familiar with local conditions under which the Work is to be completed, and that it has taken reasonable steps necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the condition of the site itself, including without limitation the general and local conditions which can affect the Work or its costs, including but not limited to local weather, geotechnical conditions, traffic patterns, availability of labor, available utilities, local requirements, the character of equipment and materials required to perform the Work, and the conditions bearing upon utilities as relates to temporary or permanent relocation or installation thereof. Any failure of the Contractor to take actions described and acknowledged in this Section will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceeding to successfully perform the Work without exceeding the Guaranteed Maximum Price or Contract Time.

#### **ARTICLE D.5 COPYRIGHTS AND LICENSES**

**§ D.5.1** Drawings, specifications, and other documents furnished by the Contractor, including those in electronic form, are Instruments of Service. The Contractor, and its architect, consultants, subcontractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall share, as joint owners, all common law, statutory and other reserved rights, including copyrights, with the Owner. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Contractor and its architect, consultants, and subcontractors, and any other person or entity providing services or work for any of them.

**§ D.5.1** The Contractor and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

**§ D.5.2** Upon execution of the Agreement, and regardless of termination, the Contractor grants to the Owner co-ownership of the Contractor's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering, completing, and adding to the Project or Contractor's Instruments of Service, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Contract Documents. The co-ownership granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce and utilize applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project.

**§ D.5.2.1** The Contractor shall obtain similar transfers of ownership from its architect, consultants, subcontractors, that will allow the Contractor to satisfy its obligations to the Owner under this Article D.5. The Contractor shall provide the Instruments of Service to Owner via hard copy, PDF, and AutoCAD. Notwithstanding joint ownership, neither Contractor nor its architect or consultants, or subcontractors shall use unique aspects of the Project (based on a confusingly similar standard) for any purpose not relating to the Project without Owner's prior written consent.

**§ D.5.2.2** Any unauthorized use of the Instruments of Service shall be at the Owner's risk and without liability to the Contractor and the Contractor's consultants.

**§ D.5.2.3** The architect or any other design consultants shall retain all legal rights (including copyright) in its Standard Details and shall be entitled to use said Standard Details without limitation on other projects; provided, however, that the Owner shall be granted a non-exclusive, royalty-free Standard Details License to use Contractor's, architect's, or any other design consultant's Standard Details as reasonably necessary in connection with the construction, renovation, alteration, expansion, repair, occupancy, operation and maintenance of the Project.

#### **ARTICLE D.6 INSURANCE**

**§ D.6.1** Contractor shall require architects, structural and civil engineers, and anyone providing MEP/FP design services to procure and maintain professional liability policies of \$5,000,000 per claim and in the aggregate. All other design professionals providing services for the Project shall procure and maintain professional liability policies of \$2,000,000 per claim and in the aggregate. All such policies shall remain in place until the expiration of the applicable statute of repose.

**Exhibit D**  
**Contractors Pre-Construction**  
**or Design-Build Scope of Services**

The Scope of Contractor's pre-construction services is attached hereto as **Exhibit D.1**.

If the Contractor is providing Design-Build Services, the following shall apply:

**ARTICLE D.1 Preconstruction / Design-Build Services**

**§ D.1.1** The Contractor shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Contractor performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Contractor shall assume responsibility for such Work and shall bear the costs attributable to correction.

**§ D.1.2** Neither the Contractor nor any Subcontractor, consultant, or architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Contractor determines that implementation of any instruction received from the Owner would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall notify the Owner in writing.

**§ D.1.3** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, architect, consultants, subcontractors, and their agents and employees, and other persons or entities performing portions of the Work.

**§ D.1.4 General Consultation.** The Contractor shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

**§ D.1.5** When applicable law requires that services be performed by licensed professionals, the Contractor shall provide those services through qualified, licensed professionals. The Contractor shall require that the services of the Contractor's architect and the Contractor's other consultants are performed for the benefit of the Owner as well as the Contractor.

**§ D.1.6** The Contractor shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

**§ D.1.7** The Contractor shall carefully study and compare the documents, materials and other information provided by the Owner, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the Owner any errors, inconsistencies or omissions discovered.

**§ D.1.8** The Contractor shall provide construction cost estimates at the end of **Schematic Design and Design Development** phases of the design. The Contractor shall provide updated detailed cost estimates during preparation of the Construction Documents.

**§ D.1.9** The Contractor shall comply with the requirements of the Owner's insurers, lenders, or landlord, or their successors, in good faith. If, during the course of the Project, the Owner's insurers, lenders, or landlord require significant changes to design or construction, or significantly reduce the Contractor's ability to perform the Work in an efficient manner, the Contractor may seek equitable adjustment of the schedule and the Contract Sum, but only through the Change Order process outlined in this Agreement.

**§ D.1.9.1 Certifications.** Upon the Owner's written request, the Contractor shall obtain from the architect, consultants, and subcontractors, and furnish to the Owner, certifications with respect to the documents and services provided by the architect, consultants, and subcontractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Contract Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the



Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Contractor's architect, consultants, and subcontractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

### § D.2 Contractor's Submittals

All professional design services or certifications to be provided by the Contractor, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

### § D.3 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 defend, indemnify, and hold the Owner and its separate contractors and consultants harmless from any loss, claim, damage, or suit (including reasonable attorneys' fees) 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 Owner, or where the copyright violations are required by the Owner. However, if the Contractor has reason to believe that the design, process or product required by the Owner 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 Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Contractor, the Owner shall give prompt written notice to the Contractor.

## ARTICLED.4 DESIGN WORK

### § D.4.1 General

§ D.4.1.1 Any information submitted by the Contractor, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process.

§ D.4.1.2 The Contractor shall advise the Owner in writing on proposed site use and improvements, selection of materials, and building systems and equipment. The Contractor shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

### § D.4.2 Evaluation of the Owner's Criteria

§ D.4.2.1 The Contractor shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's criteria. The Contractor shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Contractor's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ D.4.2.2 After the Contractor meets with the Owner and presents the preliminary evaluation, the Contractor shall provide a written report to the Owner, summarizing the Contractor's evaluation of the Owner's Criteria. The report shall also include

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Contractor's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:  
*(List additional information, if any, to be included in the Contractor's written report.)*

«[insert]»

§ D.4.2.3 The Owner shall review the Contractor's written report and, if acceptable, provide the Contractor with written consent to proceed to the development of the Preliminary Design as described in Section D.4.3.

#### § D.4.3 Preliminary Design

§ D.4.3.1 Upon the Owner's issuance of a written consent to proceed under Section D.4.2.3, the Contractor shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan;
- .3 Building plans, sections and elevations;
- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

§ D.4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Contractor with written consent to proceed to development of the Contractor's Proposal.

§ D.4.3.3 The Preliminary Design Phase shall include a Schematic Design Phase and a Design Development Phase.

#### § D.4.4 Construction Documents

§ D.4.4.1 The Contractor shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Contractor will design to ADA, or any other applicable accessibility code ("Accessibility Requirements") and require the Contractor to incorporate reasonable construction tolerances during construction of the Project. Contractor will check and confirm specified product dimension and verify that they meet Accessibility Requirements.

§ D.4.4.2 The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include drawings and specifications that establish the quality levels of materials and systems required. The Construction Documents will meet all requirements of applicable codes, regulations, and industry standards, as well as Owner, insurer, Landlord, or lender. The Contractor will respond to all comments, requests, or changes requested by any state or local governments, or certification or permitting agencies with jurisdiction over the Project or its use, the Owner's or insurers or Landlord, including, when required, the modification of Construction Documents. Construction Documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

- .1 be consistent with the approved design documents;
- .2 provide sufficient information for the use of those in the building trades; and
- .3 include documents required for regulatory agency approvals.

§ D.4.4.3 The Contractor shall meet with the Owner periodically to review progress of the design and Construction Documents

#### § D.4.5 Contractor's Proposal

§ D.4.5.1 The Contractor shall prepare and submit the Contractor's Proposal to the Owner based upon the % complete Construction Documents. The Contractor's Proposal shall include the following, as well as all documents and information outlined in Section 3.3.3 of the Agreement.

- .1 A list of the Preliminary Design documents and other information, including the Contractor's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Contractor's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Contractor's Fee, and other items that comprise the Contract Sum, including prior pre-authorized expenses or costs;
- .3 The proposed date the Contractor shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Contractor's key personnel, Contractors and suppliers; and
- .6 The date on which the Contractor's Proposal expires.

**§ D.4.5.2** Submission of the Contractor's Proposal shall constitute a representation by the Contractor that it has visited the site and become familiar with local conditions under which the Work is to be completed, and that it has taken reasonable steps necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the condition of the site itself, including without limitation the general and local conditions which can affect the Work or its costs, including but not limited to local weather, geotechnical conditions, traffic patterns, availability of labor, available utilities, local requirements, the character of equipment and materials required to perform the Work, and the conditions bearing upon utilities as relates to temporary or permanent relocation or installation thereof. Any failure of the Contractor to take actions described and acknowledged in this Section will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceeding to successfully perform the Work without exceeding the Guaranteed Maximum Price or Contract Time.

## **ARTICLE D.5 COPYRIGHTS AND LICENSES**

**§ D.5.1** Drawings, specifications, and other documents furnished by the Contractor, including those in electronic form, are Instruments of Service. The Contractor, and its architect, consultants, subcontractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall share, as joint owners, all common law, statutory and other reserved rights, including copyrights, with the Owner. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Contractor and its architect, consultants, and subcontractors, and any other person or entity providing services or work for any of them.

**§ D.5.1** The Contractor and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

**§ D.5.2** Upon execution of the Agreement, and regardless of termination, the Contractor grants to the Owner co-ownership of the Contractor's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering, completing, and adding to the Project or Contractor's Instruments of Service, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Contract Documents. The co-ownership granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce and utilize applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project.

**§ D.5.2.1** The Contractor shall obtain similar transfers of ownership from its architect, consultants, subcontractors, that will allow the Contractor to satisfy its obligations to the Owner under this Article D.5. The Contractor shall provide the Instruments of Service to Owner via hard copy, PDF, and AutoCAD. Notwithstanding joint ownership, neither Contractor nor its architect or consultants, or subcontractors shall use unique aspects of the Project (based on a confusingly similar standard) for any purpose not relating to the Project without Owner's prior written consent.

**§ D.5.2.2** Any unauthorized use of the Instruments of Service shall be at the Owner's risk and without liability to the Contractor and the Contractor's consultants.

**§ D.5.2.3** The architect or any other design consultants shall retain all legal rights (including copyright) in its Standard Details and shall be entitled to use said Standard Details without limitation on other projects; provided, however, that the Owner shall be granted a non-exclusive, royalty-free Standard Details License to use Contractor's, architect's, or any other design consultant's Standard Details as reasonably necessary in connection with the construction, renovation, alteration, expansion, repair, occupancy, operation and maintenance of the Project.

## **ARTICLE D.6 INSURANCE**

**§ D.6.1** Contractor shall require architects, structural and civil engineers, and anyone providing MEP/FP design services to procure and maintain professional liability policies of \$5,000,000 per claim and in the aggregate. All other design professionals providing services for the Project shall procure and maintain professional liability policies of \$2,000,000 per claim and in the aggregate. All such policies shall remain in place until the expiration of the applicable statute of repose.

**Exhibit E  
Project Schedule**



**Exhibit F**  
**Contractor's Labor/Trade Rates**





**Exhibit G  
Contractor's Equipment Rates**





# AIA® Document G702®GMP – 2021

## Application and Certificate for Payment for Cost of the Work Projects with a Guaranteed Maximum Price

TO OWNER: \_\_\_\_\_ PROJECT: \_\_\_\_\_

PROJECT: \_\_\_\_\_

FROM CONTRACTOR: \_\_\_\_\_

VIA ARCHITECT: \_\_\_\_\_

APPLICATION NO: \_\_\_\_\_

Distribution to:

PERIOD TO: \_\_\_\_\_

OWNER

CONTRACT FOR: \_\_\_\_\_

ARCHITECT

CONTRACT DATE: \_\_\_\_\_

CONTRACTOR

PROJECT NOS: \_\_\_\_\_

FIELD

### CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.

AIA Document G703®CW, Continuation Sheet for Cost of the Work Projects, is attached.

1. ORIGINAL GUARANTEED MAXIMUM PRICE .....

2. NET CHANGE BY CHANGE ORDERS .....

3. GUARANTEED MAXIMUM PRICE TO DATE (Line 1 ± 2) .....

4. TOTAL COMPLETED & STORED TO DATE (Column G on G703CW) \$ \_\_\_\_\_

5. RETAINAGE:

a. % of Completed Work

(Columns D + E on G703CW)

b. % of Stored Material

(Column F on G703CW)

Total Retainage (Lines 5a + 5b, or Total in Column I of G703CW). \$ \_\_\_\_\_

6. TOTAL EARNED LESS RETAINAGE .....

(Line 4 minus Line 5 Total)

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT .....

(Line 6 from prior Certificate)

8. CURRENT PAYMENT DUE .....

9. GUARANTEED MAXIMUM PRICE BALANCE, INCLUDING RETAINAGE .....

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$ _____	\$ _____
Total approved this month	\$ _____	\$ _____
<b>TOTAL</b>	<b>\$ _____</b>	<b>\$ _____</b>
NET CHANGES by Change Order	\$ _____	\$ _____

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:

By: \_\_\_\_\_

Date: \_\_\_\_\_

State of: \_\_\_\_\_

County of: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_

Notary Public:

My commission expires: \_\_\_\_\_

### ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information, and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED .....

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

By: \_\_\_\_\_

Date: \_\_\_\_\_

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.



# AIA® Document G703® – 1992

## Continuation Sheet

AIA Document G702®, Application and Certificate for Payment, or G732™, Application and Certificate for Payment, Construction Manager as Adviser Edition, containing Contractor's signed certification is attached. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO:  
 APPLICATION DATE:  
 PERIOD TO:  
 ARCHITECT'S PROJECT NO:

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		E THIS PERIOD	F MATERIALS PRESENTLY STORED <i>(Not in D or E)</i>	G TOTAL COMPLETED AND STORED TO DATE <i>(D+E+F)</i>	H BALANCE TO FINISH <i>(C-G)</i>	I RETAINAGE <i>(If variable rate)</i>
			FROM PREVIOUS APPLICATION <i>(D + E)</i>						
GRAND TOTAL									

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**Exhibit I  
Design Documents**



**Exhibit J**  
**Owner's Request for Proposal**





**Exhibit K**  
**Contractor's Proposal**  
(excluding any terms and conditions set forth therein)



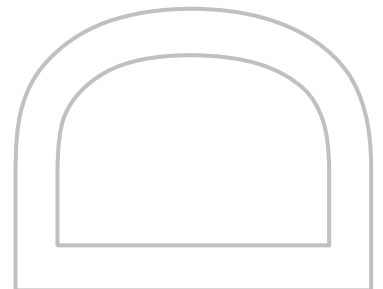
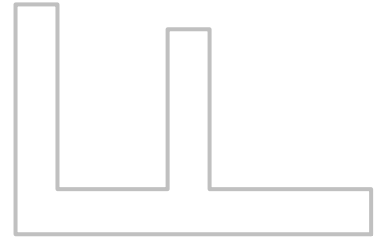
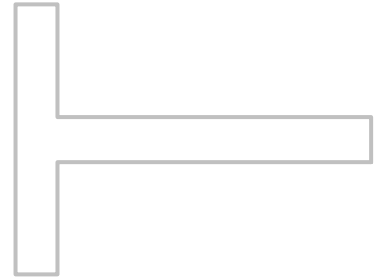
**Exhibit M**  
**Contractor's and Subcontractor's Lien Forms**



# Exhibit N

## Pre-Construction Services Consultants and Subcontractors

- .1 Mechanical Subcontractor  
[insert]
- .2 Electrical Subcontractor  
[insert]
- .3 Plumbing Subcontractor  
[insert]
- .4 Fire Protection Subcontractor  
[insert]
- .5 [insert] or design consultants, engineers, architects »



**Exhibit O**  
**GMP Amendment Form**



## Attachment B

### *Tulalip Tribes of Washington TERO Requirements*

The following outlines the TERO expectations and responsibilities placed on all contractors and sub-contractors doing work on or near the Tulalip Indian Reservation and on Tribal projects off Reservation. If you have any questions or concerns, contact a TERO Compliance Officer.

#### **TERO ACKNOWLEDGMENT:**

**Requirement:** The contractor/employer must comply with all rules and regulations as set forth in the **TERO code 9.05**. This agreement will be affirmed in writing and will be signed and dated by the TERO Manager.

#### **TERO LIAISON:**

**Requirement:** All contractors and employers must designate a responsible company official to coordinate all employment, training and contracting related activities with the TERO department to ensure that the company is in compliance with TERO.

#### **NATIVE AMERICAN OWNED BUSINESS REGISTRY:**

**Requirement:** The TERO Office maintains a certified Native American Owned Business Registry. All the businesses on the registry need to be given the opportunity to bid on any projects that they are qualified for. If they are within 10% of the lowest bid, you need to negotiate to see if they can reduce their price. But the fact remains that the bid will be awarded on: price, quality and capability.

#### **TERO COMPLIANCE PLAN:**

**Requirement:** All contractors, sub-contractors and employers must have an approved written compliance agreement filed, negotiated and approved by the TERO Office prior to commencement of any construction activities on the Tulalip Reservation and on Tribal projects off Reservation. There is a 1.75% TERO fee on any projects over \$10,000 to be paid in full or negotiated with the TERO Compliance Officers.

#### **COMPLIANCE PLAN WORKFORCE/KEY EMPLOYEE:**

**Requirement:** Contractors/employers shall be required to hire and maintain as many TERO/Native American preference employees as apply for and are qualified for each craft or skill.

**Exception:** Prior to commencing work on the Tulalip Indian Reservation the prospective employer, contractor and sub-contractors shall identify key, regular and permanent employees.

**Key employee:** One who is in a top supervisory position or performs a critical function such that an employer would risk likely financial damage or loss if that task were assigned to a person unknown to the



employer. A maximum of 20% of the work force may be considered key. A key employee has been on the employers' or contractors' annual payroll for a period of one year continuously in a supervisory capacity or is an owner of the firm. An employee who is hired on a project-by-project basis shall not be considered a key employee.

## **TERO HIRING HALL AND RECRUITMENT EFFORTS:**

**Requirement:** The contractor or employer is required to contact the TERO Office for recruiting and placement services on all non-key positions. The TERO Office shall be given a minimum of seventy-two (72) hours to furnish a qualified referral. Furthermore, contractors and employers are required to provide the TERO with a written list of their projected workforce needs, job classifications, openings, hiring policies, rate of pay, experience/skill requirements, employment screening procedures and anticipated duration of employment.

## **NATIVE PREFERENCE:**

**Requirement:** While working within Tribal jurisdiction the contractors and employers must give preference to qualified, Native applicants for all employment positions. The order of preference shall be given to the following persons in the following enumerated order:

1. Enrolled Tualip Tribal members
2. Spouses, parent of a Tribal member child, biological child born to an enrolled Tualip Tribal member, current legal guardian of a Tribal member dependent child (with a proper letter of temporary or permanent legal guardianship from a court), or a Tribal member in a domestic partner relationship (with documentation).
3. Other Natives/Indians shall mean any member of a federally recognized Indian tribe, nation or band, including members of federally recognized Alaskan Native villages or communities.
4. Spouse of federally recognized Native American
5. Other

**Exception:** Where prohibited by applicable Federal Law, the above order of preference set out in subsection 4.2, shall not apply. In such cases preference shall be given in the following:

1. Natives who are local residents
2. Other Natives

**Requirement:** If the TERO Office is unable to refer an adequate number of qualified, preferred employees for a contractor, TERO will notify the contractor who may fill the remaining positions with non-TERO workers.

**Requirement:** The contractor is required to notify the TERO Office of all future job openings on the project so that qualified, preferred employees have an opportunity to be dispatched.

## **JOB QUALIFICATIONS, PERSONNEL REQUIREMENTS AND RELIGIOUS ACCOMMODATIONS:**

**Requirement:** An employer may not use any job qualification criteria or personnel requirements which serve as barriers to the employment of Natives which are not required by business necessity. The TERO Department will review the job duties and may require the employer to eliminate the personnel

requirements at issue. Employers shall also make reasonable accommodation to the religious beliefs and cultural traditions of Native workers.

### **TRAINING:**

**Requirement:** Contractors / employers may be required to develop on-the-job training opportunities and/or participate in Tribal or local training programs, including upgrading programs, and apprenticeship or other trainee programs relevant to the employer's needs.

### **LAY-OFFS:**

**Requirement:** In all lay-offs and reductions in force, no preferred employee shall be terminated if a non-preferred employee worker in the same job qualifications is still employed. If an employer lays-off workers by crews, all qualified Native workers shall be transferred to a crew to be retained.

### **DISCIPLINARY ACTIONS AND TERMINATIONS:**

**Requirement:** Prior to the discipline or termination of any TERO employee, the contractor or employer shall consult with the TERO Compliance Officer to see if they can resolve the issue. The TERO Office is here to help in any way it can. Communication with the TERO Compliance Officers is very important to help ensure the job runs smoothly.

## *Attachment C - Code of Conduct*

The Code of Conduct are established by Tulalip to ensure that a **minimum** standard for contractors and Individual professionalism is maintained on the project. They are intended to eliminate issues arising due to misunderstandings and or poor judgement. Any contractor or contractor personnel found deviating from the established standards will face disciplinary action as deemed appropriate by the Owner or Owner's Representative. It is the responsibility of each contractor to submit this document to each of its employees and Contractors assigned to the project to read, understand, and sign prior to working at this site.

### Standard Code of Conduct:

- The contractor's supervisor is required to check in with the Owner's primary contact person each day prior to starting work to apprise the Owner of planned activities from the previous day that did not occur, discuss activities for the day, and determine if any issues related to the contractor's work exist.
- Any damage that occurs to the Owner's property or personal property on the site must immediately be reported to the Owner's primary contact person. A damage report will be generated by the prime contractor.
- When working after normal business hours it is the responsibility of the contractor to ensure all exterior doors are secured as required at the end of the work shift.
- All interior doors will be left as found unless obvious security issues exist. In these cases, the contractor is expected to contact the Owner's Representative for direction.
- Smoking only in designated areas.
- No firearms are allowed on the Owner's property.
- No alcohol or illegal drugs are allowed on the Owner's property.
- No radios or personal music allowed on the Owner's property.
- No improper language and or gestures used by the contractor personnel on the property.
- There will be no improper conduct, communication or fraternizing with the Owner's personnel.
- There will be no use of the Owner's equipment without prior written approval by the Owner.
- All Owner items moved or relocated to facilitate an installation will be put back in the exact location and condition in which it was found.
- There will be no standing on desks, chairs, office equipment or other furniture or furnishings.
- Flooring, furniture and office equipment will be covered adequately to protect it from construction activity.
- Observe safety rules as detailed in the contract documents.
- Leave all personal items on desks and in work areas alone.
- Dress attire will be professional and clean. No sleeveless shirts or shorts.
- Use of Owner's telecommunication is prohibited without permission.
- Contractor ID's bearing the company name will be worn at all times. The Owner may choose to provide ID badges to the contractors.

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**Contractor/Employee Signature/Date**

## Attachment D – Affidavit of Non-collusion

**Firm Name:** \_\_\_\_\_

**Instructions:** Please return your completed form as part of the Response submittal.

**I swear (or affirm) under the penalty of perjury:**

1. That I am the Responder (if the Responder is an individual), a partner in the company (if the Responder is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the Responder is a corporation).
2. That the attached proposal submitted in response to the Request for Proposals has been arrived at by the Responder independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other Responder of materials, supplies, equipment, or services described in the Request for Proposals, designed to limit fair and open competition.
3. That the contents of the proposal have not been communicated by the Responder or its employees or agents to any person not an employee or agent of the Responder and will not be communicated to any such persons prior to the official opening of the proposals.
4. That I am fully informed regarding the accuracy of the statement made in this affidavit.

### Authorized Signature

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Responder's firm name: \_\_\_\_\_

Print authorized representative name: \_\_\_\_\_ Title: \_\_\_\_\_

Authorized signature: \_\_\_\_\_ Date (mm/dd/yyyy): \_\_\_\_\_

### Notary Public

Subscribed and sworn to before me this:

\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Notary Public signature

\_\_\_\_\_  
Commission expires (mm/dd/yyyy)

## Attachment E - Certification of Compliance

I/we have received and reviewed the RFP and any Addenda issued by the Tulalip Tribes and this submission is our entire proposal.

Firm Name \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Date \_\_\_\_\_

Addenda Received \_\_\_\_\_



## Attachment F - Certificate of Non-discrimination

The Tulalip Tribes is opposed to any discrimination in subcontracting. Any contractor who contracts with the Tulalip Tribes shall not discriminate against minority, women, or emerging small business enterprises in the awarding of contracts.

By signature of the authorize representative of the bidder/proposer, the bidder/proposer herby certifies to the Tulalip Tribes that this bidder/proposer has not discriminated against minority, women, or emerging small business enterprises in obtaining any subcontracts; and, further, that if awarded the contract for which this bid or proposal is submitted, shall not so discriminate.

Bidder/Proposer hereby certifies that the information provided above is true and accurate.

Proposer Company Name:		
Street Address:		
City:	State:	Zip Code:
Toll Free Telephone:	Telephone:	Fax:
Federal I.D. or Social Security No.:	E-Mail:	
Type or Print Name of Person Signing:	Title:	
Authorized Signature:		

**ATTACHMENT G**



**Procurement:  
Certification Regarding Debarment, Suspension,  
and Other Responsibility Matters**

**- PLEASE READ INSTRUCTIONS ON NEXT PAGE BEFORE COMPLETING CERTIFICATION -**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Regulations can be found at [ecfr.gov](http://ecfr.gov) and [federalregister.gov](http://federalregister.gov).

- 1) The prospective primary recipient certifies to the best of their knowledge and belief that it and its principals:
  - a. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - b. Have not within a (3) three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, Tribal, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, Tribal, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - d. Have not within a three-year period preceding this application had one or more public transactions (Federal, State, Tribal, or local) terminated for cause or default.
  
- 2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

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Business name Alternative business names

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List of principals

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Date Name of authorized representative Title

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Signature



## Procurement: INSTRUCTIONS FOR CERTIFICATION

- 1)** By signing and submitting this proposal, the prospective Authorized Representative is providing the certification set out below.
- 2)** A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror non-responsible.
- 3)** The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the government agency; the department or agency may terminate this transaction for cause or default.
- 4)** The Authorized Representative shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the Authorized Representative learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5)** The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- 6)** The Authorized Representative agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- 7)** The Authorized Representative further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—SubContractors" provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 8)** A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the ineligibility of its principals. Each participant may, but is not required to, check the sam.gov database.
- 9)** Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 10)** Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the government agency; the department or agency may terminate this transaction for cause or default.

**Attachment H - PROPOSAL FORM**

Responses to the Tulalip Tribes Request for Proposals  
Medical Clinic – HVAC upgrade

**Firm Name:** \_\_\_\_\_

The Undersigned offers and agrees to provide Design-Build (DB) Services for the Tulalip Tribes.

The proposer understands that any false statement may disqualify this proposal from consideration or be cause for contract termination.

The proposer certifies that it does not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, handicap, financial ability, age or other non-job-related factors.

Washington UBI Number: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

- Resident Firm                       Non-resident Firm
- Corporation                               Partnership
- Sole Proprietor                       Joint Venture
- Other \_\_\_\_\_

Has your firm ever been disqualified by a government agency from bidding or proposing on a Tribal and/or public project? \_\_\_\_\_ (yes/no)

If the answer is yes, explain the circumstances, project, contracting agency and date. State the reason for disqualification and if the disqualification has ended. Use additional sheets if required.

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Has your firm ever been terminated from a Tribal and/or public contract? \_\_\_\_\_ (yes/no)

If the answer is yes, explain the circumstances, project, contracting agency and date. State the reason for termination. Use additional sheets if required.

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