



**CITY COUNCIL WORK SESSION
MONDAY, MARCH 3, 2025 – 7:00 PM
501 DELTA AVENUE
MARYSVILLE, WA 98270**

AGENDA

To listen to the meeting without providing public comment:

Join Zoom Meeting

<https://us06web.zoom.us/j/86246307568>

Or

Dial toll-free US: 888 475 4499

Meeting ID: 862 4630 7568

Call to Order

Pledge of Allegiance

Roll Call

Approval of the Agenda

Presentations

- A. Strategies 360 Legislative Update
- B. Swearing-in of Police Officer Robert Blaho
[Oath Police Officer Robert Blaho.docx](#)

Public Comment

Discussion Items

- 1. Hazard Mitigation Plan
This item is for discussion only. No action requested.
- 2. Recreational Vehicles - Draft Ordinances on Camping and Parking for Discussion
This item is for discussion only. No action requested.
[Ordinance - Camping 2-25-25.pdf](#)
[Ordinance - RV Parking.pdf](#)
- 3. Quiet Zone Project Update

This item is for discussion only. No action requested.

New Business

Approval of Minutes *(Written Comment Only Accepted from Audience)*

Consent

Review Bids

4. Contract Award - 1049 State Avenue Addition Project

Recommended Motion: I move to authorize the Mayor to award and execute the contract with Valdez Construction, Inc. for the 1049 State Avenue Addition Project in the amount of \$3,211,675.49 including Washington State Sales Tax and approve \$321,167.55 management reserve for a total allocation of \$3,532,843.04.

[Contract_Combined.pdf](#)

[Bid Tab.pdf](#)

Public Hearings

Legal

Mayor's Business

Staff Business

Call on Councilmembers and Committee Reports

Adjournment/Recess

Executive Session

A. Litigation

B. Personnel

C. Real Estate

Reconvene

Adjournment

Special Accommodations: The City of Marysville strives to provide accessible meetings for people with disabilities. Please contact the City Clerk's office at (360) 363-8000 or 1-800-833-6384 (Voice Relay), 1-800-833-6388 (TDD Relay) two business days prior to the meeting date if any special accommodations are needed for this meeting.



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 3, 2025

SUBMITTED BY: Executive Services Coordinator Sarah Calvin, Executive

ITEM TYPE: Presentation

AGENDA SECTION: Presentations

SUBJECT: Strategies 360 Legislative Update

SUGGESTED ACTION:

SUMMARY: Legislative Update: Strategies 360

ATTACHMENTS:



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 3, 2025

SUBMITTED BY: Confidential Administrative Assistant Margaret Vanderwalker, Police

ITEM TYPE: Appointment

AGENDA SECTION: Presentations

SUBJECT: Swearing-in of Police Officer Robert Blaho

SUGGESTED ACTION:

SUMMARY: The Marysville Police Department has a new lateral Police Officer, Robert Blaho and we request that Mayor Jon Nehring swear him in using his Oath of Office.

ATTACHMENTS:

[Oath Police Officer Robert Blaho.docx](#)



MARYSVILLE POLICE DEPARTMENT
ERIK SCAIRPON, CHIEF OF POLICE



Police Officer
OATH OF OFFICE

MARYSVILLE POLICE DEPARTMENT

I, Robert Blaho, do solemnly swear that I will support the Constitution of the United States of America; the laws of the State of Washington; and the ordinances of the City of Marysville; and that I will faithfully, honestly, and impartially perform the duties of Police Officer for the City of Marysville, according to the best of my ability, so help me God.

Signed this 3rd day of March, 2025

Robert Blaho
Police Officer

Erik Scairpon
Chief of Police

Jon Nehring
Mayor

Tina Brock
City Clerk



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 3, 2025

SUBMITTED BY: Sarah Lavelle, Executive

ITEM TYPE: Discussion Item

AGENDA SECTION: **Discussion Items**

SUBJECT: Hazard Mitigation Plan

SUGGESTED ACTION: This item is for discussion only. No action requested.

SUMMARY: The City will be developing its Hazard Mitigation Plan this year. This plan analyzes the risks from different hazards and identifies strategies to help Marysville better withstand the impacts of those hazards. This discussion will describe the planning approach and outline how the City will engage with City departments, the public, and community partners.

ATTACHMENTS:



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 3, 2025

SUBMITTED BY: City Attorney Jon Walker, Legal

ITEM TYPE: Discussion Item

AGENDA SECTION: **Discussion Items**

SUBJECT: Recreational Vehicles - Draft Ordinances on Camping and Parking for Discussion

SUGGESTED ACTION: This item is for discussion only. No action requested.

SUMMARY: Based on feedback from Council at the last workshop, two draft ordinances are attached.

There has been a misalignment in the code for some time. MMC 22C.240.020 prohibits occupying an RV overnight except in an approved RV park, but MMC 7.05.050 exempts RV's from the prohibition on camping thereby creating a question of whether an RV could be occupied overnight (24 hours) since the exemption in MMC 7.05.050 contemplated RV's being "parked" for up to 24 hours. MMC 11.08.200 banned parking RV's, but allowed it for 24 hours and allowed chain parking so long as the RV was moved over two blocks.

One of the attached draft ordinances amends both chapter 7.05 MMC and MMC 22C.240.020. The other addresses parking.

These are the highlights on the attached ordinances:

1. It eliminates the exemption for RV's in the camping code and makes it a crime to occupy a motor vehicle or RV with the intent to occupy it as a temporary or permanent habitation (on streets or city property). Also clarifies that it is not a crime to do so in an approved RV park or pursuant to a temporary use permit, both of which are currently authorized by MMC 22C.240.020.
2. There are some changes to definitions, e.g. eliminating the definition of "camp" because it is not necessary,

- broadening the definition of “street” to include sidewalks, planting strips, and medians.
3. It makes it a crime to occupy camp facilities, a motor vehicle, or an RV or use camp paraphernalia with the *intent* to occupy or use them for temporary or permanent habitation. This distinguishes a person just sitting in their car waiting to pick up their kid (i.e. someone “occupying” a car) or a mom who puts up a sun screen for her baby in the park (i.e. someone “using” camp paraphernalia) from those who are actually camping.
 4. It eliminates the stair step increase in the amount of fine that cannot be suspended.
 5. It eliminates the permit system for camping that is under the authority of the police chief. There are ways of obtaining permission (special use permit, temporary use permit) if there is an event that requires camping in some form.
 6. It amends MMC 22C.240.020 to clarify that a violation (living in an RV that’s not in an RV park) is subject to the penalty in 7.05 MMC. It is currently subject to title 4 MMC, so it’s a civil infraction that can become a crime after it is found committed twice.
 7. RV parking is limited to four hours per day and the time period is not restarted by moving the RV more than two blocks. This is a parking infraction.

ATTACHMENTS:

[Ordinance - Camping 2-25-25.pdf](#)

[Ordinance - RV Parking.pdf](#)

CITY OF MARYSVILLE

Marysville, Washington

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARYSVILLE, WASHINGTON, AMENDING CHAPTER 7.05 OF THE MUNICIPAL CODE TO PROHIBIT CAMPING IN RECREATIONAL VEHICLES ON CITY STREETS AND PROPERTY.

WHEREAS, camping is prohibited on city rights-of-way and city property; and

WHEREAS, camping on city streets and property presents health and safety risks including sanitation and noise; and

WHEREAS, camping on public way and property is incompatible with the use of these areas and zoning regulations; and

WHEREAS, recreational vehicles are currently exempt from the prohibition on camping, but present the same health and safety risks and incompatibility as other types of camping; and

WHEREAS, section 22C.240.020 of the municipal code provides that "No recreational vehicle shall be occupied overnight unless the same is parked inside an approved recreational vehicle park."; and

WHEREAS, chapter 7.05 of the municipal code should be amended to harmonize it with section 22C.240.020; and

WHEREAS, section 22C.240.020 should be amended to harmonize it with the amendments to chapter 7.05 of the municipal code; and

WHEREAS, these amendments will enhance public health and safety.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MARYSVILLE, WASHINGTON, DO ORDAIN AS FOLLOWS:

SECTION 1. Chapter 7.05 of the municipal code is amended as set forth in Exhibit A.

SECTION 2. Section 22C.240.020 of the municipal code is amended as set forth in in Exhibit B.

SECTION 3. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or

constitutionality of any other section, subsection, sentence, clause, phrase or word of this ordinance.

SECTION 4. Upon approval by the city attorney, the city clerk or the code reviser are authorized to make necessary corrections to this ordinance, including scrivener's errors or clerical mistakes; references to other local, state, or federal laws, rules, or regulations; or numbering or referencing of ordinances or their sections and subsections.

SECTION 5. Effective Date. This ordinance shall become effective five days after the date of its publication by summary.

PASSED by the City Council and APPROVED by the Mayor this _____ day of _____, 2025.

CITY OF MARYSVILLE

By _____
JON NEHRING, MAYOR

Attest:

By _____
_____, DEPUTY CITY CLERK

Approved as to form:

By _____
JON WALKER, CITY ATTORNEY

Date of publication: _____

Effective Date (5 days after publication): _____

EXHIBIT A

Chapter 7.05 CAMPING

Sections:

7.05.010 Unlawful camping.

7.05.020 Storage of personal property in public places.

7.05.030 Definitions.

7.05.040 Penalty for violations.

7.05.050 Parked recreational vehicles exempt.

~~7.05.060 Permit.~~

7.05.010 Unlawful camping.

It ~~shall be~~ unlawful for any person to camp, occupy camp facilities, or use camp paraphernalia with the intent to occupy or use them for temporary or permanent habitation in the following areas, except as otherwise provided by ordinance ~~or as permitted pursuant to MMC 7.05.060~~:

(1) Any park;

(2) Any street;

(3) Any ~~publicly city~~ owned parking lot or ~~publicly city~~ owned ~~area~~property, improved or unimproved.

7.05.011 Unlawful habitation in motor vehicles or recreational vehicles.

It is unlawful to occupy a motor vehicle or recreational vehicle with the intent to occupy it as a temporary or permanent habitation in the following areas, except as otherwise provided by ordinance:

(1) Any park;

(2) Any street;

(3) Any city owned parking lot or city owned property, improved or unimproved.

7.05.020 Storage of personal property in public places.

It ~~shall be~~ unlawful for any person to store personal property, including camp facilities and camp paraphernalia, in the following areas, except as otherwise provided by ordinance ~~or as permitted pursuant to MMC 7.05.060:~~

(1) Any park;

(2) Any street;

(3) Any ~~publicly-city~~ owned parking lot or ~~publicly-city~~ owned ~~area~~property, improved or unimproved.

7.05.030 Definitions.

The following definitions are applicable in this chapter unless the context otherwise requires:

~~(1) “Camp” means to pitch or occupy camp facilities, to use camp paraphernalia.~~

~~(2)~~ “Camp facilities” include, but are not limited to, tents, huts, or temporary shelters.

~~(32)~~ “Camp paraphernalia” includes, but is not limited to, tarpaulins, cots, beds, sleeping bags, hammocks, ~~or and noncity-designated~~ cooking facilities and similar equipment except those designated by the city.

~~(43)~~ “Park” means those areas subject to the executive and administrative responsibility of the parks and recreation department established by Chapter [2.20](#) MMC.

~~(54)~~ “Store” means to put aside or accumulate for use when needed, to put for safekeeping, to place or leave in a location.

(5) “Recreational Vehicle” means a travel trailer, motor home, truck camper, or camping trailer that is primarily designed as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle.

(6) “Street” means any highway, lane, road, street, right-of-way, boulevard, alley and every way or place in Marysville open as a matter of right to public vehicular or pedestrian travel, and including all sidewalks, planting strips, medians, and islands within the right-of-way.

7.05.040 Penalty for violations.

~~(1) Violation of any of the provisions of this chapter is a misdemeanor, and shall be punished as follows:~~

~~(2) It is not a violation of this chapter to occupy a recreational vehicle in compliance with MMC 22C.240.020 or pursuant to a temporary use permit issued in accordance with chapter 22C.110 MMC.~~

~~(1) First Offense. Any person violating any of the provisions of this chapter shall, upon conviction of such violation, be punished by a fine of not more than \$1,000 or by imprisonment not to exceed 90 days, or by both such fine and imprisonment.~~

~~(2) Second Offense. Every person who violates any of the provisions of this chapter a second time within a five-year period shall be guilty of a misdemeanor, punishable by a fine of not more than \$1,000 or by imprisonment not to exceed 90 days, or by both such fine and imprisonment. One hundred dollars of the fine and one day of imprisonment shall not be suspended or deferred.~~

~~(3) Third or Subsequent Offense. Every person who violates any of the provisions of this chapter a third or more times within a five-year period shall be guilty of a misdemeanor, punishable by a fine of not more than \$1,000 or by imprisonment not to exceed 90 days, or by both such fine and imprisonment. Five hundred dollars of the fine and five days' imprisonment shall not be suspended or deferred.~~

~~(4) If a person is unable to pay the monetary penalty set forth in subsections (1), (2) or (3) of this section, the court may order performance of a number of hours of community service in lieu of a monetary penalty. (Ord. 2159 § 1, 1997).~~

7.05.050 Parked recreational vehicles exempt.

~~The provisions of this chapter shall not apply to recreational vehicles parked on any residential street for a period of not greater than 24 hours. For purposes of this chapter, "recreational vehicle" means a travel trailer, motor home, truck camper, or camping trailer that is primarily designed and used as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle, is transient, is not occupied as a primary residence, and is not immobilized or permanently affixed to a mobile home lot; provided, that recreational vehicles not owned by the owner or tenant of real property may park on the real property of another for a period not exceeding 14 consecutive days in a one-year period. (Ord. 2337 § 1, 2000; Ord. 2159 § 1, 1997).~~

7.05.060 Permit.

~~(1) The chief of police is authorized to permit persons to camp, occupy camp facilities, use camp paraphernalia, or store personal property in parks, streets, or any publicly owned parking lot or publicly owned area, improved or unimproved, in the city of Marysville.~~

~~(2) The chief of police shall approve a permit as provided under this section when, from a consideration of the application and from such other information as may otherwise be obtained, the chief finds that:~~

~~(a) Adequate sanitary facilities are provided and accessible at or near the camp site;~~

~~(b) Adequate trash receptacles and trash collection is to be provided;~~

~~(c) The camping activity will not unreasonably disturb or interfere with the peace, comfort and repose of private property owners; and~~

~~(d) The camping activity is not reasonably likely to cause injury to persons or property, to provoke disorderly conduct or create a disturbance.~~

~~(3) The chief of police is authorized to promulgate rules and regulations regarding the implementation and enforcement of this chapter.~~

~~(4) No permit shall be issued for a period of time in excess of seven calendar days.~~

~~(5) Any person denied a permit may appeal the denial to city council. Notice of appeal must be in writing, and filed with the city clerk within seven calendar days from the date notice of the denial is received. (Ord. 2159 § 1, 1997).~~

EXHIBIT B

22C.240.020 General requirements.

(1) No recreational vehicle shall be occupied overnight unless the same is parked inside an approved recreational vehicle park. An exception to this rule may be granted for temporary uses as defined in Chapter 22C.110 MMC, subject to strict compliance with the requirements of said section.

(2) Any person occupying a recreational vehicle overnight in any park, on any street, or on any city owned parking lot or city owned property, improved or unimproved, is subject to the penalties set forth in chapter 7.05 MMC.

(23) No recreational vehicle shall be occupied for commercial purposes anywhere in the city of Marysville. An exception to this rule may be granted for temporary uses as defined in Chapter 22C.110 MMC, subject to strict compliance with the requirements of said section.

(34) No recreational vehicle shall be used as a permanent place of abode, or dwelling, for indefinite periods of time. Occupancy in a park for more than 180 days in any 12-month period shall be conclusively deemed to be permanent occupancy. Any action toward removal of wheels of a recreational vehicle, except for temporary purposes of repair, or placement of the unit on a foundation, is hereby prohibited.

(45) No external appurtenances, such as carports, cabanas or patios, may be attached to any recreational vehicle while it is in a park.

(56) No space within a recreational vehicle park shall be rented for any purpose other than those expressly allowed by this chapter.

(67) No person, company or corporation shall establish or modify a recreational vehicle park without first complying with the provisions of this chapter.

CITY OF MARYSVILLE
Marysville, Washington

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARYSVILLE,
WASHINGTON, AMENDING CHAPTER 11.08 OF THE MUNICIPAL CODE TO
REGULATE RECREATIONAL VEHICLE PARKING.**

WHEREAS, the City's streets and rights-of-way are for the public convenience and use;
and

WHEREAS, recreational vehicles are designed for habitation; and

WHEREAS, chapter 7.05 of the municipal code prohibits occupying a recreational
vehicle on streets and city property for the purpose of habitation; and

WHEREAS, section 11.08.030 permits most vehicles to park for up to 72 hours; and

WHEREAS, section 11.08.200 currently permits recreational vehicles to park for up to
24 hours and permits the reparking of a recreational vehicles for additional periods of 24 hours if
the recreational vehicle is moved more than two blocks from the location it was parked; and

WHEREAS, permitting parking for 24 hours or other extended time period is inconsistent
with the prohibition on occupying a recreational vehicle for the purposes of habitation; and

WHEREAS, four hours is sufficient time for a person to patronize businesses or
temporarily visit residents of the city; and

WHEREAS, public health and safety will be enhanced by limiting the time period for
recreational vehicle parking.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MARYSVILLE,
WASHINGTON, DO ORDAIN AS FOLLOWS:

- A. SECTION 1. Section 11.08.020 of the municipal code is amended as set forth in Exhibit
- B. SECTION 2. Section 11.08.030 of the municipal code is amended as set forth in Exhibit
- C. SECTION 3. Section 11.08.200 of the municipal code is amended as set forth in Exhibit

SECTION 4. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this ordinance.

SECTION 5. Upon approval by the city attorney, the city clerk or the code reviser are authorized to make necessary corrections to this ordinance, including scrivener's errors or clerical mistakes; references to other local, state, or federal laws, rules, or regulations; or numbering or referencing of ordinances or their sections and subsections.

SECTION 6. Effective Date. This ordinance shall become effective five days after the date of its publication by summary.

PASSED by the City Council and APPROVED by the Mayor this _____ day of _____, 2025.

CITY OF MARYSVILLE

By _____
JON NEHRING, MAYOR

Attest:

By _____
_____, DEPUTY CITY CLERK

Approved as to form:

By _____
JON WALKER, CITY ATTORNEY

Date of publication: _____
Effective Date (5 days after publication): _____

EXHIBIT A

11.08.020 Definitions.

Unless otherwise provided or unless the context clearly requires a different meaning, the following terms shall have the meaning given to them herein:

“Alley” means a public highway not designed for general travel and used primarily as a means of access to the rear of residences and business establishments.

“Alley entrance” means that portion of the street which provides access to an alley through curb cut or a depression in the constructed curb or, when there is no constructed curb, that are in front of such alley as is well defined or is designated by authorized signs, markings or existing physical features. “Alley entrance” shall include an alley exit for one-way alleys.

“Bus” means every motor vehicle designed for carrying more than 10 passengers and used for transportation of persons, and every motor vehicle, other than taxicabs, designed and used for the transportation of persons for compensation.

“Bus stop” means a fixed portion of the highway parallel and adjacent to the curb and designated by a sign to be reserved exclusively for buses for layover in operating schedules or while waiting for, loading or unloading passengers; provided, that such bus provides regularly scheduled service within the city.

“Camper” means a structure designed to be mounted upon a motor vehicle and which provides facilities for human habitation or for temporary outdoor or recreational lodging.

“City” means the city of Marysville.

“City street” or “street” means every public highway or part thereof located within the limits of the city, except alleys.

“Crosswalk” means that portion of the roadway between the intersection area and a prolongation or connection of the farthest sidewalk line or in the event there are no improved sidewalks, then between the intersection area and a line 10 feet therefrom, except as modified by a marked crosswalk.

“Curb” or “curb line” means the edge of a roadway, either marked by curbing construction or not.

“Fire exit” means that portion of any street contiguous to and opposite any outside court, corridor, passage, fire escape, exit or entrance door, or any other place adjacent to, or any door opening in an outer wall of any building containing, in whole or in part, any theater, public auditorium, church, dance hall or other public assembly through which the public must pass to leave such building.

“Fire zone” means an area of street in the vicinity of churches, schools, hospitals, theaters or other public buildings; and an area along curves, narrow streets and in alleys to facilitate unimpeded exit from such buildings by large numbers of persons and to facilitate adequate maneuvering room for fire apparatus at all times.

“Highway” means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

“Intersection” means the area embraced within the prolongation of the lateral curb lines or, if there are no curbs, then the lateral roadway boundary lines of two or more streets which join one another at an angle, whether or not such streets cross one another. The junction of an alley with a street or highway shall not constitute an intersection for purposes of this ordinance.

“Legal owner” means a person having a security interest in a vehicle perfected in accordance with Chapter 46.12 RCW or the registered owner of a vehicle unencumbered by a security interest or the lessor of a vehicle unencumbered by a security interest.

“Loading zone” means a space reserved for the exclusive use of vehicles during the loading or unloading of property or passengers.

“Motorcycle” means every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.

“Motor home” means motor vehicles originally designed, reconstructed or permanently altered to provide human habitation.

“Motor vehicle” means every vehicle which is self propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

“Operator” or “driver” means every person who drives or is in actual physical control of a vehicle.

“Ordinance” means the city’s parking regulation ordinance codified in this chapter.

“Owner” means a person who has lawful right of possession of a vehicle by reason of obtaining it by purchase, exchange, gift, lease, inheritance or legal action whether or not the vehicle is subject to a security interest and means registered owner where the reference to owner may be construed as either to registered or legal owner.

“Park” or “parking” means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading of property or passengers.

“Parking enforcement officer” means an employee of the city under the direction of the police department who is responsible, along with the city’s police officers, to enforce the provisions of this chapter.

“Parking space” means any space which is duly designated for the parking of a single vehicle by appropriate markings on the pavement and/or the curb.

“Parking violation” means a traffic infraction which is the infringement of any parking regulation adopted by the city.

“Passenger loading zone” means a place reserved for the exclusive use of vehicles while receiving or discharging passengers.

“Planting strip” means the portion of a highway lying between the constructed curb and the property line exclusive of the sidewalk area.

“Police officer” means a law enforcement officer of the city of Marysville.

“Recreational Vehicle” means a travel trailer, motor home, truck camper, or camping trailer that is primarily designed as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle.

“Registered owner” means the person whose lawful right of possession of a vehicle has most recently been recorded with the Washington State Department of Licensing.

“Roadway” means that portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the sidewalk or shoulder, even though such sidewalk or shoulder is used by persons riding bicycles.

“Safety zone” means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is marked or indicated by painted marks, signs, buttons, standards or otherwise, so as to be plainly discernible.

“Sidewalk” means the property between the curb lines or for the lateral lines of a roadway and the adjacent property, set aside and intended for the use of pedestrians or such portion of private property parallel and in proximity to a public highway and dedicated to use by pedestrians.

“Stand” or “standing” means the halting of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

“Stop” or “stopping” means any halting of a vehicle resulting in complete cessation from movement, even momentarily.

“Tow-away zone” means a portion of a street or alley that is signed or marked as a tow-away zone.

“Trailer” includes every vehicle without power designed for being drawn by or used in conjunction with a motor vehicle.

“Truck” means any motor vehicle designed or used for the transportation of commodities, merchandise, produce, freight or animals.

“Truck loading zone” means a designated portion of the street reserved for the exclusive use of truck-licensed commercial vehicles during the loading and unloading of materials.

“Vehicle” means every device capable of being moved upon a highway and in, upon or by which any person or property is or may be transported or drawn upon a public highway, including mopeds, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks. For purposes of this chapter, the definition of vehicle encompasses, but is not limited to, motor vehicles, trailers, trucks and motorcycles.

EXHIBIT B

11.08.030 Stopping, standing or parking prohibited in specified places.

(1) Except when necessary to avoid conflict with other traffic, or in compliance with the law or the directions of a police officer or official traffic control device, no person shall:

(a) Stop, stand or park a vehicle:

(i) On the roadway side of any vehicle stopped or parked at the edge or curb of a street,

(ii) On a sidewalk or street planting strip,

(iii) Within an intersection,

(iv) On a crosswalk,

(v) Between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless official signs or markings indicate a different no-parking area opposite the ends of a safety zone,

(vi) Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic,

(vii) Upon any bridge or other elevated structure upon a highway or within a highway tunnel,

(viii) On any railroad tracks,

(ix) In the area between roadways of a divided highway, including cross-overs,

(x) At any place where official signs prohibit stopping, or

(xi) Within any fire zone or fire exit;

(b) Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:

(i) In front of a public or private driveway or within five feet of the end of the curb radius leading thereto,

- (ii) Within 15 feet of a fire hydrant,
 - (iii) Within 20 feet of a crosswalk,
 - (iv) Within 30 feet upon the approach to any flashing signal, stop sign, yield sign or traffic control signal located at the side of a roadway,
 - (v) Within 20 feet of the driveway entrance to any and on the side of a street opposite the entrance to any fire station within 75 feet of said entrance when properly signed,
 - (vi) At any place where official signs prohibit standing, or
 - (vii) At any place where city barricades are placed;
- (c) Park a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading property or passengers;
- (i) Within 50 feet of the nearest rail of a railroad crossing, or
 - (ii) At any place where official signs prohibit parking;
- (d) Reserve or attempt to reserve any portion of a street or alley for the purpose of stopping, standing, or parking to the exclusion of any other like person, nor shall any person be granted such right.
- (2) Parking or standing shall be permitted in the manner provided by law at all other places except where a time limitation or parking restriction has been imposed.
- (3) No one shall leave a vehicle, boat trailer, ~~recreation trailer, camper,~~ or other licensed or unlicensed vehicle or device parked for a period of time longer than three consecutive days on any public street or alley right-of-way.
- (4) No person shall move a vehicle not lawfully under his or her control into any such prohibited area or away from a curb such a distance as is prohibited.

EXHIBIT C

11.08.200 Parking recreational vehicles and trucks.

(1) No person shall park or park and detach any recreational vehicle ~~(as defined in MMC 7.05.050)~~ upon any street or alley; provided, however, a recreational vehicle may park on a city street for a maximum period of ~~24~~four hours, provided said recreational vehicle does not violate any parking restrictions (such as posted time zones) ~~and~~, meets all other parking regulations, and is not in violation of chapter 7.05 of the municipal code. It shall be a parking violation ~~to move or re-park a recreational vehicle within two blocks of any location where the recreational vehicle has previously parked in a residential zone for up to the 24-hour limit provided in this section~~ to park a recreational vehicle for more than four hours on any day within the city regardless of whether the recreational vehicle moves to another location.

(2) A tractor-trailer combination may be parked only on the following streets: 47th Avenue NE south of the 1st Street Bypass. Unattached trailers and dollies of such combinations may be parked only where combinations are allowed to be parked. When parked, blocks must be placed under the trailer legs and the trailer must be marked with reflectorized devices that meet all industry standards. It is a violation to park in any other public rights-of-way.

(3) Trucks or tractor-trailer combinations may temporarily park within the untraveled portion of a city street or alley when property is actively being loaded or unloaded from such vehicle; or when the vehicle is a city vehicle or public utility vehicle providing a service to the public; or the vehicle is an emergency vehicle; or such vehicle is currently used at and is located at a specific location within a residential zone for the purpose of assisting in the providing of services such as construction, carpentry, plumbing or landscaping to such residence or location.



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 3, 2025

SUBMITTED BY: Public Works Director Jeff Laycock, Engineering

ITEM TYPE: Discussion Item

AGENDA SECTION: **Discussion Items**

SUBJECT: Quiet Zone Project Update

SUGGESTED ACTION: This item is for discussion only. No action requested.

SUMMARY:

ATTACHMENTS:



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE:	March 3, 2025
SUBMITTED BY:	Bryan Milligan, Engineering
ITEM TYPE:	Bid Award
AGENDA SECTION:	Review Bids
SUBJECT:	Contract Award - 1049 State Avenue Addition Project
SUGGESTED ACTION:	<u>Recommended Motion:</u> I move to authorize the Mayor to award and execute the contract with Valdez Construction, Inc. for the 1049 State Avenue Addition Project in the amount of \$3,211,675.49 including Washington State Sales Tax and approve \$321,167.55 management reserve for a total allocation of \$3,532,843.04.
SUMMARY:	The 1049 State Avenue Addition project consists of an 8,840 SF addition to the existing building at 1049 State Avenue. This addition includes offices, meeting rooms, tech storage, open cubical space, as well as restrooms and ancillary storage consistent with an office building. Additionally, the project encompasses the installation and painting of new siding to the entire existing building which will provide an updated appearance to the property within the City's downtown core. The project also includes asphalt paving, and associated site work including landscaping within the envelope of the addition. Bids were opened for the project on February 24, 2025. Per the attached bid tab, the City received nine bids. The low bidder, Valdez Construction, submitted a bid in the amount of \$2,935,718 plus sales tax. References have been checked, and Valdez Construction has been verified as a responsible bidder. Staff recommend awarding the project to Valdez Construction in the amount of \$2,935,718 (\$3,211,675.49 with sales tax) and authorize a management reserve of \$321,167.55 (10%) for a total allocation of \$3,532,843.04.

ATTACHMENTS:

[Contract_Combined.pdf](#)
[Bid Tab.pdf](#)

SECTION 00 04 00

PUBLIC WORKS CONTRACT DOCUMENTS

PUBLIC WORKS CONTRACT

THIS PUBLIC WORKS CONTRACT (the “Contract”) is made and entered into as of the date of the last signature below, by and between the City of Marysville, a Washington State municipal corporation (the “City”) and Valdez Construction, a corporation, organized under the laws of the State of Washington, located and doing business at 499 NE Midway Blvd. Suite 2, Oak Harbor, WA 98277, (the “Contractor”).

WITNESSETH:

Whereas, the City desires to have certain public work performed as hereinafter set forth, requiring specialized skills and other supportive capabilities; and

Whereas, the Contractor represents that it is qualified and possesses sufficient skills and the necessary capabilities to perform the services set forth in this Contract.

NOW, THEREFORE, in consideration of the terms, conditions, and agreements contained herein, the parties hereto agree as follows:

- I. SCOPE OF WORK.** The Contractor agrees to do all work and furnish all labor, tools, materials, equipment, and supplies required to build and construct and to build and construct in a workmanlike manner the work, improvements, and appurtenances in order to accomplish the following project:

1049 State Avenue Addition Project 23-1026

All such work, labor, tools, materials, equipment, and supplies to be procured and furnished in accordance with the following documents (the “Contract Documents”) which are incorporated by reference and are hereby made a part of this Contract:

- A. This Contract;
- B. The Call for Bids, Information for Bidders, and Bidder’s Checklist;
- C. Construction Agreement between Owner and Contractor, and General Conditions of the Construction Agreement between Owner and Contractor;
- D. Plans, Drawings, Project and Technical Specifications and Supplementary General Conditions and Special Conditions;
- E. Addenda (if any)
- F. Contractor's Proposal/Bid
- G. Payment Bond and Performance Bond; and
- H. All provisions required by law whether set forth and reproduced herein or not.

and shall perform any alterations in or additions to the work provided under this Contract and every part thereof.

The Contractor shall provide and bear the expense of all equipment, work, and labor of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the work provided for in this Contract, except as may otherwise be provided in the Contract Documents.

The Contractor shall guarantee said materials and work for a period of one year after completion of this Contract.

II. TIME FOR COMPLETION & LIQUIDATED DAMAGES. Substantial completion shall be achieved within two hundred sixty five (265) calendar days of the effective date of the Notice to Proceed. If said work is not completed within the time specified, the Contractor agrees to pay the City liquidated damages as provided in the Construction Agreement between Owner and Contractor.

III. COMPENSATION AND METHOD OF PAYMENT. The stipulated sum amount of the Contract is three million, two hundred eleven thousand, and six hundred seventy five dollars and forty nine cents (\$3,211,675.49) including Washington State Sales Tax. The total Project cost includes all costs associated with the Project work, including, but not limited to labor, materials, overhead, and administrative, permit, and regulatory costs, unless otherwise agreed in writing. The Project cost is based on the bid submitted by the Contractor dated February 24, 2025. The basis for final payment will be the actual amount of work performed according to the Contract Documents and payments, whether partial or final, shall be made as specified therein.

IV. ATTORNEY FEES. Should either the City or the Contractor commence any legal action relating to the provisions of this Contract, or the enforcement thereof, the prevailing party shall be awarded judgment for all costs of litigation including, but not limited to, costs, expert witnesses and reasonable attorney fees.

V. INDEMNIFICATION. In addition to any other obligations contained in the Contract Documents,

- A. The Contractor shall defend, indemnify and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including attorney fees, arising out of or in connection with the performance of this Contract, except for injuries and damages caused by the sole negligence of the City.
- B. Should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.
- C. The Contractor specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW, as

provided in RCW 4.24.115. The indemnification obligation under this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers compensation acts, disability benefits acts, or other employee benefits acts; provided the Contractor's waiver of immunity by the provisions of this paragraph extends only to claims against the Contractor by the City and does not include, or extend to, any claims by the Contractor's employees directly against Contractor. The obligations of Contractor under this subsection have been mutually negotiated by the parties hereto, and Contractor acknowledges that the City would not enter into this Contract without the waiver thereof of Contractor.

_____ (City initials) _____ (Contractor initials)

- D. The provisions of this section shall survive the expiration or termination of this Contract with respect to any event occurring prior to such expiration or termination.

VI. CONTRACT ADMINISTRATION.

This Contract shall be administered Brandon Roos on behalf of the Contractor and by Bryan Milligan on behalf of the City. Any written notices required by the terms of this Contract shall be served or mailed to the following addresses:

<u>Contractor:</u>	<u>City:</u>
Valdez Construction, Inc.	City of Marysville
Attn: Brandon Roos	Public Works – Attn: Bryan Milligan
499 NE Midway Blvd. Suite 2	501 Delta Ave
Oak Harbor, WA 98277	Marysville, WA 98270

VII. PREVAILING WAGES AND APPRENTICE UTILIZATION REQUIREMENTS.

The Contractor shall comply with all state and federal laws relating to the employment of labor and wage rates to be paid.

Contractor will comply with the apprentice utilization requirements of RCW 39.04.300-.320 and the requirements set forth in Article 11 of the Supplementary General Conditions. The monetary incentives and penalties are set forth in Article 11.

- VIII. DEBARMENT.** By signing this contract, Contractor certifies that it is not presently debarred or proposed for debarment, suspended, or otherwise excluded by any state or federal department or agency from participating in transactions. Contractor agrees to refrain from hiring any subcontractor or employee who is debarred, proposed for debarment, suspended, or otherwise excluded by a state or federal department or agency from participating in transactions. Contractor must immediately notify the City if it or any subcontractor or employee is proposed for debarment or is debarred during the term of this Contract. The City may terminate this Contract if the Contractor, a subcontractor, or employee is debarred, proposed for debarment, suspended, or otherwise excluded by a state or federal department or agency from participating in transactions.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

DATED _____

CITY OF MARYSVILLE

By: _____

Jon Nehring, Mayor

DATED _____

Valdez Construction, Inc.

By: _____

Tony Martin, CEO

Attested/Authenticated:

Chari Taber, Deputy City Clerk

Approved as to form:

Jon Walker, City Attorney

Bond No.

This bond may be executed in two (2) original counterparts and shall be signed by the parties' duly authorized officers. This bond will only be accepted if its accompanied by a fully executed and original power of attorney for the office executing on behalf of the Surety.

Surety

Title: _____

Name, address, and telephone number of local office/agent of Surety is:

Bond No.

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Monies reserved under provisions of Chapter 60.28 RCW, at the option of the Contractor, shall be:

Select one:

- ☐ **(1) Retained in a fund by the City.** No interest will be earned on the retained percentage amount under this election.
- ☐ **(2) Deposited in an Interest-Bearing Account.** Deposited by the City in an interest-bearing account in a bank, mutual savings bank, or savings and loan association. Funds may not be withdrawn until sixty (60) days after the completion date of the work and must be in accordance with Chapters 60.28 and 39.12 RCW. Interest on such account will be paid to the Contractor. Fees incurred shall be the responsibility of the Contractor.

If this option is selected, the Contractor must complete the attached "Assignment of Savings or Time Deposit Escrow Retained Percentage Holding Account" form.

- ☐ **(3) Placed in an Escrow Account Chosen by Contractor.** Placed in escrow with a bank or trust company by the City. When the monies reserved are to be placed in escrow, the City will issue a check representing the sum of the monies reserved payable to the bank or trust company and the Contractor jointly. Such check shall be converted into bonds and securities chosen by the Contractor and approved by the City and the bonds and securities held in escrow. The Contractor is solely responsible for all costs which may accrue from escrow services, brokerage costs, or both, and assumes all risks in connection with the investment of the retained percentages in securities.

If this option is selected, the Contractor must complete two copies of the attached "Retainage Escrow Agreement" form.

- ☐ **(4) Bond in Lieu of Retainage.** In lieu of the City withholding retainage, the Contractor will submit a Retainage Bond which must be effective until sixty (60) days following the completion date of the work and in accordance with Chapters 60.28 and 39.12 RCW.

If this option is selected, the Contractor must complete the attached "Retainage Bond" form.

Contractor

Contractor's Signature

Printed Name: _____

Title: _____

Date: _____

**Assignment of Savings or Time Deposit Escrow
Retained Percentage Holding Account**

The undersigned _____
hereby referenced to as "Contractor" has directed CITY OF MARYSVILLE herein referred to as
"Agency" to deliver its warrants or checks payable to
_____, herein after the "Bank" and the Contractor jointly.
Such warrants or checks shall be deposited to Account # _____ as an Escrow
Retained Percentage Holding Account.

All deposits to the account shall not be subject to withdrawal until the Bank is notified by the
Agency, in writing, authorizing the release of such funds. All interest earned on this account shall
be paid to the Contractor. Any costs or fees incurred as a result of placing the said retained
percentage funds in this account shall be paid by the Contractor.

Contractor

Agency: City of Marysville

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

Date: _____

Date: _____

Bank

Signature: _____

Name: _____

Title: _____

Address: _____

Phone: _____

Date: _____



Project	1049 State Avenue Addition 23-1026
Contractor	
Bank	

The Undersigned, _____, hereinafter referred to as the Contractor, and the City of Marysville, hereinafter referred to as the City, have entered into a public works construction contract.

Under the terms of the Contract, and pursuant to Chapter 60.28. RCW, the Contractor and the Public Body have agreed to deposit any and all retainage from the Contract into an interest bearing depository account (the “Retainage Account”) with _____ (the “Bank”), subject to the following instructions:

RETAINAGE ESCROW AGREEMENT AND INSTRUCTIONS

- 1. Escrow Agreement.** The Contractor on a public improvement project for the City exercised its option pursuant to RCW 60.28.011 (1994) to place Retainage in escrow with the Bank. This Agreement constitutes both the escrow agreement between the City and Contractor and instructions to the Bank for handling of the Escrow Account. This Agreement is not effective until (a) the Agreement has been signed by the Contractor, Bank and City and (b) Contractor, Bank and City have entered the appropriate information in Exhibit A.
- 2. Check Issuance, Endorsement, and Deposit.** From time to time, the City will issue a Check payable to the Bank and Contractor jointly. Contractor expressly authorizes and grants the power to the Bank to endorse the check on its behalf, to negotiate the check, collect the funds represented by the Check, and to deposit the funds so collected into the Escrow Account. These powers shall be deemed to be powers coupled with an interest and shall be irrevocable during the term of this escrow.
- 3. Investment of Funds.** Funds and cash balances in the Escrow Account may be invested in Eligible Securities at the direction of the Contractor. For purchase of Eligible Securities, the Bank may follow the last written direction it received from the Contractor, provided such direction provides for investment in Eligible Securities. The Bank shall not invest any funds, cash balances, or proceeds of sale of Eligible Securities in any securities, bonds or accounts that are not Eligible Securities. Eligible Securities purchased pursuant to this Agreement shall be held by the Bank as custodian as part of this escrow. Eligible Securities shall be held in the Bank’s name. Interest on the purchased Eligible Securities, if any, shall be paid to Contractor when, as and if any accrued interest is received by the Bank.
- 4. Eligible Securities.** The following securities are deemed Eligible Securities, and the Bank may invest funds and cash balances in such securities at the direction of Contractor without further approval of the City, provided that any maturity dates are no later than twenty-five (25) calendar days after the Completion Date and provided they are held in a manner and form that allows Bank alone to liquidate the securities as provided for in the Agreement.

- A. Bills, certificates, notes or bonds of the United States;
- B. Other obligations of the United States or its agencies;
- C. Obligations of any corporation wholly owned by the Government of the United States;
- D. Indebtedness of the Federal National Mortgage Association;
- E. Time deposits in commercial banks; and
- F. Mutual funds, pools, or investment trusts, provided the investments of the fund, pool or trust consists solely of securities listed in herein.

Other securities may be deemed Eligible Securities upon the written request of the Contractor and written approval of the City, provided the City has the staff assistance and expertise which will permit it to exercise sound judgment in assessing the security. The City shall consider probable safety, risk to principal, liquidity and any other factor the City deems reasonable to consider. Nothing herein obligates the City to incur any expense or charge to assess the appropriateness of a proposed security. The City has no obligation to consider a proposed security if the City would incur expenses, charges or fees in its assessment of the appropriateness of the security as an investment. If the proposed security has a maturity date, the security must mature on or before the Completion Date. The Contractor expressly acknowledges that any investment in securities involves risks, including, but not limited to, the risks of loss or diminution of principal and failure to realize anticipated or expected appreciation, dividends, interest, or other gain. Contractor expressly waives and releases both City and Bank from any and all liability associated with, or arising out of, these and all market risks.

5. Bank Duties and Responsibilities. Although the Bank will be a joint payee of any Check, the Bank shall only have (a) those duties and responsibilities that a depository bank would have pursuant to Article 4 of the Uniform Commercial Code of the State of Washington for an item deposited to Bank and (b) those duties and responsibilities created by this Agreement. The Bank must not deliver to the Contractor all or any part of the securities or money held by the Bank pursuant to this Agreement (or any proceeds from the sale of such securities, or the negotiation of the City's warrants or checks) except in accordance with written instructions from the City. The City Clerk is authorized to give written instructions and the Finance Director or Treasurer (or its designee) is authorized to give written approval of securities. Written instructions and written approval of securities must be countersigned by the City Attorney. The City may designate different authorized persons from time to time by notifying the Bank in writing of the change, which notice must be countersigned by the City Attorney.

6. Change of Completion Date. Upon written request by the Bank, City shall advise the Bank in writing of any change in the Completion Date. If the changed Completion Date is later than the original Completion Date, the Bank may reinvest any funds on hand, cash balances or proceeds of Eligible Securities with maturities, reverse loads, etc. consistent with the later Completion Date. If the changed Completion Date is earlier than the original Completion Date,

the Bank shall execute such transactions as are commercially reasonable to liquidate Eligible Securities in the Escrow Account no later than twenty-five (25) calendar days after the earlier Completion Date.

7. ***Return of Funds to City.*** At the City's sole option and notwithstanding any other provision of this Agreement, the City may direct the Bank in writing to liquidate any and all Eligible Securities held in or for the Escrow Account and to deliver all funds, cash, accrued interest and proceeds in the Escrow Account to the City. Such liquidation shall occur within thirty-five (35) calendar days of receipt of the written direction.

8. ***Compensation of Bank.*** Contractor shall be solely responsible for, and shall pay separately to the Bank, any and all fees, charges, or commissions of the Bank relating to the Escrow Account. No fees, charges or commissions of any kind may be deducted by the Bank from any property, funds, proceeds or Eligible Securities in the Escrow Account until and unless the City directs the release of the Escrow Account to the Contractor, in which case the Bank is hereby granted a lien upon the property, proceeds or Eligible Securities in the Escrow Account for the entire amount of unpaid Bank fees, costs or charges arising out of or relating to the Escrow Account. Said lien arises and is effective upon the City's written direction to release the Escrow Account to the Contractor. The City shall not be liable for any fees, charges, expenses or commissions relating to the Escrow Account or any Eligible Securities.

9. ***Termination of Escrow By Bank.*** Bank may terminate the escrow by giving written notice to the City and Contractor. Within twenty (20) calendar days of the receipt of such notice, the City and Contractor shall jointly appoint a successor escrow holder and instruct Bank to deliver all securities and funds of the Escrow Account to said successor. If Bank is not so notified of the appointment of a successor escrow holder, Bank may return all funds, securities and contents of the Escrow Account to the City.

10. ***Definitions***

"*Agreement*" shall mean this document, including exhibit A when completely executed by the City, Contractor and Bank.

"*Bank*" shall mean that national or state chartered bank identified in Exhibit A that holds the escrow.

"*Check*" shall mean a check or warrant payable jointly to the Bank and Contractor, representing accrued Retainage.

"*City*" shall mean the City of Marysville, a municipal corporation of the State of Washington.

"*Completion Date*" shall mean that date occurring immediately after the expiration of the project duration (as defined by the contract for the public improvement), including any agreed extensions thereof. The initial Completion Date can be found in Exhibit A.

"*Contractor*" shall mean the undersigned contractor.

"*Escrow Account*" shall mean the escrow created by this Agreement.

"*Eligible Securities*" are those bonds and securities identified in the paragraph 4 above.

“Retainage” shall mean moneys reserved by the City under the provisions of a public improvement contract.

11. **Miscellaneous.**

A. With the possible exception of any agreement between the Bank and Contractor regarding amount and payment of fees, commissions and charges related to the Escrow Account, this document contains the entire agreement between the Bank, Contractor and the City with respect to this Escrow Account.

B. This Agreement binds the assigns, successors, personal representatives and heirs of the parties hereto. Those persons executing this Agreement represent and warrant they are duly authorized to bind their principals to this Agreement and to execute this Agreement on their behalf.

C. Venue for any dispute arising out of, or related to, this Agreement shall be Snohomish County, Washington.

D. This Agreement shall be executed in triplicate, each of which shall be deemed to be an original.

AGREED AND ACCEPTED this the ___ day of _____, 20__. _____ CONTRACTOR By: _____ Printed Name: _____ Title: _____ Address: _____ City: _____ State: _____ Zip: _____ Tax ID #: _____	AGREED AND ACCEPTED this the ___ day of _____, 20__. CITY OF MARYSVILLE By: _____ Jon Nehring, Mayor ATTEST: By: _____ _____, Deputy City Clerk
AGREED AND ACCEPTED this the ___ day of _____, 20__. _____ BANK By: _____ Printed name: _____ Its: _____	APPROVED AS TO FORM: By: _____ Jon Walker, City Attorney

EXHIBIT A

City Supplied Information. The City provides the following information:

Project	Name
	Work Order # (if applicable)
Contractor	
Bank	
Completion Date	

Bank Supplied Information. Bank provides the following information:

Bank	Name	
	Branch	
	Address/Phone	
	Contact Person/Account Officer	
Escrow Account	Account Name	
	Bank Account #	

Contractor Supplied Information. Contractor provides the following information:

Contractor	Name	
	Address/Phone	
	Representative Authorized to Direct Investment	

RETAINAGE BOND

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS, that Valdez Construction, Inc., a corporation organized under the laws of the State of Washington, and registered to do business in the State of Washington as a contractor, as Principal, and _____ (Surety), a corporation organized under the laws of the State of _____ and registered to transact business in the in the State of Washington as surety, as Surety, their heirs, executors, administrators, successors, and assigns, are jointly and severally held and bound to the City of Marysville, Washington, hereinafter called "City", and are similarly held and bound unto the beneficiaries of the trust fund created by RCW Chapter 60.28, in the sum of _____ and ___/100's Dollars (\$_____), or five percent (5%) of all monies now or hereafter earned by the Principal in connection with the below-referenced Contract, the payment of which, well and truly to be paid, we bind ourselves, our heirs, executors and successors, jointly and severally, formally by these presents.

THE CONDITIONS OF THE ABOVE OBLIGATION ARE THAT:

WHEREAS, on _____, 20____, the Principal executed a contract (the "Contract") with the City known as:

Project Name: _____

Contract Number: _____

And,

WHEREAS, said Contract and RCW Chapter 60.28 require the City to withhold from the Principal the sum of five percent (5%) from monies earned by the Principal during the progress of the construction, hereinafter referred to as "earned retained funds"; and

WHEREAS, the Principal has requested that the City accept a retainage bond and release earned retained funds to the Principal, as allowed under RCW Chapter. 60.28;

NOW, THEREFORE, the condition of this obligation is such that the Surety is held and bound to the City to indemnify, defend, and hold the City harmless from any and all loss, costs or damages that the City may sustain by reason of release of said earned retained funds to Principal, then this obligation to be null and void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, it is expressly understood and agreed that:

1. Any suit or action under this bond must be instituted within the time period provided by applicable law. The bond shall be subject to all claims and liens provided for by law or Contract against the earned retained funds and in the same manner and priority as set forth for retained percentages in RCW Ch. 60.28 and the Contract.

2. The Surety hereby consents to and waives notice of any extension in the time for performance of the Contract, assignment of obligations under the Contract, or Contract alteration, termination, amendment or change order. This expressly includes, but is not limited to, consent to and waiver of any notice with respect to increases in the Contract price by change

City of Marysville

1049 State Avenue Addition Project 23-1026

Form Rev. 12/2024

order. Upon any such Contract price increase, the amount of this bond automatically increases by an amount equal to five percent (5%) of the Contract price increase.

3. Until written release of this obligation by the City, this bond may not be terminated or canceled by the Principal or Surety for any reason. Any extension of time for the Principal's performance on the Contract, assignment of obligations under the Contract, or Contract alteration, amendment or change order shall not release the Surety from its obligation under this bond.

4. RCW Ch. 60.28 authorizes the City to substitute a retainage bond in lieu of earned retained funds and the Surety hereby waives any defense that this bond is void or otherwise not authorized by law.

5. Any claim or suit against the City to foreclose the liens provided for by RCW Chapter 60.28 shall be effective against the Principal and Surety and any judgment under RCW Chapter. 60.28 against the City shall be conclusive against the Principal and the Surety.

6. The laws of the State of Washington shall apply to the determination of the rights and obligations of the parties hereunder. Venue for any dispute or claim hereunder shall be the state courts of Washington in Snohomish County, Washington.

The City Attorney may, in his or her discretion, waive conditions of the bond as appropriate.

The bond must be duly executed by the contractor and a surety that is (1) authorized to do business as a surety in the State of Washington and (2) rated at least "A" or better and with a numerical rating of no less than seven (7) by A.M. Best Company. The bond must be accompanied by a fully executed Power of Attorney appointing the signer for the surety as the surety's attorney-in-fact.

Principal

Surety

Principal Signature _____ Date _____

Surety Signature _____ Date _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Send bond release information to:

_____ (Address)

_____ (City/State)

ACCEPTED
CITY OF MARYSVILLE

Approved as to Form

By _____
Jon Nehring, Mayor

By _____
Jon Walker, City Attorney

Date: _____

Date: _____

PART 4 - PREVAILING WAGE RATES

Washington State Prevailing Wage Rates are available for Look up at <https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>.

County: Snohomish County

Publication Date: 1/20/2025

The prevailing wage rates in Snohomish County are determined by the bid due date for a public works project (the bid due date as shown in the Call for Bids) and these rates apply to that project until it is completed, unless the contract award date is six months or more after the bid due date. In this case the award date would determine the rates to be paid. The bid due date is the date that General Contractor bids for the project are due to the Awarding Agency. All sub-contractors use this same bid due date and award date.

A copy of the prevailing rate rates are available for viewing at the Marysville Public Works Department, 501 Delta Ave, Marysville, Washington (360-363-8100) or a hard copy can be mailed upon request.

The Contractor shall perform all work and services under and pursuant to this Contract in full compliance with any and all federal, state, or local laws, ordinances, regulations, or codes. The Contractor shall obtain a City of Marysville Business License prior to commencement of work under this Contract. If this project is supported by any federal funds, Contractor is responsible to comply with the requirements in 2 C.F.R. Part 200, Appendix II, § I, 44 C.F.R. § 18.110, and 31 U.S.C. § 1352

SECTION 00 05 00 – CONSTRUCTION AGREEMENT BETWEEN OWNER AND CONTRACTOR

AGREEMENT

made as of the _____

day of _____

in the year of Two Thousand and Twenty Five.

BETWEEN the Owner:

CITY OF MARYSVILLE

501 Delta Avenue

Marysville, WA 98270

Hereinafter referred to as “the Owner”

And the Contractor:

Valdez Construction, Inc.

499 NE Midway Blvd. STE 2

Oak Harbor, WA 98277

Hereinafter referred to as “the Contractor”

The **Project** is:

1049 STATE AVENUE ADDITION

The **Architect** is:

Botesch, Nash and Hall Architects, P.S.

2727 Oakes Avenue, Suite 100

Everett, WA 98201

Hereinafter referred to as the “Architect”

The Owner and the Contractor agree as follows:

TABLE OF ARTICLES

- 1 Contract Documents
- 2 The Project
- 3 Relationship of the Parties
- 4 Commencement and Substantial Completion
- 5 Basis for Payment
- 6 Changes in the Work
- 7 Maximum Allowable Construction Cost Exclusions
- 8 Discounts, Rebates and Refunds
- 9 Subcontractors
- 10 Accounting Records
- 11 Payments
- 12 Retainage and Prevailing Wage
- 13 Termination or Suspension
- 14 Warranty
- 15 Insurance and Bonds
- 16 Safety
- 17 Miscellaneous Provisions

ARTICLE 1

1. CONTRACT DOCUMENTS

The Owner and Contractor are proceeding under the terms established by statutes governing public works in the State of Washington.

1.2 The Contract Documents are listed below. In the event of conflicts or discrepancies between the documents, the order listed below establishes the priority of the documents.

1.2.1 Modifications and/or revisions to the Contract Documents issued after execution of this Agreement.

1.2.2 Construction Agreement Between Owner and Contractor (the **Agreement**).

1.2.3 General Conditions of the Construction Agreement Between the Owner and Contractor (the **General Conditions**)

1.2.4 Drawings (Plans), Specifications, Addenda issued prior to execution of this Agreement.

These documents form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

1.3 Not Applicable

1.4 In the event of uncertainty as to the type or quality of materials to be supplied, the more stringent requirement shall govern, unless otherwise directed in writing by the Architect.

1.5 In the event of a discrepancy between the Drawings and the Specifications, the more stringent requirements or higher quality shall govern. Discrepancy between Drawings and the Specifications shall not be allowed as the basis for Change Orders.

ARTICLE 2

2. THE PROJECT

2.1 The work includes an 8,840 SF addition to the existing building at 1049 State Avenue, in addition to the demolition, installation, and painting of new siding to the entire existing building. The project also includes new asphalt paving, and associated site work including landscaping, irrigation, and storm drain system.

- 2.2 The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.
- 2.3 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.

ARTICLE 3

3. RELATIONSHIP OF THE PARTIES

- 3.1 The Owner has retained the Contractor through a competitive process pursuant to statutes governing public works in the state of Washington.
- 3.2 The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect, its consultants and the Owner’s other consultants, 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.
- 3.3 Except for the special agreements in Paragraph 3.19 of the General Conditions, nothing contained in the Contract Documents shall be construed to create any contractual relationship of any kind between the Architect and the Contractor.
- 3.4 The Owner’s representative is: Bryan Milligan
- 3.5 The Architect’s representative is: Chris Raef
- 3.6 The Contractor’s project personnel are: (To Be Inserted)
- (a) Principal In Charge
 - (b) Project Director
 - (c) Project Manager
 - (d) Project Superintendent
 - (e) MEP / Field Superintendent
 - (f) Project Engineer
 - (g) QC Engineer

- (h) Owner Equipment Coordinator
- (i) Occupancy Permit Expediter
- (j) MEP / Commissioning
- (k) Lead Estimator

- 3.7 The Contractor's representative is, <insert name> who shall have authority to bind the contractor with respect to all matters requiring the Contractor's approval or authorization.
- 3.8 The Contractor's project personnel and representative shall not be changed without the Owner's written approval.
- 3.9 If at any time the Owner reasonably objects to any of the Contractor's personnel, then the Contractor shall, upon written request by the Owner, immediately remove and replace said personnel with qualified individuals to whom the Owner has no objections.
- 3.10 Not Applicable.

ARTICLE 4

4. COMMENCEMENT AND SUBSTANTIAL COMPLETION

- 4.1 The date of commencement is the date of this Agreement. The start of construction of the Work shall be the date established by the Notice To Proceed. At the Owner's option Notices To Proceed may be issued for certain phases of the Work. The Contractor shall only undertake Work for which is has been authorized by a Notice To Proceed.
- 4.2 The Contract Time shall be measured from the date of the Notice To Proceed for construction of the Work.
- 4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than **265 calendar days** from the date of the Notice To Proceed. The date of Substantial Completion may only be adjusted as provided for in the Contract Documents.
- 4.4 When requested by the Owner, the Contractor shall coordinate completion of various areas and departments integral to the Work to allow the Owner, its vendors or its other contractors to install the Owner's furnishings, fixtures and equipment in advance of Substantial Completion.
- 4.5 The Contractor shall achieve Final Completion of the entire Work not later than 30 calendar days following Substantial Completion of the entire Work.
- 4.6 The Owner and the Contractor acknowledge that the Owner will suffer financial damages if the Contractor achieves late Substantial Completion or Final

Completion. The Owner is entitled to enforce Liquidated Damages of two thousand five hundred dollars (\$2,500) per day for late Substantial Completion and one thousand dollars (\$1,000) per day for late Final Completion. The Owner and Contractor agree that it is extremely difficult to predict or to determine with accuracy the damages Owner will suffer for late completion of Work and that these amounts are a fair and reasonable estimate of the Owner's actual damages resulting from late completion. If Substantial Completion is delayed but Final Completion is not, Liquidated Damages of two thousand five hundred dollars (\$2,500) per day shall apply to the period between actual and planned Substantial Completion. If Substantial Completion is achieved but Final Completion is delayed, Liquidated Damages of one thousand dollars (\$1,000) per day shall apply to the period between actual and planned Final Completion. If both Substantial and Final Completions are delayed, Liquidated Damages shall apply to the difference between the actual and planned Substantial Completion and to the difference between the actual and planned Final Completion.

- 4.7 The Owner shall be entitled to subtract Liquidated Damages from amounts due the Contractor.

ARTICLE 5

5. BASIS FOR PAYMENT

5.1 CONTRACT SUM

5.1.1 The Contract Sum is <insert \$ value>.

5.1.2 Not Applicable.

ARTICLE 6

6. CHANGES IN THE WORK

- 6.1 Changes in the Work may be additive or deductive or result in no net changes. Changes in the Work resulting from Owner initiated scope changes will be authorized by Change Order and may result in an increase or decrease to the Contract Sum and an adjustment, if warranted, in the Contract Time. All other Changes in the Work will be reviewed by the Owner, the Architect and the Contractor to determine if the change warrants an adjustment to the Contract Sum or the Contract Time. If an adjustment is warranted, it will be authorized by Change Order.

Owner initiated scope changes are those changes that are specifically requested by the Owner and that materially effect Project scope.

- 6.2 In order to facilitate review of potential change orders or change order requests, all proposals shall be accompanied by a complete itemization of costs including labor, materials, equipment and subcontracts. Labor and materials shall be itemized to show individual quantities, rates and extensions. Where cost items are subcontracts, they shall be itemized in the same manner. If the change includes an adjustment in the Contract Time, it shall be substantiated by the Contractor using the Contemporaneous Period Analysis as specified in Contract Documents. Changes submitted without such itemization will be returned to the Contractor without review and in no case will a change be approved without such itemization.
- 6.3 The Contractor shall not pass through potential change orders or change order requests from subcontractors without (a) reviewing the subcontractor's scope of work and all documentation available to determine that a change has actually occurred and is warranted; (b) obtaining from the subcontractor documentation in a level of detail sufficient to allow the Contractor to analyze the specific merits of the change; (c) verifying the quantities and pricing put forth by the subcontractor for accuracy and reasonableness; (d) reviewing the time impact of the change using the CPM Schedule current at the time of the change and (e) providing the Owner and the Architect advance notice that the change is forthcoming. If any change exceeds twenty-five hundred dollars (\$2,500) the Contractor shall perform its own estimate of the change in accordance with Paragraph 6.2 and present this to the Owner and Architect to verify costs presented by subcontractors. Failure to adhere to this requirement shall result in the change documentation being returned to the Contractor without review.
- 6.4 In issuing a change order request or potential change order to the Owner and Architect the Contractor is certifying that it has performed a thorough review of the change in accordance with paragraph 6.2 and 6.3 and believes the change is fair, reasonable and complete compensation for the entire change.
- 6.5 Adjustments to the Contract Sum on account of changes in the Work shall be based on the Contractor's actual cost of completion, as defined in Subparagraph 5.3.7 of the General Conditions, of any such additional or changed Work, or if the parties agree, to one of the following methods:
- (a) mutual acceptance of a lump sum properly itemized and supported by the required substantiating information to permit evaluation; or
 - (b) unit prices stated in the Contract Documents or subsequently agreed upon; or
 - (c) cost to be determined in a manner agreed upon by the parties.
- 6.6.1 Markup for general contractor overhead and profit shall be based on costs specified in Paragraph 6.7 and applied in the following manner:

- (a) Twelve percent (12%) for work the general contractor directly performs
 - (b) Eight percent (8%) for work performed by a subcontractor
- 6.6.2 Markup for subcontractor overhead and profit shall be based on costs specified in Paragraph 6.7 and applied in the following manner:
 - (c) on the first \$2500 of the change, fifteen percent (15%) for the subcontractor that directly performs the work and five percent (5%) for all additional tiers of subcontractors combined.
 - (d) on the value of the change exceeding \$2500, ten percent (10%) for the subcontractor that directly performs the work and five percent (5%) for all additional tiers of subcontractors combined.
- 6.7 Markup for overhead and profit shall be applied to the direct labor, material and construction equipment usage costs of the change as defined in Paragraph 6.8 and shall not be applied to bond, insurance costs, permit fees, sales / use or similar taxes or to the markup for overhead and profit applied by other tier subcontractors.
- 6.8 Markup for overhead and profit on changes shall apply to the following categories of costs.
- 6.8.1 Direct Labor Costs. These are the costs determined by either the estimated or actual number of additional (or reduced) craft hours and the hourly costs related thereto necessary to perform the Change in the Work. The estimated hours shall be based on the reasonable time required to perform the task under the prevailing job conditions and as evidenced by productivities being achieved by the Contractor on the Project for similar work. Contractor Trade Association (NECA, SMACNA and the like) labor manuals will not be accepted as evidence of required man-hours.

The hourly cost shall be based upon the following:

- (a) Basic Wages. Unburdened base hourly wage rates for all labor, crew foreman and general foreman performing and / or directly supervising the changed work. These rates shall be based on the Prevailing Wage rates established for Skagit County by the state of Washington Department of Labor and Industries.
- (b) Fringe Benefits. Fringe benefits established by the state of Washington Department of Labor and Industries or contributed to labor trust funds as itemized fringe benefits, whichever is applicable.
- (c) Worker's insurances. Direct contributions to the state of Washington as industrial insurance, medical aid, and supplemental

pension class and rates established by the state of Washington Department of Labor and Industries.

- (d) Federal insurances. Direct contributions required by the Federal Insurance Compensation Act (FICA), Federal Unemployment Tax Act (FUTA) and State Unemployment Compensation Act (SUCA).
- (e) Travel allowance. Travel allowance and / or subsistence when said allowances are required by labor agreement. Such amounts are paid as incurred costs only as directly attributable to the Change in the Work.
- (f) Items specifically excluded are contractor organization dues, costs of labor negotiations, bonuses and any additional hourly labor factors that are not specifically included above.

6.8.2 Direct material costs. This is an itemization of the quantity and cost of additional (or reduced) materials necessary to perform the Change in the Work. These costs shall be the unit cost applied to the quantity and extended. The unit cost shall be the most favorable or lowest competitive cost prevailing in the area considering the quantities involved and the required delivery time, and based upon the net cost after all offered or available discounts or rebates, freight costs, express charges, or special delivery costs, when applicable.

6.8.3 Construction equipment usage costs.

- (a) The costs of major tools and equipment shall be the reasonable estimated cost of additional (or reduced) major tools and equipment necessary to perform the Change in the Work. Only the actual incremental cost increases (or reductions, if any) will be allowed for tools and equipment already on the site for use on the changed Work. The rental rates to be applied thereto shall be the reasonable estimated rate (monthly, weekly, hourly) that result in the lowest cost to the Owner for each piece of equipment or tool, and shall be based on the following rates, as applicable:

- .1 75% of the current rental rates established by the most recent edition of Rental Rate Blue Book ("Blue Book") published by Data Quest, San Jose, California. These rates will be the base rates for all tools and equipment listed in this publication. For any tools or equipment not listed in the Blue Book, the most recent edition of Association of Equipment Dealers (A.E.D.) price list (at the 75% rate) may be used in lieu of Blue Book prices. For specialty tools and equipment not included in either of the two aforementioned publications, the less of the following shall apply:

- .2 75% of the current rental rates established by the National Electrical Contractor's Association (N.E.C.A.) for equipment used on electrical work.
- .3 75% of the current rental rates established by the Mechanical Contractor's Association (M.C.A.) for equipment used on mechanical work.
- .4 If equipment is required for which a rental rate is not established in any of the above, an agreed rental rate shall be established for that equipment. Such rates and the use of the equipment on the work must be approved by the Owner prior to performing the work.
- .5 For non-owned equipment, the competitive local rental rates charges by equipment rental companies.
- .6 Actual cost, if not included in rental rate, billings, fuel, oil, lubrication, periodic maintenance and insurance will require documentation of actual cost and negotiation with the Owner.

- (b) Small tools, expendable and consumable supplies are those items valued at \$500 per item or less. These items are considered to be normal operating cost included in the overhead. Such items are not directly allowable in the calculation of costs for Changes in the Work.

ARTICLE 7

7. CONTRACT SUM EXCLUSIONS

7.1 OTHER COSTS AND EMERGENCIES

- 7.1.1 Other costs incurred in the performance of the Work if approved in advance in writing by the Owner.
- 7.1.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Paragraph 8.2 of the General Conditions.
- 7.1.3 Costs of repairing or correcting damaged or non-conforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or non-conforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recoverable by the Contractor from insurance, sureties, Subcontractors or suppliers.

ARTICLE 8

8. **NOT APPLICABLE**

ARTICLE 9

9. **SUBCONTRACTORS**

- 9.1 A Subcontractor is a person or entity that has a direct contract with the Contractor to perform a portion of the Work at the site. The term “Subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term “Subcontractor” does not include a separate contractor or subcontractors of a separate contractor.
- 9.2 A Sub-subcontractor is a person or entity that has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term “Sub-subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.
- 9.3 The Contractor shall include the language of this section in each of its first tier subcontracts, and shall require each of its subcontractors to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. Upon request of the Owner, the Contractor shall promptly provide documentation to the Owner demonstrating that the subcontractor meets the subcontractor responsibility criteria below. The requirements of this section apply to all subcontractors regardless of tier.
- 9.4 At the time of subcontract execution, the Contractor shall verify that each of its first tier subcontractors meets the following bidder responsibility criteria:
1. Have a current certificate of registration in compliance with chapter 18.27 RCW, which must have been in effect at the time of subcontract bid submittal;
 2. Have a current Washington Unified Business Identifier (UBI) number;
 3. As applicable, have:
 - a. Have Industrial Insurance (workers’ compensation) coverage for the subcontractor’s employees working in Washington, as required in Title 51 RCW;
 - b. A Washington Employment Security Department number, as required in Title 50 RCW;

- c. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
 - d. An electrical contractor license, if required by Chapter 19.28 RCW;
 - e. An elevator contractor license, if required by Chapter 70.87 RCW.
- 4. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).
- 9.5 Not Applicable.
- 9.6 Not Applicable.
- 9.7 Not Applicable.
- 9.8 Not Applicable.
- 9.9 Not Applicable.
- 9.10 Not Applicable.
- 9.11 Not Applicable.
- 9.12 Not Applicable:
- 9.13 Not Applicable.
- 9.14 The Contractor agrees to bind every subcontractor and every subcontractor shall agree to be bound by the terms of this Agreement and the Contract Documents and the following:
 - (a) All subcontractors shall agree to submit to the Contractor applications for payment in such form and in such reasonable time as to enable the Contractor to apply for payment under the terms of this Agreement; and
 - (b) All subcontractors shall agree to make all claims for extras, for extensions of time and for damages for delays or otherwise, to the Contractor in the manner provided in the Agreement and General Conditions for like claims by the Contractor, except that the time limit for making claims for extra cost or extra time is one (1) week. Failure to adhere to these time frames waives Subcontractor / Contractor rights to submit claims.

9.14.1 The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of this Agreement and the Contract Documents to which the Subcontractor will be bound by paragraph 9.14. Each Subcontractor shall similarly make copies of such Contract Documents available to his Sub-contractors.

9.15 The Contractor agrees:

- (a) To pay the subcontractor, upon receipt of payment in accordance with the Agreement, the amount allowed to the Contractor on account of the subcontractor's Work to the extent of subcontractor's interest therein;
- (b) Order issued by the Owner;
- (c) To give the Owner immediate written notice of any claim made or action commenced against the Contractor by any subcontractor or supplier;
- (d) The Owner shall not be responsible for resolving any dispute between the Contractor and any Subcontractor or Supplier, nor shall it be responsible to the Contractor for any failure of a Subcontractor or Supplier to perform as required, whether or not the Owner has approved such Subcontractor or Supplier.
- (e) To require submission to the Contractor of applications for payment under each Subcontract to which the Contractor is a party, in reasonable time to enable the Contractor to apply for payment in accordance with the General Conditions.
- (f) To require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to the Contractor (via any Subcontractor or Sub-subcontractor where appropriate) in sufficient time so that the Contractor may comply in the manner provided in the Contract Documents for like claims by the Contractor upon the Owner.

9.16 By appropriate written agreement, the Contractor shall require each subcontractor and supplier, to the extent of the Work to be performed by the subcontractor or materials or equipment supplied by such supplier, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all obligations and responsibilities which the Contractor, by such Contract Documents, assumes toward the Owner.

Each subcontract agreement and purchase order shall preserve and protect the rights of the Owner under the Contract Documents with respect to other Work to be performed by the subcontractor and materials and equipment supplied by the supplier so that subcontracting thereof will not prejudice the rights and shall allow the subcontractor or supplier, unless specifically provided other in the subcontract

agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each subcontractor to enter into similar agreements with sub-subcontractors.

The Contractor shall make available to each proposed subcontractor or supplier prior to the execution of the subcontract or purchase order, copies of the Contract Documents to which the subcontractor or supplier will be bound, and upon written request of the subcontractor or supplier, identify to the subcontractor or supplier the terms and conditions of the proposed subcontract agreement or purchase order which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors.

9.17 The Contractor shall be fully and solely responsible to the Owner for all acts and omission of the Subcontractors, suppliers and other persons and organizations performing or furnishing any of the Work under a contract with the Contractor, just as the Contractor

9.18 Nothing in this Article shall create any contractual relations between any subcontractor and the Owner or create any obligations on the part of the Owner to pay or to see to the payment of any sums to any subcontractor.

9.19 **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 for cause and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- (b) Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

The Contractor shall be relieved and released from all obligations under the subcontract agreement for all work performed by the subcontractor from and after the date the assignment of such subcontract agreement becomes effective. Upon assignment of any subcontract, the Subcontractor shall look solely to the Owner for subsequent performance and the Owner shall indemnify the Contractor therewith.

Upon such assignment, if the Work has been suspended for more than 60 days, the Subcontractor's compensation shall be equitably adjusted for substantiated increases in cost, if any, directly resulting from the suspension. The

Subcontractor shall provide supporting documentation, acceptable to the Owner, for any requested increase in cost.

ARTICLE 10

10. ACCOUNTING RECORDS

- 10.1 The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract, and the accounting and control systems shall be demonstrated to and approved by the Owner no less than thirty days (30) prior to the first Application For Payment. The Owner, the Owner's accountants and the Owner's other agents shall upon request be afforded access to, and shall be permitted to audit and copy, the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, delivery slips, test and inspection reports, daily reports, memoranda and other data relating to this Contract, and the Contractor shall preserve these for a period of six years after final payment, or for such longer period as may be required by law.
- 10.2 The Contractor shall, at the time of its Final Application For Payment and with the Owner's assistance, assign the total Contract Sum to the categories stated by the American Hospital Association's Guidelines for Depreciation. Final Payment by the Owner to the Contractor will not be made until this task has been completed.

ARTICLE 11

11. PAYMENTS

11.1 PROGRESS PAYMENTS

- 11.1.1 No less than fifteen (15) days prior to the first Application For Payment the Contractor shall provide the Schedule of Values report for review by the Owner and the Architect. The sum of the costs allocated to all activities shall equal the Contract Sum. The report shall be itemized and formatted in a manner acceptable to the Owner and the Architect. The Schedule of Values shall be coordinated with the Contractor's Construction Schedule such that a value in the Schedule of Values is directly related to the actual construction of the Work Code of each item

in the Schedule of Values to also coordinate with the Project Manual table of contents. Submit Schedule of Values in both formats described herein. No Schedule Value shall exceed fifty thousand dollars (\$50,000) in value unless it is (a) a material or equipment delivery item; or (b) previously approved by the Architect and Owner.

- 11.1.2 The period covered by each Application For Payment shall be one calendar month ending on the last day of the month.
- 11.1.3 The Contractor shall submit to the Owner and the Architect a draft Application For Payment report no later than the twenty-eighth (28th) day of the month for which payment is requested. Prior to submitting the draft, the Contractor shall perform a preliminary review of invoicing from subcontractors and suppliers to ensure the amounts invoiced are reasonable and properly supported.
- 11.1.4 No later than the seventh (7th) day of the month following the period covered by the Application For Payment, the Owner, Architect and Contractor shall meet on site to review the Application For Payment report. At this meeting the Owner, Architect and Contractor shall agree on the amounts to be approved in the Application For Payment. Thereafter the Contractor shall prepare the approved Application For Payment for signing by the Owner, the Architect and the Contractor.
- 11.1.5 Based upon an approved Application For Payment the Architect shall issue a Certificate For Payment.
- 11.1.6 The Owner will make payment to the Contractor based on a Certificate For Payment issued by the Architect not later than forty-five (45) days after the Owner receives the certificate for payment from the architect.
- 11.1.7 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate of 5 % annually.
- 11.1.8 In the event that the Owner, Architect and Contractor cannot agree on the amounts to be approved in an Application For Payment, the disputed amount(s) shall be removed from the Application For Payment and the undisputed amount shall be approved and processed as allowed under this Article 11. Disputed amounts shall not be grounds for Termination by the Contractor.
- 11.1.9 Within two (2) weeks of disputed amount(s) being removed from an Application For Payment, the Contractor shall submit information to the Owner and the Architect to substantiate the disputed amount(s). The Owner and Architect shall, within one (1) week of receiving such information, notify the Contractor if they wish to continue to dispute the amount. In the absence of such notice, the Contractor may include the amount in the next Application For Payment.

11.1.10 Omitted

11.1.11 With each Application For Payment, the Contractor shall submit conditional lien waivers and claim waivers from subcontractors and suppliers for the current pay period. With each Application For Payment, the Contractor shall submit final lien waivers and claim waivers from subcontractors and suppliers for the previous pay period.

11.1.12 As an integral part of each Application For Payment, the Contractor shall submit the Contractor's Construction Schedule, updated with progress to the end of the month covered by the Application For Payment, and including the schedule narrative, reports and electronic schedule file. The field set of "as built" record drawings will be reviewed for completeness prior to each draw request. The Contractor's Application For Payment will be considered incomplete and will be returned to the Contractor un-reviewed if this schedule information is not submitted with the Application For Payment or if review of the as built record drawings reveals they are not up to date, and the Owner will have no duty or responsibility to make payment to the Contractor on the unreviewed Application For Payment.

11.1.13 Each Application For Payment shall be based on the most recent subcontractor and supplier invoices, reviewed and approved by the Contractor, and supported by Work in place as established by the Contractor's Construction Schedule and site inspections.

11.1.14 Applications For Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application For Payment and the percentage of Work completed in the current period.

11.1.15 Subject to other provisions of the Contract Documents, the amount of each Application For Payment shall include:

- (a) that portion of the Contract Sum properly allocable to completed Work as shown by the Contractor's Construction Schedule. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Subparagraph 5.3.9 of the General Conditions;
- (b) that portion of the Contract Sum properly allocable to materials and equipment in accordance with Article 10 of the General Conditions;
- (c) that portion of the Contractor's fee on a percentage basis of the value of work completed;
- (d) subtract the aggregate of previous payments made by the Owner;
- (e) subtract the shortfall, if any, indicated by the Contractor in the documentation required to substantiate prior Applications For Payment, or resulting from errors subsequently discovered by the Owner in such documentation;

- (f) subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 10.5 of the General Conditions;
- (g) subtract amounts, if any, for the Contractor's failure to submit the monthly Contractor's Construction Schedule update and narrative; and,
- (h) subtract amounts, if any, withheld for Liquidated Damages.

11.1.16 Retainage shall be in accordance with Article 12.

11.2 FINAL PAYMENT

11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

- (a) the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Subparagraph 9.2 of the General Conditions;
- (b) unconditional lien waivers, certifications and claim waivers from agencies of the state of Washington, subcontractors and suppliers have been submitted by the Contractor or received by the Owner; and
- (c) a final Certificate for Payment has been issued by the Architect with the Owner's approval.

11.2.2 If the Contractor, within 30 calendar days of achieving Substantial Completion, has not made good faith effort to complete Work identified on the Certificate of Substantial Completion, the Owner may at its option engage others to complete the Work identified on the Certificate of Substantial Completion, and deduct costs associated with such action from the unpaid balance of the Contract Sum.

11.2.3 The Owner's final payment to the Contractor shall be made no later than forty-five (45) days after the issuance of the Architect's final Certificate for Payment and all requirements of Section 11.2.1, subject to Article 12.

11.2.4 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs to correct defective or non-conforming Work, the Owner shall reimburse the Contractor such costs applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Contract Sum, provided that such defective or non-conforming work is not caused by negligence or failure to fulfill a specific responsibility of the Contractor.

ARTICLE 12

12. **RETAINAGE AND PREVAILING WAGE**

12.1 **RETAINAGE**

- 12.1.1 Subject to the requirements of Revised Code of Washington, chapter 60.28, as amended, all payments to the Contractor shall be subject to the requirements therein contained for the retainage from the monies earned by the Contractor on Applications For Payment during the progress of the Work. There shall be reserved from the monies earned by the Contractor on Applications For Payment a sum equal to five percent (5%) of such Applications For Payment. The amounts of reserve shall be subject to claims of liens provided by Washington statutes in the manner and within the time now or hereafter provided by such statutes.

12.2 **COMPLIANCE WITH PUBLIC WORKS AND WAGE RATES**

- 12.2.1 The prevailing rate of wages to be paid all workmen, laborers, or mechanics employed in the performance of any part of this Contract shall be in accordance with the provisions of Chapter 39.12 RCW, as amended, and the rules and regulations of the Department of Labor and Industries. The rules and regulations of the Department of Labor and Industries and the schedule of prevailing wage rates for the locality or localities where this Contract will be performed as determined by the Industrial Statistician of the Department of Labor and Industries, are by reference made a part of this Contract as though fully set forth herein.
- 12.2.2 One copy of the latest Wage Rates, including fringe benefits for the construction area for all classifications of labor to be used on the Project, attached to State Form 9882 and properly certified by the State Department of Labor and Industries must be filed with WSCTC prior to the start of construction. The Contractor shall be responsible for any and all costs of filing fees required by the State Department of Labor and Industries.
- 12.2.3 In case any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the Director of the Department of Labor and Industries of the State and his decision therein shall be final and conclusive and binding on all parties involved in the dispute as provided for by RCW 39.12.060, as amended.
- 12.2.4 Each Application For Payment submitted by the Contractor shall state that prevailing wages have been paid in accordance with the pre-filed Statement or Statements of Intent on file with the Department of Labor and Industries as approved by the Industrial Statistician. Copies of the Approved Intent Statements shall be posted on the job site with the address and telephone number of the Industrial Statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made. In addition, one

copy of each Statement shall be provided to the Owner with each draw request for each trade/subcontractor included in the draw.

- 12.2.5 No payment will be made to the Contractor on behalf of itself or its subcontractors until an approved “Intent to Pay Prevailing Wage” statement is provided to the Owner. Retainage will not be released until all “Affidavit of Wages Paid” statements are received by the Owner and state authorization to release retainage is received. Contractor to provide to owner State of Washington Form “Notice of Completion of Public Works Contract” with a complete listing of all subcontractors with subcontractor UBI # listed and Affidavit of Wages Paid ID # listed.
- 12.2.6 In compliance with WAC 296-127-040 Contractor(s) shall pay to the Department of Labor and Industries a \$12.50 fee for/with each Statement of Intent and/or Affidavit of Wages Paid submitted to that department for certification and these costs shall be included in the Contract Sum.

ARTICLE 13

13. TERMINATION OR SUSPENSION

13.1 TERMINATION BY THE CONTRACTOR

- 13.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- (a) issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- (b) an act of government, such as a declaration of national emergency which requires all Work to be stopped; or
- (c) because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Subparagraph 10.4.1 of the General Conditions, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents;

- 13.1.2 If one of the reasons described in Subparagraph 13.1.1 exists, the Contractor may, upon thirty days written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven costs with respect to materials, equipment, tools, and construction equipment and machinery, including the portion of its fee applicable thereto.

- 13.1.3 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon thirty additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Subparagraph 13.1.2.

13.2 TERMINATION BY THE OWNER FOR CAUSE

13.2.1 The Owner may terminate the Contract if the Contractor:

- (a) persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- (b) fails to make payment to Subcontractors for material or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- (c) persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- (d) otherwise is guilty of substantial breach of a provision of the Contract Documents, or
- (e) persistently fails to schedule the Project as required by the Contract Documents or persistently fails to recover or present a viable plan to recover lost time that is not the fault of the Architect or the Owner.

13.2.2 Upon receipt of the notice of termination, Contractor shall immediately, in accordance with Owner's instructions, proceed with performance of the following duties:

- (a) Cease operations as specified;
- (b) Place no further orders and enter into no further Subcontracts for materials, labor, services or facilities;
- (c) Unless otherwise specified, terminate all Subcontracts and orders to the extent that they relate to Work so terminated;
- (d) Complete the performance of the Work not terminated; and
- (e) Take such other actions as may be necessary or requested by Owner for the protection and preservation of the terminated Work.

13.2.3 When any of the reasons in Paragraph 13.2.1 exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, three days' written notice, and provided the Contractor within such three-day period has not commenced good faith efforts to cure such cause or breach, or if having commenced such cure, is

not proceeding diligently to complete such cure, terminate employment of the Contractor and may:

- (a) take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- (b) accept assignment of subcontracts; and
- (c) 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.

13.2.4 When the Owner terminates the Contract for one of the reasons stated in Subparagraph 13.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

13.2.5 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's or other Consultants' services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, the Owner shall pay to the Contractor the amount due for work performed by the Contractor to the date of termination. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall survive termination of the Contract.

13.2.6 In no event shall the Contractor have a claim for damages, lost profits or otherwise on account of the termination of the Contract by the Owner.

13.3 **SUSPENSION BY THE OWNER FOR CONVENIENCE**

13.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine. The Contractor, its subcontractors, sub-subcontractors, suppliers, employees and agents shall make every reasonable effort to mitigate costs incurred by reason of such suspension.

13.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time shown to have resulted directly from the suspension, delay or interruption as described in Subparagraph 13.3.1. No adjustment shall be made to the extent:

- (a) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- (b) that an equitable adjustment is made or denied under another provision of the Contract.

13.4 **TERMINATION BY THE OWNER FOR CONVENIENCE**

- 13.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Contractor shall make every reasonable effort to mitigate costs incurred by reason of such termination.
- 13.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:
- (a) cease operations as directed by the Owner in the notice;
 - (b) take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
 - (c) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.
- 13.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment from the Owner for Work performed by the Contractor and expenses incurred to the date of termination, including the Contractor's actual cost of shutdown less the aggregate of previous payments made to the Contractor by the Owner. The Contractor shall provide timesheets, pay slips, receipts and other documentation necessary to support its actual cost of shutdown.
- 13.4.4 The Owner shall also pay the Contractor fair compensation, either by purchase or payment of rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Contract Sum.
- 13.4.5 To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.
- 13.4.6 In no event shall the Contractor have a claim for damages, lost profits or otherwise on account of the termination of the Contract by the Owner.

ARTICLE 14**14. WARRANTY****14.1 CONTRACTOR'S WARRANTIES**

Unless otherwise specified in the Contract, all materials and equipment incorporated into the Work shall be new and, where specified, of the most suitable grade of their respective kinds for their intended use. All Work and workmanship shall be free from defects and performed in accordance with standard construction practices, construction practices acceptable to the Owner and the Contract Documents. Contractor warrants all materials and labor furnished and Work performed under this Contract by Contractor or any Subcontractor or Supplier will be fit for the intended purpose (a first-class regional healthcare treatment and diagnostic facility) and free from defects in workmanship and materials, such warranty to commence as to any and all Work performed hereunder on the date of Substantial Completion thereof. Contractor shall include terms in all contracts with Subcontractors and Suppliers which allow the Owner also to enforce such contracts directly against such Subcontractors or Suppliers.

14.2 REMEDY FOR BREACH OF WARRANTY

The Owner shall provide Contractor notice of any defect covered by the warranty set forth in Paragraph 14.1. Promptly after receipt of such notice, Contractor shall repair or replace any portion of the Work affected by a defect covered by the warranty set forth in such Paragraph 14.1. Contractor shall perform any tests required by the Owner to verify that any such repair or replacement, complies with the requirements of the Contract Documents. All costs and expenses related to such repair or replacement and testing, including the removal, replacement and reinstallation of equipment and materials necessary to gain access to the defective Work, shall be done solely by Contractor at no additional cost or charge to the Owner. Contractor warrants such repaired or replaced Work against defective materials and workmanship. Whether such warranty work is the responsibility of the Contractor or a Subcontractor or a Supplier, such warranty work shall be performed at no additional cost or charge to the Owner. If Contractor fails to proceed with reasonable promptness to accomplish any repair, replacement or testing required under this Paragraph, the Owner may (1) by contract or otherwise accomplish such repair, replacement or testing and charge to Contractor any cost or damage occasioned the Owner thereby, or may reduce any amount otherwise payable to Contractor under this Contract (or require repayment of any amount theretofore paid) in an amount equal to such costs and damages, and/or (2) may terminate the performance of Work under the Contract in accordance with Article 13. If the Owner determines that it is impracticable to repair or replace any defective portion of the Work covered by the warranty indicated in Paragraph 14.1, the Owner may reduce the amount payable under the Contract (or require

repayment of any amount theretofore paid) in an amount equal to the costs and damages resulting from such defective Work.

14.3 **OTHER WARRANTIES**

The warranties contained in Paragraph 14.1 shall be in addition to any other specific or general warranties contained elsewhere in the Contract or in any other agreement between the parties. Furthermore, if Contractor obtains warranties from any Supplier or Subcontractor which are more favorable than the warranties contained in the Contract, Contractor shall enforce such warranties for the benefit of the Owner to the full extent possible under the terms of such warranties, and shall, upon written demand by the Owner, assign such warranties to the Owner.

ARTICLE 15

15. **INSURANCE AND BONDS**

15.1 **CONTRACTOR'S LIABILITY INSURANCE**

15.1.1 The Contractor shall purchase from and maintain in a company or companies licensed to do business in the state of Washington such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (a) claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- (b) claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- (c) claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- (d) claims for damages insured by usual personal injury liability coverage;
- (e) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;
- (f) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- (g) claims for bodily injury or property damage arising out of completed operations; and

- (h) claims involving contractual liability insurance applicable to the Contractor's obligations under Paragraph 3.19 of the General Conditions.

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

15.1.2 The insurance required by Subparagraph 15.1.1 shall be written for not less than limits stated in 15.1.4 or required by law, whichever is greater. Coverage, whether written on an occurrence or claims-made basis, shall be maintained without interruption from Date of Commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment, except for products and completed operations insurance, which shall be maintained for three years after final payment.

15.1.3 Three copies of Certificates of Insurance acceptable to the Owner and copies of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the Automobile Liability and Commercial General Liability insurance of the Contractor shall be filed with the Owner no less than fourteen days prior to commencement of the Work. These certificates and the insurance policies required shall contain provision that coverage afforded under the policies will not be canceled or allowed to expire until at least sixty days' prior written notice has been given to the Owner. If any of the foregoing insurance coverage is required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application For Payment. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

15.1.4 The insurance required by Subparagraph 15.1.1 shall be written for limits of not less than the following or greater if required by law:

- (a) Worker's Compensation: As required by Statute.
- (b) Employer's Liability: \$1,000,000 each incident – bodily injury by incident; \$1,000,000 each employee – bodily injury by disease; \$1,000,000 policy limit – bodily injury by disease.
- (c) Commercial General Liability: shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit, using ISO form CG 25 03 05 09 or an equivalent endorsement. Coverage shall be

written on an “Occurrence” basis with the standard Insurance Service Office (ISO) 2002 or equivalent coverage form. The policy shall include Premises and Operations coverage, and Completed Operations coverage extending for three (3) years after the completion of construction and Final Payment by the Owner or its designee. This policy shall also cover Personal Injury liability and Contractual liability assumed under this Agreement. The policy shall not contain exclusions for Broad Form Property Damage or for the hazards commonly known as “Explosion, Collapse, and Underground (XCU).” Policy limits shall be not less than: \$1,000,000 each occurrence – bodily injury and property damage; \$2,000,000 – annual general aggregate; \$2,000,000 completed operations three year aggregate.

- (d) Business Automobile Liability for owned, non-owned and hired vehicles: Policy limits shall be not less than: \$1,000,000 each occurrence – bodily injury and property damage.
- (e) Umbrella or Excess Liability: Umbrella or Excess Liability insurance from a combination of layered placements which provide excess liability coverage to the Employers Liability, Commercial General Liability and Business Automobile Liability insurance described in this Paragraph 15.1.4. Policy limits shall be not less than: \$5,000,000 each occurrence and \$5,000,000 annual aggregate.

15.1.5 The Contractor shall require all subcontractors of any tier to provide Commercial General liability insurance with combined single limits for bodily injury and property damage of at least \$1,000,000 per occurrence, and Business Automobile liability insurance for all owned, non-owned and hired vehicles with combined single limits for bodily injury and property damage of at least \$1,000,000 per occurrence. The Contractor shall obtain policies or certificates for its Subcontractor(s) and deliver them to the Owner, if requested to do so.

15.1.6 Except for the Workers Compensation insurance described in Subparagraph 15.1.1.1, all other Contractor insurance policies described in this Section 15.1 shall name Owner, Architect, and Owner’s consultants as additional insureds. Such insurance policies shall provide primary coverage to Owner, Architect and Owner’s consultants for liabilities they incur under this Agreement, and any insurance policies maintained by Owner, Architect and Owner’s consultants shall be excess and non-contributory to claims paid by Contractor’s policies. Contractor shall waive its rights of recovery, and shall cause underwriters of all insurance policies described in this Section 15.1 to waive their rights of subrogation against Owner, Architect and Owner’s consultants for claims and defense costs paid under Contractor’s insurance policies.

15.2 PROPERTY INSURANCE

- 15.2.1 The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the state of Washington, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials and equipment supplied or installed by the Owner or others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Paragraph 10.10 of the General Conditions or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 15.2 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors, the Architect, the Design Consultants, and all other agents of the Owner involved in the Project.
- 15.2.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, false work, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.
- 15.2.1.2 If the property insurance requires deductibles, the Contractor shall pay costs not covered because of such deductibles.
- 15.2.1.3 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.
- 15.2.1.4 Partial occupancy or use in accordance with Paragraph 10.9 of the General Conditions shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.
- 15.2.1.5 Owner retains the right to obtain builders risk insurance itself and obtain a credit from the Fixed General Conditions.
- 15.2.2 BOILER AND MACHINERY INSURANCE**

The Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insured.

15.2.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

15.2.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall if possible allow the inclusion of such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

15.2.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Subparagraph 15.2.7 for damages caused by fire or other causes of loss to the extent covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

15.2.6 Before an exposure to loss may occur, the Contractor shall file with the Owner a copy of each policy that includes insurance coverage required by this Paragraph 15.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least sixty days' prior written notice has been given to the Owner.

15.2.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, Owner's other contractors or separate contractors, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent

covered by property insurance obtained pursuant to this Paragraph 15.2 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, Owner's other contractors or separate contractors, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

- 15.3 Contractor shall purchase and maintain such insurance as will reasonably protect it from the potential liability described in Paragraph 3.19 of the General Conditions. The Contractor hereby indemnifies and agrees to hold harmless and defend Owner, its agents, representatives, shareholders, and its affiliates from all loss and liability to the extent of any deficiency of coverage under such insurance.

15.4 **ADDITIONAL INSURED**

All insurance policies maintained by the Contractor pursuant to the Contract Documents and the General Conditions, except Workers Compensation, shall name the Owner, its agents and representatives, and any other party Owner requests who is related to Owner, directly or indirectly, and any lender with an interest in the Project, as additional insureds. Contractor's insurance policy shall be primary and Owner shall not be required to contribute to the payment of premiums or other costs with respect to Contractor's policy. The interests of the Owner, the Contractor, Subcontractors and any Sub-subcontractors in any insurance proceeds shall be subject to the interest of any such lender, and the right of such lender to apply the proceeds pursuant to the terms of its security interest.

15.5 **FAILURE TO OBTAIN INSURANCE**

If Contractor fails to procure and maintain the above described insurance, or any portion thereof, Owner shall have the right, but not the obligation, to procure and maintain the required insurance for and in the name of Contractor and Contractor shall pay the cost thereof and shall furnish all information necessary to acquire and maintain such insurance. Contractor shall not violate or knowingly permit any violation of any conditions or terms of the policies of insurance described herein.

15.6 **PERFORMANCE BOND AND PAYMENT BOND**

- 15.6.1 The Contractor shall furnish a Performance Bond and a Payment Bond, each in an amount equal to the full amount of the Contract Sum. Such bonds shall be on

forms acceptable to the Owner and furnished by a surety with an A. M. Best's A+ rating or higher satisfactory to the Owner. The premium for such bonds shall be paid by the Contractor unless otherwise agreed upon in writing by the parties hereto.

- 15.6.2 By signing this Agreement the Contractor certifies that it has the bonding capacity necessary for this Project and has made arrangements for furnishing said Performance Bond and Payment Bond to Owner no less than fourteen days prior to beginning performance of the Work and that the time required to prepare and furnish said bond will not delay the start of the Work.

ARTICLE 16

16. SAFETY

16.1 CONTRACTOR'S RESPONSIBILITY FOR SAFETY

Contractor shall at all times be responsible for all aspects of safety in connection with the Work, including initiating, maintaining and supervising all safety precautions and programs, including establishing and enforcing access restrictions such as exclusion zones required by applicable health and safety regulations. Such responsibility for safety includes, without limitation, the obligations set forth in the remainder of this Article 16. Contractor shall at all times perform the Work, or ensure that it is performed, in a manner to avoid the risk of bodily injury to persons or risk of damage to any property. Contractor shall promptly take all precautions which are necessary and adequate against any conditions that involve a risk of bodily harm to persons or a risk of damage to any property. Contractor shall continuously inspect all Work, materials and equipment to discover and determine the existence of any such conditions and shall be solely responsible for discovery, determination and correction of any such conditions.

16.2 COMPLIANCE WITH LAWS, ET CETERA

Contractor shall comply, and shall ensure that all Subcontractors and Suppliers on Site comply, with all applicable Federal, state and local laws, regulations, ordinances and standards related to safety. Contractor shall cooperate and coordinate with other contractors and their subcontractors regarding safety matters. Failure to so comply shall be a material breach of this Contract and can, at the Owner's option, be a basis for termination of this Contract.

16.3 OBSERVATIONS

The Owner's observers may visit the Site at various times generally to observe the Contractor's performance under the Contract Documents. The Owner will not, however, be required to make on-Site observations, periodic, continuous, exhaustive, or otherwise. Neither the Owner's observations, visits, or omissions, nor any actions or inactions during or as a result of such visits or observations, shall give rise to a duty, responsibility, or liability of the Owner to the Contractor, any Subcontractor, Supplier, their agents or employees or other persons performing portions of the Work. Contractor, its subcontractors and employees shall be responsible for safety.

16.4 NOT APPLICABLE

16.5 SAFETY REPRESENTATIVE

The Contractor shall appoint a qualified Safety Representative and shall authorize such representative to devote to his or her Safety Representative duties whatever time is necessary to properly perform such duties. Such Safety Representative shall attend all Project safety meetings and participate fully in all activities outlined in Contractor's Safety Management Plan.

16.6 SAFETY MEETINGS AND EQUIPMENT

The Contractor shall hold regular scheduled meetings to instruct its personnel and all Subcontractors' personnel on safety practices. Contractor shall furnish appropriate safety equipment for the Work in progress and enforce the use of such equipment by its employees. Contractor shall ensure that each Subcontractor furnishes appropriate safety equipment for the Work in progress and enforces the use of such equipment by its employees.

16.7 ACCIDENT REPORTS

The Contractor shall maintain accurate accident and injury reports and shall furnish to the Owner a copy of any accident report prepared as required by the applicable workers compensation law and shall also furnish to the Owner a monthly summary of injuries and worker hours lost due to injuries.

16.8 PAYMENT FOR EMERGENCY SERVICES

In the event any employee of Contractor or any Subcontractor, who is engaged in any activity related to the Work, requires the services of an ambulance, physician, hospital or other health provider, Contractor shall pay or arrange for such Subcontractor or employee to pay all charges for any such services directly to the provider of such services.

16.9 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection,

including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

- 16.10 When use or storage of explosives or other hazardous materials or equipment or unusual methods is necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.
- 16.11 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in this Article 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 this Article, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.19 of the General Conditions.

ARTICLE 17

17. MISCELLANEOUS PROVISIONS

- 17.1 Venue for any legal proceeding or lawsuit is Snohomish County, Washington. This agreement shall be construed pursuant to the laws of Washington. In the event of a lawsuit between the parties, the prevailing party shall receive an award of its reasonable attorney fees and costs, including those incurred on appeal.
- 17.2 In the event any provision of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.
- 17.3 The Contractor and its employees shall maintain the confidentiality of all project information, 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. The Contractor shall require of its subcontractors and suppliers similar agreements to maintain the confidentiality of all project information.

17.4 CONTACTOR PARKING

The Contractor shall make off-site arrangements as required for parking for all personnel.

- 17.5 The Owner and the Contractor each bind themselves, their partners, successors, assigns and legal representatives to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Contractor shall assign, sublet or transfer its interest in this Agreement without the written consent of the other.
- 17.6 Notwithstanding anything herein to the contrary, in the event of any change in the laws, regulations or lawful orders of public authorities which occur after the date this Contract is executed by the parties, to the extent such change may result in increased costs or time of performance, the Contract Sum and / or Contractor's construction schedule shall be equitably adjusted by Change Order, provided that the Contractor was not reasonably aware of or could not reasonably have anticipated that change at the time the Contract was entered.

17.7 REGULATIONS

The Contractor shall comply with statutory provisions relating to public works in the state of Washington, including but not limited to the following:

- (a) Chapter 70.92 RCW relating to provisions for the aging and physically handicapped.
 - (b) Chapter 39.12 RCW relating to prevailing wages on public works.
 - (c) Chapter 39.16 RCW relating to resident employees on public works.
 - (d) Chapter 49.28 RCW relating to hours of labor.
 - (e) Chapter 39.08 RCW relating to Contractor's bond.
 - (f) Chapter 18.27 RCW relating to registration of Contractors.
 - (g) Title I of the Americans with Disabilities Act ("ADA") and Washington law and regulations relating to discrimination and the definition of persons who are handicapped or disabled, including but not limited to workers injured on the job.
 - (h) Federal and state laws and regulations prohibiting discrimination including, but limited the Age Discrimination in Employment Act and the Older Worker Benefit protection Act, and those prohibiting discrimination based on age, race, color, pregnancy, ethnicity, religion, marital status, sexual orientation and gender, including Chapter 49.60 RCW.
- 17.8 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.
- 17.9 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties,

obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

This Agreement shall take effect on the last day it is executed. It shall be executed in at least four original copies, of which one is to be delivered to the Contractor, one to the Architect and the remainder to the Owner. Any adjustment or change to this contract shall be by written amendment hereto and will require the written consent of all signing parties on this original document.

CONTRACTOR

By _____ Date _____
Printed Name _____
Its _____

OWNER

By _____ Date _____
Printed Name _____
Its _____

SECTION 00 07 10 – GENERAL CONDITIONS OF THE CONSTRUCTION AGREEMENT BETWEEN THE OWNER AND CONTRACTOR

These General Conditions of the Construction Agreement Between the Owner and Contractor, (hereinafter referred to as **General Conditions**) agreed to as of

the _____

day of _____

in the year of Two Thousand and Twenty Five.

BETWEEN the Owner:

CITY OF MARYSVILLE

501 Delta Avenue
Marysville, WA 98270

Hereinafter referred to as “the Owner”

And the Contractor:

Valdez Construction, Inc.
499 NE Midway Blvd. STE 2
Oak Harbor, WA 98277

Hereinafter referred to as “the Contractor”

The **Project** is:

1049 STATE AVENUE ADDITION

The **Architect** is:

Botesch, Nash and Hall Architects, P.S.
2727 Oakes Avenue, Suite 100
Everett, WA 98201

Hereinafter referred to as the “Architect”

The Owner and the Contractor agree as follows:

TABLE OF ARTICLES

1. General Provisions
2. Owner
3. Contractor
4. Administration Of The Project
5. Changes In The Work
6. Time
7. Claims And Disputes
8. Hazardous Materials And Emergencies
9. Uncovering And Correction Of Work
10. Payments And Completion
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ARTICLE 1: GENERAL PROVISIONS
1.1 BASIC DEFINITIONS
1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are set forth in Paragraph 1.2 of the Construction Agreement Between Owner and Contractor (hereinafter referred to as the **Construction Agreement**).

1.1.2 THE DRAWINGS

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

1.1.3 THE SPECIFICATIONS

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

1.1.4 THE PROJECT MANUAL

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

1.1.5 THE PROJECT SCHEDULE

The Project Schedule shall be the schedule for the Project. All references to schedule or Project schedule shall mean a critical path method (CPM) schedule as defined in the Specifications. All phrases such as “in a timely manner”, “promptly”, “without delay”, “with reasonable promptness” and similar languages shall mean so as to cause no critical path delay to the CPM project schedule. References to the “critical path”, “critical work” or “critical activities” shall mean those activities or sequences(s) of work in the current CPM schedule having the lowest total float value.

1.1.6 WORK

The term “Work” shall have meaning set forth in Section 2.3 of Construction Agreement.

1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS
1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all;

performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

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

1.3 EXECUTION OF CONTRACT DOCUMENTS

- 1.3.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, has become familiar with local conditions under which the Work is to be performed, has correlated personal observations with requirements of the Contract Documents, and warrants that it is experienced and skilled with the type of work anticipated by this contract.

1.4 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

- 1.4.1** The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants.

ARTICLE 2: OWNER

2.1 GENERAL

- 2.1.1** The Owner is the person or entity identified as such in the Construction Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative. Except as otherwise provided in Subparagraph 4.2.1, the Architect does not have the authority to bind the Owner. The term “Owner” means the Owner or the Owner’s authorized representative.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

- 2.2.1** Except for permits and fees, including those required under Subparagraph 3.6.1, which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- 2.2.2** 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 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 not be liable to the Owner for any inaccuracy in such information. However, the Contractor shall immediately and within forty-eight hours of discovery report to the Owner any inaccuracies in the information furnished by the Owner that are discovered by the Contractor.
- 2.2.3** Information or services under the Owner’s control and required of the Owner by the Contract Documents shall be furnished by the Owner in accordance with the Contractor’s Construction Schedule and so as to not cause critical path delays. Any other information or services relevant to the Contractor’s performance of the Work under the Owner’s control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.
- 2.3 OWNER’S RIGHT TO STOP THE WORK**
- 2.3.1** If the Contractor fails to carry out or correct 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 has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

2.4 OWNER’S RIGHT TO CARRY OUT THE WORK

- 2.4.1** If the Contractor defaults or neglects to carry out or correct the Work in accordance with the Contract Documents and fails within a three-day period after receipt of written notice from

the Owner to commence and continue correction of such default or neglect with diligence and promptness, or to provide the Owner with its plan to correct such default or neglect, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

2.5 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

- 2.5.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 7.
- 2.5.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.
- 2.5.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Owner may, at its discretion, request that the Contractor coordinate the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, and the Contractor shall be compensated accordingly for its efforts to do so.
- 2.5.4** The Contractor shall afford the Owner and separate contractor's reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.
- 2.5.5** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate Contractors completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

- 2.5.6** The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to 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 Owner or the Owner's separate contractor(s).
- 2.5.7** The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors.
- 2.5.8** The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor.
- 2.5.9** If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.
- 2.5.10** Owner shall indemnify the Contractor from any claim, liability, loss, costs, damage or expenses, including attorneys' fees, for death, bodily injury, sickness, disease or injury or destruction of tangible property (except for the Work), on account of or through the use of the Project or work on the Project, or any portion thereof, by the Owner's vendors or contractors. Owner shall not be obligated to indemnify Contractor to the extent such damages are the result of the negligence or willful misconduct of the Contractor.

ARTICLE 3: CONTRACTOR

3.1 GENERAL

- 3.1.1** The Contractor is the person or entity identified as such in the Construction Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.
- 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.11.
- 3.1.3** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.
- 3.1.4** The Contractor shall specify a representative who shall have express authority to bind the Contractor with respect to all matters requiring the Contractor's approval or authorization.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

- 3.2.1** Since the Contract Documents are complementary, before starting each portion of the Work and at frequent intervals during the progress thereof, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Subparagraph 2.2.2, 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. This review by the Contractor shall be conducted so as to cause no critical path delay to the Project and in recognition that additional information and / or clarification may be required of the Architect. These obligations are primarily for the purpose of facilitating construction by the Contractor and discovering errors, omissions, or inconsistencies in the Contract Documents.
- 3.2.2** Any design errors, inconsistencies or omissions noted by the Contractor during this review shall be reported promptly to the Architect as a request for information in such form as the Owner and the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Architect.
- 3.2.3** If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information, the Contractor shall make Claims as provided in Article 7. If the Contractor fails to perform the obligations of Subparagraphs 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor should have recognized such error, inconsistency, omission or difference and failed to report it to the Architect. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume responsibility for such performance and shall bear the costs for correction.
- 3.2.4** The Contractor shall give the Owner and the Architect timely notice of any additional design drawings, specifications, or instructions the Contractor believes are required to define the Work in greater detail, in order to permit the proper progress of the Work.
- 3.2.5** Any necessary changes shall be ordered as provided in Article 5.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

- 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences 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 twenty-one days' written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect.
- 3.3.2** 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.
- 3.3.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.
- 3.3.4** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.
- 3.3.5** The Contractor shall record in electronic format, a record of each day's activities in the execution of the Work, to a level of detail consistent with the coding detail of the Contractor's Construction Schedule. As such, the Contractor shall record the number of laborers for each sub-trade, the type of work being performed by each laborer or group of laborers and the location in which that work is taking place.
- 3.3.6** Not Applicable.
- 3.3.7** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.4 LABOR AND MATERIALS

- 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and

completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4.2 After the Contract has been executed, the Owner and the Architect will consider a formal written request by the Contractor for the substitution of products in place of those specified.

3.4.3 The Contractor may offer substitutions. In requesting approval of substitutions, the Contractor shall provide all product information necessary for the Architect to review the substitution. If the substitution is deemed acceptable by the Architect and the Owner, then it shall be incorporated into the specifications and listed as an acceptable product. The Contractor and its subcontractors shall only include acceptable products in their bidding and within the Work.

3.4.4 The following is hereby added to Subparagraph 3.4.3.

By making requests for substitutions based on Subparagraph 3.4.3 above, the Contractor:

.1 Represents that the Contractor has personally investigated the proposed substitute product and determined that are equal or superior in all respects to that specified.

.2 Represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;

.3 Certifies that the cost data presented is complete and includes all related costs under this contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and

.4 Will coordinate the installation of the accepted substitute, making such changes as may be required for the work to be complete in all respects.

3.4.5 Substitution requests shall be distinct and the Request For Information process shall not be used for this purpose.

3.5 TAXES

3.5.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted when bids are received, whether or not yet effective or merely scheduled to go into effect.

3.6 PERMITS, FEES AND NOTICES

3.6.1 The Owner shall secure the building, mechanical, plumbing, electrical permits, jurisdiction permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work. Contractor shall, as reasonably necessary cooperate with Owner to obtain such permits.

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

3.6.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

3.6.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume responsibility for such Work and shall bear the costs of correction.

3.7 ALLOWANCES

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

3.7.2 Unless otherwise provided in the Contract Documents:

- .1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts, costs for unloading and handling at the site, labor, installation costs, and other expenses contemplated for stated allowances;
- .2** whenever costs are more than allowances the Contractor shall make specific recommendations to the Architect and the Owner on how costs can be aligned with allowances. If the Owner fails to act on the Contractor's recommendations, or fails to take other steps necessary to align costs with allowances then, the Contract Sum shall be adjusted accordingly by Change Order.

3.7.3 Materials and equipment under an allowance specified within the Contract Documents shall be selected by the Owner in sufficient time to avoid critical path delay in the Work. It is the responsibility of the Contractor to make the Owner aware of the dates the Owner must meet in this regard.

3.8 CONSTRUCTION PROJECT PERSONNEL

3.8.1 The Contractor shall assign and maintain Construction Supervision and Project Management that are acceptable to the Owner, and an adequate workforce during the progress of the Work until the date of Final Completion of the Work.

3.8.2 The Contractor shall provide and maintain a cellular telephone for use by the Construction Superintendent. The Construction Superintendent shall carry the phone at all times that he is, by contract, required to be present at the Project site. The phone number shall be issued to the Owner and the Architect.

3.8.3 If the Owner has reasonable objection to any of the Contractor's personnel, the Contractor shall remove the person if requested to do so in writing by the Owner. The Contractor shall promptly recommend a competent person and, upon acceptance by the Owner, replace the removed person with the accepted person.

3.8.4 The Contractor shall not make any changes in Construction Project Personnel without prior written approval from the Owner.

3.9 CONTRACTOR'S CONSTRUCTION SCHEDULE

3.9.1 Time is of the essence in the performance of the Work under this Contract. The Contractor shall use the Contractor's Construction Schedule to manage and monitor the Work. Incomplete construction documents shall not be justification for the Contractor to delay continuous development of the schedule since the Contractor was hired based on its knowledge and experience of projects of this type.

3.9.2 The schedule shall not exceed time limits current under the Contract Documents, shall be revised monthly or at appropriate intervals as required by the conditions of the Work, 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.

3.9.3 The Owner and Contractor recognize the importance of scheduling in the planning and execution of the Work. The scheduling performed by the Contractor shall conform to the requirements of the Specifications.

3.9.4 Not Applicable.

3.9.5 The Owner's review and acceptance of the Contractor's Construction Schedule shall be for the sole purpose of determining that the schedule generally meets the requirements of the specification and the Contract Documents. The Owner's review and acceptance shall not constitute the Owner's approval of the means, methods, techniques, sequences or procedures of construction, all of which are the responsibility of the Contractor.

3.10 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and Owner and shall be delivered to the Architect in (AutoCAD format) for submittal to the Owner upon completion of the Work.

3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- 3.11.1** Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
- 3.11.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
- 3.11.3** Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
- 3.11.4** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Subparagraph 4.2.6. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents shall be returned by the Architect without action.
- 3.11.5** The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence shown by the Contractor's Construction Schedule so as to cause no critical path delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor shall be returned by the Architect without action. The Contractor shall have no claim for extension of time due to late review of a submittal by the Architect unless the Contractor has included the submittal process for that portion of the work in the Contractor's Construction Schedule and has clearly indicated that late review by the Architect will cause critical path delay to the project.
- 3.11.6** By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. If during its review of a Contractor approved submittal, the Architect discovers obvious errors between the submittal and the requirements of the Contract Documents which necessitate a subsequent re-submittal by the Contractor and re-review by the Architect, the cost of the Architect's re-review shall be charged to the Contractor.

- 3.11.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.
- 3.11.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.
- 3.11.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice the Architect's approval of a resubmission shall not apply to such revisions.
- 3.11.10** The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. The Contractor shall not be responsible for the adequacy of the performance of said design criteria, but Contractor shall promptly report to Architect any known or suspected defects or deficiencies within. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals. Pursuant to this Subparagraph 3.11.10, the Architect will review, approve or take other appropriate action on submittals for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

3.12 PROJECT MEETINGS

- 3.12.1** The Contractor shall ensure that project meetings are properly coordinated and attended by its employees, Subcontractors, Sub-Subcontractors, suppliers and others as requested. The

Contractor shall ensure that accurate minutes (issues discussed, actions taken or to be taken, time commitments, responsible parties) are taken during all meetings conducted in relation to the Work, whether conducted on site or at another location, and that such minutes are distributed to the meeting attendees no later than forty-eight hours after the meeting has been conducted. This requirement shall extend to all meetings that the Contractor attends, whether the Contractor initiated the meeting or not.

- 3.12.2** The meetings shall be held at the job site unless otherwise arranged.
- 3.12.3** The Owner will require the attendance of the Architect and other disciplines as required.
- 3.12.4** Schedule meetings shall be held, at the minimum, once a week. The intention of the meetings is to use the latest schedule update as a basis for discussions on time-related issues, discuss options for expediting work should the contract schedule fall behind, and provide the Owner with all the required information to approve the schedule update and make decisions on all requests for time extensions. The contractor will also provide a detailed schedule for the next 6 weeks at each meeting.

3.13 REQUESTS FOR INFORMATION

- 3.13.1** A Request For Information is a request from the Contractor or a Subcontractor to the Architect, seeking an interpretation or clarification of some requirement of the contract documents. The Contractor shall clearly and concisely set forth the issue for which clarification or interpretation is sought and why a response is needed from the Architect. The Contractor shall, in the written request, set forth its understanding or interpretation of the contract's requirements, along with reasons why such an understanding has been reached. Responses from the Architect will not change any requirements of the contract documents unless so noted in the Request For Information response by the Architect. Responses to Contractor inquiries shall be as outlined in this Paragraph 3.13.
- 3.13.2** In the event that the Contractor, Subcontractor or supplier at any tier, determines that some portion of the drawings, specifications or other contract documents requires clarification or interpretation by the Architect, the Contractor shall submit a Request For Information in writing to the Architect and copy the Owners Representative. Request For Information may only be submitted by the Contractor and shall only be submitted on a Request For Information form approved by the Architect and the Owner. The Contractor shall clearly and concisely set forth the issue for which clarification or interpretation is sought and explain why a response is needed from the Architect. In the Request For Information the Contractor shall set forth its own interpretation or understanding of the requirement, along with reasons why such an understanding has been reached.
- 3.13.3** The Contractor shall review and submit all Requests For Information presented by Subcontractors and suppliers to ensure the validity and accuracy of the Request for Information, and to eliminate Requests For Information for which information is already available within the Contract Documents. If the Architect determines that information to answer a Request For Information is contained within the Contract Documents already

available to the Contractor and reasonably found therein, the Owner shall direct the Architect to deduct the cost of the Architect's review from the Contractor's next Application for Payment.

- 3.13.4** The Owner, Architect and Contractor acknowledge that this is a complex project and that actual Requests For Information will be a necessary part of project communication.
- 3.13.5** The Architect will review all Requests For Information to determine whether they are Requests For Information within the meaning of this term. If the Architect determines that the issue submitted by the Contractor is not a Request For Information, it will be returned to the Contractor unreviewed as to content, for resubmittal on the proper form and in the proper manner. The Contractor shall have no remedy for delay or increase in cost in this situation.
- 3.13.6** The Architect will issue responses to Requests For Information in a timely manner so as to cause no critical path delay to the project, providing the Contractor has submitted the Request For Information in a like manner. The Architect's review time will start on the date stamped received "in from Contractor" and will end on the date stamped "out to Contractor".
- 3.13.7** Responses from the Architect will not change any requirement of the contract documents unless so noted by the Architect in the response to the Request For Information. If the Contractor believes that a response to a Request For Information will cause a change to the requirements of the contract document, the Contractor shall within three working days give written notice to the Architect stating that the Contractor considers the response to be a change. Failure to give such written notice shall waive the Contractor's right to seek additional time or cost under Article 5.

3.14 USE OF SITE

- 3.14.1** The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

3.15 CUTTING AND PATCHING

- 3.15.1** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.
- 3.15.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

3.16 CLEANING UP

- 3.16.1** The Contractor shall schedule regular cleanup of the project site to the satisfaction of the Owner and shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. As a minimum this shall be done on a weekly basis. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.
- 3.16.2** If the Contractor fails to clean up as provided in the Contract Documents or to the satisfaction of the Owner, the Owner may do so and the cost thereof shall be charged to the Contractor.
- 3.16.3** For the purposes of Subparagraphs 3.16.1 and 3.16.2, in addition to Contractor's leaving all floor surfaces in a broom-clean condition (or it's equivalent) and Contractor's cleaning of all interior/exterior surfaces, contractor shall perform the following final cleaning for all trades at the completion of Work;
- (i) Remove temporary project office and shacks;
 - (ii) Remove marks, stains, finger-prints and other soil or dirt from painted, decorated and natural finish woodwork and other Work;
 - (iii) Remove spots, plaster, soil and paint from ceramic tile, marble and other finished materials, and wash or wipe clean;
 - (iv) Clean fixture, cabinet work and equipment, removing stains, paint, dirt and dust, and leave same in undamaged, new condition;
 - (v) Clean aluminum in accordance with recommendations of the manufacturer; and
 - (vi) Clean resilient floors thoroughly with a well-rinsed mop containing only enough moisture to clean off any surface dirt or dust and buff dry by machine to bring the surfaces to sheen. The owner has specified the only allowable floor wax to use.

3.17 ACCESS TO WORK

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

3.18 ROYALTIES, PATENTS AND COPYRIGHTS

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

or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

3.19 INDEMNIFICATION

3.19.1 Contractor shall, to the fullest extent permitted by law with respect to its obligations under the Contract Documents, indemnify, defend, protect and hold harmless Owner, Architect, Architect's consultants and their constituent partners, employees, agents, representatives, stockholders, officers and directors (collectively, the "Indemnified Parties") from and against each and all of the following:

- .1** Any claim, liability, loss, damage, cost, expense, including attorneys' fees, award, fine or judgment, resulting from or arising out of (i) the performance of the Work, or (ii) breach of the obligations of Contractor under the Contract Documents, or (iii) any other act or omission with respect to the Work by Contractor, the Subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable, attributable to death, bodily injury, sickness, disease or injury to or destruction of tangible property (except for the Work), or loss of use thereof; provided, however, Contractor shall not be obligated to indemnify the Indemnified Parties to the extent such damages are the result of the negligence or willful misconduct of the Indemnified Parties. Such obligation shall not be construed as to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party described in this paragraph. Contractor's obligation to defend the Indemnified Parties shall not extend to any action, proceeding or arbitration which asserts or alleges only that the injury to the claimant resulted solely from the negligence or misconduct of the Indemnified Party and from no other cause or if a final judgment is obtained establishing that such injury to the claimant resulted solely from the negligence or misconduct of the Indemnified Party, in which latter event, Contractor's obligation to defend such indemnified Party shall cease upon the date such judgment becomes final, and such Indemnified Party shall thereupon reimburse Contractor for its reasonable attorneys' fees and court costs in so defending the Indemnified Party. Contractor shall be obligated to defend an Indemnified Party to the extent the concurrent negligence of the Owner or another Indemnified Party is alleged and upon the date a judgment becomes final establishing the extent of the Indemnified Party's negligence, the Indemnified Party shall thereupon reimburse Contractor for the pro rata portion of attorneys' fees attributable to and to the extent of such negligence and the pro rata portion of court costs in defending such Indemnified Party. In no event shall the Contractor be required to provide indemnification for errors or omissions/design liability for the Owner's Architect or Consultant's.
- .2** Any and all charges of every type, including claims against retainage, which may at any time be filed or claimed against the Project, or any portion thereof, as a consequence of acts or omissions of Contractor, Contractor's agents, servants, employees, Subcontractors, Sub-subcontractors or any or all of them and which are not due to Owner's failure to perform its obligations under this Contract.
- .3** Any claim, liability, loss, costs, damage or expenses, including attorneys' fees, on account of or through the use of the Project, or any portion thereof, by Contractor, or by

any other person whomsoever at the invitation, express or implied, of Contractor or by permission of Contractor or arising out of or indirectly or directly resulting from the performance of the Contract by Contractor, any Subcontractor, any Sub-subcontractor, or anyone employed directly or indirectly by any of them or for whose acts they may be liable.

- .4 Any claim, liability, loss, cost, damage or expense, including attorneys' fees, arising out of or in connection with any claim by or any act or omission of any employee of Contractor, any Subcontractor, Sub-subcontractor, anyone employed directly or indirectly by any of them or for whose acts they may be liable, including any claims under or related to or arising out of worker's compensation acts and other employee benefit acts. **By affixing their initials below, the parties acknowledge that this provision has been mutually negotiated by the parties as relates to waiver by Contractor of any immunity it might otherwise have and the Industrial Insurance Act, Title 51, Revised Code of Washington.**

Contractor: _____ Owner: _____

- .5 The provisions of this Paragraph shall survive the termination or expiration of the Contract and shall not be limited in any way by the amount or type of insurance obtained by Owner, Contractor or any Subcontractor.

- 3.19.2 In claims against any person or entity indemnified under Paragraph 3.19 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 Paragraph 3.19 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' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4: ADMINISTRATION OF THE PROJECT

4.1 ARCHITECT

- 4.1.1 The Architect is the entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.
- 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.
- 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a new Architect whose status under the Contract Documents shall be that of the former Architect.

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

- 4.2.1** The Architect in conjunction with the Owner's Representative will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the period for correction of Work described in Article 9. The Architect working in conjunction with the Owners 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.
- 4.2.2** The Architect and the Owner's other consultants will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to guard the Owner against delays, defects and deficiencies in the Work, and (3) to determine if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, neither the Architect nor the Owner's other consultants will be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. They will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences and procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Subparagraph 3.3.1.
- 4.2.3** Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall communicate with each other through the Architect about matters arising out of or relating to the Project. Communications by and with the Architect's consultants and the Owner's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.
- 4.2.4** Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.
- 4.2.5** The Architect will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Article 9, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.
- 4.2.6** The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause

no critical path delay in the Work or in the activities of separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The review of the Contractor's submittals shall not relieve the Contractor of its obligations and approval of a specific item shall not indicate approval of an assembly of which the item is a component.

- 4.2.7** The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 5.4.
- 4.2.8** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, will receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.
- 4.2.9** Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.
- 4.2.10** The Architect's decisions on matters relating to aesthetic effect will be final if approved by the Owner and if consistent with previously approved estimates and the intent expressed in the Contract Documents.

ARTICLE 5: CHANGES IN THE WORK

5.1 GENERAL

- 5.1.1** Changes in the Work may be accomplished after execution of the Contract and without invalidating the Contract, by Change Order or Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 5 and elsewhere in the Contract Documents.
- 5.1.2** Changes in the Work shall be incorporated by a Change Order or by Construction Change Directive, which outlines the modifications to the Work and lists the increase or reduction in the Contract Sum and the Contract Time. Any such increase in the Contract Sum shall be based upon the Contractor's actual cost of completion of any such additional or changed work. Any such increase or decrease in the Contract Time shall be supported by contemporaneous schedules showing the project at the time of the change order both with and without the proposed change order work. The change in Contract Time shall be equal to or less than the change in the project end date between those two schedules. The Contractor shall prepare all Change Orders and present them to the Architect for approval using the form included in the Contract Documents. The Contractor must submit the Change Order in a timely fashion so that it will mitigate to the extent possible any critical path delay to the

Project. The Contractor shall account for the Architect and Owner's approval time when planning its Change Order submissions. Each Change Order will be approved or rejected by the Owner and Architect in a reasonable period of time. The Contractor shall not proceed with commencement of the Change Order Work without the proper written approval to proceed by the Owner and Architect.

- 5.1.3** The Contract Sum and the Contract Times may be amended by agreed-upon Change Orders.
- 5.1.4** The Contractor shall use a form agreed to by the Architect and the Owner, unless otherwise agreed, to obtain price quotations required in the negotiation of change orders.
- 5.1.5** A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.
- 5.1.6** Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, or Construction Change Directive or order for a minor change in the Work.
- 5.1.7** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed would cause substantial inequity to the Owner or Contractor, the applicable unit prices may be equitably adjusted.
- 5.1.8** In order to facilitate checking for quotations of extras or credits, all proposals shall be accompanied by a complete itemization of costs clearly showing labor, materials and subcontracts. Each labor and materials component shall be itemized to show quantities, unit costs and the resulting mathematical extensions. Subcontract cost items shall be itemized in the same manner. Proposals submitted by the Contractor without the required itemization of costs will be returned by the Architect without review and the Contractor will be responsible for any delays to the Work that result.

5.2 CHANGE ORDERS

- 5.2.1** A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect, stating their agreement upon all of the following:
 - .1** change in the Work;
 - .2** the amount of the adjustment, if any, in the Contract Sum; and
 - .3** the extent of the adjustment, if any, in the Contract Time.
- 5.2.2** The Contractor shall submit Change Orders to the Architect for approval using a format agreed to by the Project Team.

- 5.2.3** The Contractor shall review Change Orders submitted by other parties prior to submitting them to the Architect in order to clarify and validate acceptable Change Orders and to return unsubstantiated or spurious Change Orders to the originating party.
- 5.2.4** The Contractor shall submit Change Orders in a timely fashion, mitigating critical path delay to the Project. The Contractor shall account for the Architect and Owner's approval time when planning its Change Order submissions. Each Change Order will be approved or rejected by the Owner and Architect in a reasonable period of time following submission of all information necessary for the Owner and Architect to review the Change Order. Change Orders submitted without complete information may be returned to the Contractor without review.
- 5.2.5** The Contractor shall not proceed with commencement of the Change Order Work without the proper written approval to proceed by the Owner and Architect.
- 5.2.6** Any increase in the Contract Sum shall be based on the Contractor's actual cost of completion, as defined in Subparagraph 5.3.7, of any such additional or changed Work, or if the parties agree, to one of the methods listed in 5.3.3. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.
- 5.2.7** Any increase or decrease in the Contract Time shall be supported by a contemporaneous period analysis which shows the impact of the proposed change order work. The adjustment in Contract Time shall be no greater than the change in the project end date shown by the contemporaneous period analysis.
- 5.2.8** The Contractor acknowledges and agrees that adjustment to the Contract Time and Contract Sum as shown on a Change Order represents full and complete compensation to the Contractor on account of the change and the Contractor waives any claim for additional adjustment to Contract Time and Contract Sum beyond those amounts shown on the Change Order.

5.3 CONSTRUCTION CHANGE DIRECTIVES

- 5.3.1** A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

- 5.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.
- 5.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on the Contractor's actual cost of completion, as defined in Subparagraph 5.3.7, of any such additional or changed Work, or if the parties agree before the Contractor begins performing the applicable Work, to one of the methods listed below.
- .1** mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - .2** unit prices stated in the Contract Documents or subsequently agreed upon; or
 - .3** cost to be determined in a manner agreed upon by the parties.
- 5.3.4** Any increase or decrease in the Contract Time shall be supported by a contemporaneous period analysis using the Contractor's Construction Schedule which shows the impact of the proposed Construction Change Directive. The adjustment in Contract Time shall be no greater than the change in the project end date shown by the contemporaneous period analysis.
- 5.3.5** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work.
- 5.3.6** A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time. Such agreement shall be effective immediately and shall be recorded as a Change Order.
- 5.3.7** The Contractor's actual cost of a change shall include, in case of an increase in the Contract Sum, an allowance for overhead and profit in accordance with the schedule set forth in Article 6 of the Construction Agreement. In such case the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purpose of this Subparagraph 5.3.7 shall:
- .1** include costs of direct labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance;
 - .2** include costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
 - .3** include indirect costs such as rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
 - .4** exclude indirect costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
 - .5** exclude indirect costs of supervision and field office personnel unless it can be shown to the satisfaction of the Architect that supervision and field office personnel were added to the Project as a direct result of the change and are substantiated by timesheets for Subcontractors.

- 5.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.
- 5.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect will make an interim determination by Change Order for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 7.
- 5.3.10** When the Owner and Contractor agree with the determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.
- 5.4** **MINOR CHANGES IN THE WORK**
- 5.4.1** The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and consistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 6: TIME

- 6.1** **DEFINITIONS**
- 6.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents between the Date of Commencement and Substantial Completion of the Work. Contract Time is shown and measured by the Contractor's Construction Schedule.
- 6.1.2** The Date of Commencement of the Work is the date established in the Agreement between the Owner and the Construction Manager.
- 6.1.3** The achievement of Substantial Completion will be certified by the Architect.
- 6.1.4** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

- 6.1.5** The term “delay” shall mean critical path delay which results in later than planned achievement of Substantial Completion or Final Completion, as determined by a Contemporaneous Period Analysis.

6.2 PROGRESS AND COMPLETION

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

- 6.2.1.1** The owner will issue the Notice to Proceed within ten (10) days of receipt in proper form and after approval of the required Contract, bonds, certificates and other required submittals. The work of this project shall be substantially completed within **two hundred sixty five (265) calendar days** from the date of Notice to Proceed. Time is of the essence of the Contract. Any delay in the performance of the work will be an inconvenience and be expensive to the Owner and will interfere with and delay business and commerce and could cause increased risk to persons and property. The cost to the Owner in the administration of services and observation and administration of construction will be increased by such delays. It will be impracticable and extremely difficult to ascertain and determine the actual damages which could be suffered by the Owner as the result of such delays.

- 6.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required to be furnished by the Contractor and Owner. The Date of Commencement of the Work shall not be changed by the effective date of such insurance. Unless the Date of Commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic’s liens and other security interests.

- 6.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

- 6.2.4** Whenever it becomes apparent that the Project completion date may not be met, the Contractor shall take whatever actions are reasonable and effective, and which will substantially eliminate the backlog of work and which will return the Contractor’s Construction Schedule to show on-time completion of the Project.

- 6.2.4.1** If the Contractor fails to take reasonable, effective action to put the Project back on schedule within four days after receiving written notice from the Owner, or provide its plan to do so, the Owner may direct the Contractor to take action to put the Project back on schedule. This action may include, but not be limited to, some or all of:

- .1** increasing manpower;
- .2** increasing the working hours per shift, shifts per day, or days per week;
- .3** increasing the amount of equipment;

- .4 re-scheduling activities to achieve maximum practical concurrency of activities; or
- .5 engage other contractors or subcontractors.

Costs related to such actions shall be the responsibility of the Contractor.

- 6.2.5 If each of three successive applications, indicate that the actual Work completed is less than 90 percent of the Work estimated in the Contractor's Construction Schedule to be completed by the respective dates, the Owner may at the Owner's option, treat the Contractor's delinquency as a default.
- 6.2.6 If the Owner has determined that the Contractor should be permitted to extend the time for completion as provided in Paragraph 6.3, the Contractor's Construction Schedule shall be adjusted accordingly.

6.3 **DELAYS AND EXTENSIONS OF TIME**

- 6.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work (which changes in the Work have been identified by a Change Order as causing delay), or by labor disputes, fire, unusual delay in deliveries, extreme weather conditions not reasonably anticipated, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending litigation by other causes which the Owner determines may justify delay, then the Contractor shall provide the Owner with options for expediting the Work to mitigate the delay and the associated cost for each option. Following such presentation, the Owner may have the Work expedited, have the Contract Time extended by Change Order, or a combination thereof.
- 6.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 7.
- 6.3.3 This Paragraph 6.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 7: CLAIMS AND DISPUTES

- 7.1.1 **Definition.** A Claim is a demand or assertion seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, and extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.
- 7.1.2 **Time Limits on Claims.** Claims by the Contractor must be initiated within 7 days after occurrence of the event giving rise to such Claim or within 7 days after the claimant first

recognizes the condition giving rise to the Claim, whichever is later; otherwise they shall be waived. Claims must be initiated by written notice to the Owner and to the Architect and must state when full information substantiating the claim will be provided, specifically what information (deliverable) will be provided and recommendations for mitigating the impact(s) of the event giving rise to the Claim.

- 7.1.3 Mitigation.** Both parties accept the responsibility to mitigate all damages and will seek to accurately inform the other party of the potential for cost and time impacts to the project and the opportunities to minimize or avoid these impacts. Both parties recognize that this responsibility to mitigate requires timely response, accompanied by sufficiently detailed supporting schedule and cost documentation to allow informed decisions by all parties.
- 7.1.4 Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Work of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.
- 7.1.5 Claims for Concealed or Unknown Conditions.** If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which 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, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 7 days after first observance of the conditions. The Owner will immediately investigate such conditions to determine if they differ materially and cause an increase or decrease in the Contractor's cost of performance of any part of the Work. Adjustments to the Contract Time will only be made if the discovery of the concealed or unknown condition causes a delay to the critical path of the CPM project schedule. If the Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents or from those that should have been anticipated, the Owner shall so notify the Contractor in writing, stating the reasons. Claims by the Contractor in opposition to such determination must be made within 7 days after notice of the decision. If the conditions encountered are materially different and, if appropriate, the Contract Sum and Contract Time shall be equitably adjusted. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment, if any, shall be resolved pursuant to the provisions of Paragraph 7.2.
- 7.1.6 Claims for Additional Cost.** If the Contractor wishes to make Claim for an increase in the Contract Sum for the Work of the Project, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 8.2. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) failure of payment by the Owner, (4) termination of the Contract by the Owner, (5) Owner's suspension or (6) other reasonable grounds, Claim shall be filed in accordance with this Paragraph 7.1. The Contractor shall have the burden of

substantiating its claim and shall furnish the Owner with such documentation relating thereto as the Owner may require, in addition to that submitted by the Contractor.

7.1.7 Claims for Additional Time:

- 7.1.7.1** If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of effect on the critical path of the Work. In the case of a continuing delay, only one Claim is necessary.
- 7.1.7.2** The Contractor shall have the burden of demonstrating the effect of the claimed delay on the Contract Time, and shall furnish the Owner with such documentation relating thereto as the owner may require, including but not limited to a contemporaneous Contractor's Construction Schedule update demonstrating, at the time of the occurrence of the delaying activity, the change to the Substantial Completion date of the Project due solely to the inclusion of the delaying activity.
- 7.1.7.3** If abnormal weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal. Abnormal weather conditions are defined as abnormal for the period of time, conditions which could not have been reasonably anticipated, and affecting the Contractor's ability to perform work on the critical path of the CPM project schedule. If another Contractor performs similar work in the Marysville area during the period the Contractor claims a weather delay, the Contractor's Claim for additional time will not be granted. The Contract Time will not be adjusted for normal inclement weather which can be expected in Marysville due to precipitation or temperature, based upon actual data from the U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) for Marysville. The Contractor agrees that the measure of abnormal inclement weather due to:
- .1** Precipitation. Are those days when precipitation for the day exceeds the previous five year average for the day by one-half inch or more;
 - .2** Temperature. Are those days when the highest temperature for the day is below the previous five-year average for the day and is also below thirty-two degrees Fahrenheit.
- 7.1.7.4** No extension of time will be made for abnormal inclement weather after the principal portions of the Work are enclosed except for site work which critically affects the Contract Time or Specific Dates. For the purpose of this provision, the term "enclosed" is defined to mean when the Work is sufficiently closed in (exterior walls up and roof in place) so as to permit any structure, or major portion thereof which is part of the Work, to be adequately heated so as to allow the various trades to perform their work. The Owner, the Architect and the Contractor shall jointly agree when the structure is "enclosed" and the Owner shall issue, upon the request of the Contractor, a letter certifying the date the Work became enclosed for the purposes thereof.
- 7.1.7.5** The Contractor must consider weather in the Contractor's Construction Schedule by adding duration to those activities which are weather dependent, and which occur during seasons when weather may be an issue. At the beginning of construction, the Contractor shall identify

these activities and the amount the duration was increased to allow for weather. Throughout the progress of the Work and in its monthly schedule updates, the Contractor shall maintain and present a log of planned weather days versus actual incurred weather days.

- 7.1.7.6 The Contractor shall not, as a result of delays from any causes, be entitled to damages arising out of actual or alleged loss of efficiency; morale, fatigue, attitude, or labor rhythm; constructive acceleration; extended home office overhead; expectant under run; trade stacking; reassignment of workers; concurrent operations; dilution of supervision; learning curve; beneficial or joint occupancy; logistics; ripple; season change; profit or fee upon damages for delay; impact damages or similar damages.
- 7.1.7.7 The Contractor shall not recover any amounts from the Owner for delay in performance of the Work unless the delay was unreasonable and was caused by the Owner or persons acting for the Owner. In no case shall the Contractor be entitled to damages for delay where it could have reasonably avoided the delay by the exercise of due diligence. If the delay has been caused by anyone other than the Owner or persons acting for the Owner, the Contractor may seek an extension of the Contract time, but the Owner is under no obligation to grant such an extension. The Owner shall not be included as a party to any proceeding, whether in arbitration or litigation, in which the Contractor or any other contractor seek damages directly or indirectly from one or more third parties allegedly responsible for such delay.
- 7.1.8 **Injury or Damage to Person or Property.** If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 7 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

7.2 **RESOLUTION OF CLAIMS AND DISPUTES**

- 7.2.1 Any Claim arising out of or related to the Contract shall be subject to the dispute resolution process set forth in this Paragraph 7.2.
- 7.2.2 The Owner and Contractor shall each propose a Dispute Resolution Neutral (DRN) to serve as a facilitator of the dispute resolution process outlined in this Paragraph 7.2. The proposed DRNs shall be familiar with the construction industry and be reviewed and approved by the other party. The Owner and Contractor shall mutually select one of these individuals to act as the DRN of the project. If the Owner and Contractor cannot agree on the DRN, the presiding judge of the Snohomish County Superior Court shall appoint one of the candidates.

The DRN, shall be available to assist in resolving any disputes, claims, or other controversies that might arise from the commencement of construction through issuance of the final certificate of occupancy and acceptance of the Project by the Owner. The DRN shall have no adjudicatory authority and, therefore, shall act solely as a mediator in working with the parties.

The services of the Project Neutral shall be provided on an hourly basis and the cost will be borne in equal parts by the Owner, Contractor and any other necessary parties, including, but not limited to Subcontractors.

- 7.2.3** In the event agreement cannot be reached as to a Claim or other issue or matter in dispute, the Owner and the Contractor agree to follow the approach set forth below to resolve the dispute(s). They also agree to include all provisions of this Paragraph 7.2 in all contracts and agreements relating to or arising out of the Project. Should good faith negotiations (step 1) not result in a settlement to the dispute, the remaining steps of the process shall be invoked in sequence to resolve the dispute.

Step 1: Direct Discussion / Negotiation

Negotiations shall be between all parties directly involved in the dispute, each of which shall appoint a negotiation representative. This process shall begin at project management level, where relevant facts and documentation shall be presented. The negotiations shall be elevated to the project executive level if the claim/dispute cannot be settled during initial discussions. The DRN can be called upon by either party to be a participant to this process.

Step 2: Senior Management Review

Senior Management of both parties shall meet to resolve the dispute. In such a meeting, the Owner's Project Representative and the Contractor's Project Executive shall present respective facts and positions and all relevant documentation. If the parties are unable to resolve their differences in a one-day session, the meeting may continue from time to time, as they may agree. Submission to Senior Management may also include authorization to a corporate officer of each party with settlement power to meet and attempt resolution by themselves. The DRN can be requested by any participating party to be a participant to this process.

Step 3: Mediation

Mediation shall include all individuals directly involved in the dispute and a mediator. The mediator can be the DRN, or the mediator can be selected and mutually agreed by Owner, Contractor, and DRN. In the absence of agreement by the parties involved, they shall utilize the American Arbitration Association Construction Mediation Process. The costs of the mediation and the mediator, whether by agreement or using the American Arbitration Association, shall be shared equally by the parties.

Step 4: Adjudication

If the dispute is not resolved in Step 3, all parties may unanimously agree to binding arbitration or a private judging process. In the absence of unanimous agreement to arbitration or a private judging process, the dispute shall be subject to litigation in the Skagit County Superior Court. When arbitration or private judging is chosen to adjudicate the dispute, the process shall include all parties to the dispute, with attorneys, and its results shall be binding on the parties.

ARTICLE 8: HAZARDOUS MATERIALS AND EMERGENCIES**8.1 HAZARDOUS MATERIALS**

- 8.1.1** The Architect is not responsible for the survey, indemnification, or removal or any hazardous materials, including asbestos or polychlorinated biphenyl (PCB), on the Project. A “hazardous material” is any material or substance that is identified or defined as a hazardous or toxic material, substance or waste, or as a pollutant or contaminant under any federal, state or local law, ordinance or regulation pertaining to the environment, pollution or public or workplace health or safety, or materials or substances which are regulated by any such law, ordinance or regulation including, without limitation, asbestos and polychlorinated biphenyls.
- 8.1.2** If any hazardous material is encountered at the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The Owner shall obtain the service of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the contractor and Architect the names and qualifications or persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment or such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. 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 shut-down, delay and start-up, which adjustments shall be accomplished as provided under the Contract.
- 8.1.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect’s consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.
- 8.1.4** The Owner shall not be responsible under this Article for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

- 8.1.5** If, without negligence on the part of the Contractor, the Contractor is held liable 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.

8.2 EMERGENCIES

- 8.2.1** In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided under the Contract.

ARTICLE 9: UNCOVERING AND CORRECTION OF WORK

9.1 UNCOVERING OF WORK

- 9.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, the Contractor must inform the Architect immediately and if thereafter required in writing by the Architect, uncover the Work for the Architect's examination and replace the Work at the Contractor's expense without change in the Contract Time.
- 9.1.2** If a portion of the Work has been covered which the Architect has not specifically requested to examine prior to it's being covered, the Architect 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 with an appropriate change in the Contract Sum and Contract Time if applicable. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense without change in the Contract Sum or Contract Time unless the Owner or a separate contractor caused the condition in which event the Owner shall be responsible for payment of such costs.

9.2 CORRECTION OF WORK

9.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

- 9.2.1.1** The Contractor shall within three (3) working days correct Work, or provide its written plan for correcting such Work, rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

9.2.2 AFTER SUBSTANTIAL COMPLETION

- 9.2.2.1** In addition to the Contractor's obligations under Article 14 of the Construction Agreement, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct, begin to correct, or give to the Owner its plan to correct within seven days after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice within 21 days after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct, begin to correct or provide to the Owner its plan to correct nonconforming Work within seven days after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Paragraph 2.4.
- 9.2.2.2** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.
- 9.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Paragraph 9.2.
- 9.2.3** The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.
- 9.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.
- 9.2.5** Nothing contained in this Paragraph 9.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Subparagraph 9.2.2 relates only to the specific right of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's warranty and other obligations other than specifically to correct the Work.

9.3 ACCEPTANCE OF NONCONFORMING WORK

- 9.3.1** If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in

which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 10: PAYMENTS AND COMPLETION
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10.1 CONTRACT SUM

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

10.2 SCHEDULE OF VALUES

- 10.2.1** A Schedule of Values shall be submitted in accordance with Article 11 of the Construction Agreement.

10.3 APPLICATIONS FOR PAYMENT

- 10.3.1** No later than the 7th day of each month, the Contractor shall submit to the Architect an itemized Application for Payment for activities completed or in progress in accordance with the schedule of values. Such application shall be notarized, if required, and supported in detail by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents. Concurrent with its Application for Payment the Contractor shall submit its updated Contractor's Construction Schedule, and demonstrate to the Architect that as-built information has been properly recorded for all Work for which payment is being requested. Neither the Architect nor the Owner shall have any responsibility to review the Contractor's Application for Payment until these two conditions are met.
- 10.3.1.1** Such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders, provided this has been approved by the Owner in advance.
- 10.3.1.2** Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier.
- 10.3.1.3** Each Application for Payment shall be based upon the schedule of values submitted by the Contractor. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work.
- 10.3.1.4** Applications for Payment shall show the percentage of completion and the remaining duration (in working days) of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of: (1) the

percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Contract Sum allocated to that portion of the Work.

- 10.3.1.5** Typographical and/or arithmetical errors in Applications for Payment or Change Orders shall not be grounds for additional payments.
- 10.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation into the Work provided that the Contractor's Construction Schedule shows that the material and equipment will be incorporated into the Work within the ninety days. If approved in writing in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditional upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site and shall only occur if the delivery and storage of such material and equipment is included as an activity in the Contractor's Construction Schedule.
- 10.3.2.1** The Contractor, his Subcontractors and Sub-subcontractors shall obtain prior written approval from the Owner for permission to store materials to be incorporated in the Work, for which Progress Payments will be requested, at off-site locations. Before approval of payment, the Owner will require proper proof of insurance naming the Owner as an additionally insured party, and a letter in which is furnished:
- .1 the name of the Contractor and/or Subcontractor or Sub-Subcontractor leasing the storage area;
 - .2 the location of such leased space;
 - .3 the leased area: the entire premises of certain areas of a warehouse giving the number of floors or portions thereof;
 - .4 the date on which the material is first stored;
 - .5 the value of the material stored; and
 - .6 transfer of Title to the Owner, Right of Entry and Removal.
- 10.3.2.2** The Contractor, its Subcontractors and Sub-Subcontractors shall notify the Architect and the Owner to inspect, at least once each month, the materials being stored at any location.
- 10.3.2.3** The Contractor, his Subcontractors and Sub-Subcontractors shall mark each sealed carton with the name and address of the Project, the Contractor and the Owner.
- 10.3.2.4** A perpetual inventory shall be maintained for all materials held in storage for which payment has been requested and shall be included in each Application for Payment.

- 10.3.2.5** Payment for materials stored off-site shall be at the sole discretion of the Owner. Any additional costs to the Owner resulting from storage of material off site for which payment is requested, such as, but not limited to, travel expenses and time for inspectors, shall be withheld from subsequent payments made to the Contractor.
- 10.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.
- 10.3.4** The Application for Payment shall constitute a representation by the Contractor to the Owner that, to the Contractor's knowledge, information and belief, the construction has progressed to the point indicated, the quality of the Work covered by the Application is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount requested.
- 10.3.5** All payments are subject to applicable state laws including but not limited to Chapter 60.28 RCW.

10.4 CERTIFICATES FOR PAYMENT

- 10.4.1** The Architect will issue a Certificate For Payment in accordance with Article 11 of the Construction Agreement, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Subparagraph 10.5.1.
- 10.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work including observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.
- 10.4.3** Provided a properly submitted, complete and correct Application for Payment is received by the 7th day of the month, the Owner shall make payment to the Contractor no later than forty-

five (45) days after the Owner, the Architect and the Contractor agree on the amounts approved in the Application For Payment. Any payment shall be net of retainage not to exceed five percent (5%) of the moneys earned by the contractor as a trust fund for the protection and payment of: (a) The claims of any person arising under the contract; and (b) the state with respect to fees and taxes imposed by Washington state law which may be due from such contractor.

10.5 DECISIONS TO WITHHOLD CERTIFICATION

10.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary as determined by the Architect and Owner, to protect the Owner, if in the Architect's and Owner's opinion the representations to the Owner required by Subparagraph 10.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Subparagraph 10.4.1. If the Contractor, Owner, and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also decide not to certify the entire Application for Payment or, because of subsequently discovered evidence, may nullify the whole Certificate for Payment previously issued, if in the Architect's and Owner's opinion this is necessary to protect the Owner from loss, including loss resulting from acts and omissions described in Subparagraph 3.3.2, because of:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or another contractor not covered by insurance;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 persistent failure to carry out the Work in accordance with the Contract Documents.

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

10.6 PROGRESS PAYMENTS

10.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

10.6.2 The Contractor shall within three working days of receipt of payment from the Owner, pay each Subcontractor out of the amount paid to the Contractor on account of such

Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such 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.

- 10.6.3** The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.
- 10.6.4** Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.
- 10.6.5** Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraph 10.6.2, 10.6.3 and 10.6.4.
- 10.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.
- 10.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.
- 10.6.8** Until Construction Work in an established phase is substantially complete, the Owner will pay 95 percent of the amount due the Contractor on account of progress payments. The Owner may subsequently withhold the full Contract retainage if the manner of completion of the Work and its progress do not remain satisfactory to the Owner, or if the Surety withholds its consent, or for other good and sufficient reasons.

10.7 FAILURE OF PAYMENT

- 10.7.1** If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect, then the Contractor may, upon fourteen additional days written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's actual costs of shut-down,

delay and start-up, plus interest as provided for in the Contract Documents. The Contractor shall have a duty to minimize costs of shut-down, delay and start-up.

10.8 SUBSTANTIAL COMPLETION

- 10.8.1** 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. A final Certificate of Occupancy for the entire project will be a condition precedent to the Architect issuing a Certificate of Substantial Completion.
- 10.8.2** The Contractor shall obtain and deliver promptly to the Owner any final Certificate of Occupancy and any certificates of final inspection of any part of the Contractor's Work and operating permits for any mechanical apparatus, such as elevators, escalators, boilers, air compressors, etc., which may be required by law to permit full use and occupancy of the premises by the Owner. Receipt of such permits or certificates by the Owner shall be a condition precedent to Substantial Completion of the Work, but shall not in itself, establish Substantial Completion. Determination of Substantial Completion remains the responsibility of the Architect.
- 10.8.3** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment along with a CPM schedule that defines the specific time for completion or correction of each item on the list. In no case shall completion or correction of each item extend beyond the date of Final Completion established in the Contractor's Construction Schedule. 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.
- 10.8.4** Upon receipt of the Contractor's list, the Architect will make an inspection with the Owner's Representative and the Contractor to prepare its own list of items to be completed or corrected prior to final payment and determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. The Contractor shall be responsible for paying for the cost of the Architect's third inspection for Substantial Completion and every one thereafter.
- 10.8.5** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion using AIA standard form, or other form if agreed by the Parties, which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall include a list prepared by the Architect of each and

every item of work remaining to be corrected before the Work is complete. 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.

10.8.6 Omitted.

10.8.7 All penetrations, permanent or temporary, whether in new construction or existing construction, in walls, floors or ceilings, shall be sealed and / or patched in accordance with the Contract Documents. For each unsealed / unpatched penetration discovered during the Architect's inspection for Substantial Completion, the Architect shall reduce payment due to the Contractor by an amount of \$750 per occurrence or the estimated cost of correction, whichever is greater.

10.9 PARTIAL OCCUPANCY OR USE

10.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under the Contract and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Subparagraph 10.8.3. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

10.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. The condition of the Work shall be recorded by the Architect in a written manner and by the Contractor using a digital video camera. A copy of the digital video so recorded shall be provided by the Contractor to the Architect and to the Owner.

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

10.10 FINAL COMPLETION AND FINAL PAYMENT

10.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such

inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with 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 final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 10.10.2 as precedent to the Contractor's entitlement to final payment, have been fulfilled. The Architect shall ensure that all items shown on the list it prepared under subparagraph 10.8.5 have been completed in accordance with the Contract Documents before issuing a final Certificate for Payment. Final payment shall then be due when Contractor has completed the items on the punch list, and the procedure set forth in this Subparagraph shall be repeated until the Work is complete.

- 10.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, (6) Submission of required as-built information and Operation and Maintenance Manuals to the Owner and (7) Owner has received (a) from the Department of Revenue a certificate that all taxes, increases and penalties due from the Contractor, and all taxes due and to become due with respect to the Contract have been paid in full or that they are, in the department's opinion, readily collectible without recourse to the state's lien on the retained percentage; (b) Department of Labor and Industries Certification that the Contractor and any sub-contractors have complied with Chapter 39.12 RCW (Prevailing Wages); and (c) approval from the Employment Security Department and no claims from any subcontractor, materialmen or laborers have been received and remain unpaid by Contractor. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees. If a lien bond and/or labor material payment bond are provided by Contractor, the Contractor shall not be required to furnish releases or waivers of liens from the subcontractors or materialmen.

- 10.10.3** After the expiration of the forty-five day period for giving notice of lien provided in RCW 60.28.011(2), and after receipt of the Department of Revenue's, Department of Labor and

Industries' and Employment Security Department's certificates, and the Owner is satisfied that the taxes certified as due or to become due by the Department of Revenue are discharged, and the claims of subcontractors, materialmen and laborers who have filed their claims, together with a sum sufficient to defray the cost of foreclosing the liens of such claims, and to pay attorneys' fees, have been paid, the Owner may withhold from the remaining retained amounts for claims the public body may have against the contractor and shall pay the balance, if any, to the contractor the fund retained by it or release to the contractor the securities and bonds held in escrow. If such taxes have not been discharged or the claims, expenses, and fees have not been paid, the Owner shall either retain in its fund, or in an interest bearing account, or retain in escrow, at the option of the Contractor, an amount equal to such unpaid taxes and unpaid claims together with a sum sufficient to defray the costs and attorney fees incurred in foreclosing the lien of such claims, and shall pay, or release from escrow, the remainder to the contractor.

10.10.4 Omitted.

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

- .1 liens, Claims, liability to third persons for property damage or personal injury asserted or unasserted, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents;
- .4 as described in Subparagraph 10.10.3 above; or
- .5 faulty or defective Work appearing after Substantial Completion.

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

ARTICLE 11: MISCELLANEOUS PROVISIONS

11.1 TESTS AND INSPECTIONS

11.1.1 Tests, inspections and approvals of portions of the Work required by Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority. The contractor will be required to schedule all tests and inspections. The Owner will select the firm to do the tests and inspections and pay for the tests and inspections. The Contractor shall give the Architect & Owners Representative timely notice of when and where tests and inspections are to be made so that the Architect may be present for and observe such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements

until after bids are received or negotiations concluded. Owner will pay for all tests and inspections.

- 11.1.2** If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 11.1.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect and Owners Representative may be present for and observe such procedures. Such costs, except as provided in Subparagraph 11.1.3, shall be at the Owner's expense.
- 11.1.3** If such procedures for testing, inspection or approval under Subparagraphs 11.1.1 and 11.1.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated testing, procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.
- 11.1.4** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect with a copy to the Owner.
- 11.1.5** If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.
- 11.1.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid critical path delay in the Work.

11.2 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

- 11.2.1** As between the Owner and Contractor:
 - .1 Before Substantial Completion.** As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
 - .2 Between Substantial Completion and Final Certificate for Payment.** As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and
 - .3 After Final Certificate for Payment.** As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to

have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Article 14 of the Construction Agreement, the date of any correction of the Work or failure to correct the Work by the Contractor under Article 9, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

CONTRACTOR

By _____ Date _____
Printed Name _____
Its _____

OWNER

By _____ Date _____
Printed Name _____
Its _____

SECTION 00 08 00 – SUPPLEMENTARY GENERAL CONDITIONS

The following supplements modify the “General Conditions of the Construction Agreement Between the Owner and Contractor”. Where a portion of the General Conditions is modified or deleted by these Supplementary Conditions, the unaltered portions of the General Conditions shall remain in effect. In all other instances, the Supplementary Conditions shall have precedence over all other provisions they supplement, modify, delete or replace.

ARTICLE 1: GENERAL PROVISIONS

- 1.5 Add Section 1.5 as follows:
In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

1. The Agreement.
2. Addenda, with those of later date having precedence over those of earlier date.
3. The Supplementary Conditions.
4. The General Conditions of the Contract for Construction.
5. Drawings and Specifications.

In case of inconsistency between Drawings and Specifications or within either Document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the Architect’s interpretation.

ARTICLE 3: CONTRACTOR

- 3.21 Add Section 3.21 as follows:

Each bidder shall have listed, on the form provided in the proposal section, the name, address, and description of the work, of each subcontractor to whom the bidder proposes to sublet portions of the work in excess of ten percent of the total amount of their bid. For the purpose of this paragraph, a subcontractor is defined as one who contracts with the Contractor to provide materials and labor, labor only, or who specially fabricates and installs a portion of the work or improvement according to drawings contained in the Contract Documents. Failure to list subcontractors may render a bid non-responsive and may result in automatic rejection of the bid.

All persons or entities proposed by Contractor to be Subcontractors or Sub-subcontractors shall be responsible persons or entities, or suitable experience and ability to perform the Work proposed to be subcontracted to it. Not later than ten days after the date of commencement, Contractor shall furnish in writing to the Owner through the Architect the names of persons or entities proposed as manufacturers for each of the products identified in the General Requirements (Division 1 of the Specifications) and, where applicable, the name of the installing subcontractor.

- 3.21.1 Add the following subparagraph 3.21.1:

Not later than ten days after the date of Commencement, Contractor shall furnish in writing to the Owner through the Architect the names of persons or entities proposed as manufacturers for each of the projects identified in the General requirements (Division 1 of the Specifications) and, where applicable, the name of the installing Subcontractor.

The following Subparagraphs are hereby added to Article 3:

3.21.2 Contracts between Contractor and its Subcontractors shall provide that:

- (i) The Subcontractor and Contractor assign their interest in the Subcontract to the Owner, which assignment shall become effective upon the contractor's default under the Contract Documents and the Subcontractor's receipt of notification from the Owner that (a) the Contractor is in default under the Contract Documents, and (b) the assignment is effective;
- (ii) Require submission to the Contractor of applications for payment under each Subcontract to which the Contractor is a party, in reasonable time to enable the Contractor to apply for payment in accordance with Article 9 of the General Conditions and Article 9 of the General Conditions and Article 12 of The Contract Documents.
- (iii) Require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to the Contractor (via any Subcontractor or Sub-subcontractor where appropriate) in sufficient time so that the Contractor may comply in the manner provided in the Contract Documents for like claims by the Contractor upon the Owner;
- (iv) Waive all rights the Contractor and Subcontractor may have against one another for damages caused by fire or other perils covered by the property insurance described in Paragraph 11.3 of these General Conditions, except such rights as they may have to the proceeds of such insurance held by the Owner as trustee under such Paragraph 11.3; and
- (v) Obligate such Subcontractor specifically to consent to the provisions of this Subparagraph 5.3. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Document to which the Subcontractor will be bound by this paragraph 5.3. Each Subcontractor shall similarly make copies of such Contract Documents available to his Sub-contractors.
- (vi) The Contractor shall be fully and solely responsible to the Owner for all acts and omission of the Subcontractors, suppliers and other persons and organizations performing or furnishing any of the Work under a contract with the Contractor, just as the Contractor.

Add the following new subsections:

3.21.3 All work performed for the Contractor by a Subcontractor shall be pursuant to an appropriate agreement between the Contractor and the Subcontractor that specifically binds the subcontractor to the applicable terms and conditions of the Contract Documents and contain third party beneficiary waiver provisions as required by revised section 1.1.2. The Contractor shall pay each Subcontractor a just share of any insurance monies received by the Contractor on account of losses under policies issued pursuant to the Contract.

3.21.4 All Contracts for Work performed for the Contractor by a Subcontractor shall provide that any dispute between the Contractor and Subcontractor will be litigated in superior court as provided in revised section 4.5 of this document and, further, that in the event a Subcontractor makes any claim for attorneys' fees or costs, that said claim, if allowed, will not be directly or indirectly passed through by the Contractor against the Owner.

ARTICLE 11: MISCELLANEOUS PROVISIONS

11.3 Add Section 11.3 as follows:

11.3 **Apprentices**

11.3 Apprentice Utilization

11.3.1 This Contract includes an Apprentice Utilization Requirement. Fifteen percent or more of project Labor Hours shall be performed by Apprentices unless Good Faith Efforts are accepted. Apprentice Utilization will be determined using the Department of Labor and Industries (L&I) online Prevailing Wage Intent & Affidavit (PWIA) system.

11.3.2 Definitions

For the purposes of this specification the following definitions apply:

- Apprentice is a person enrolled in a State-approved Apprenticeship Training Program.
- Apprentice Utilization is the apprentice labor hours, on the project, expressed as a percentage of project Labor Hours based on certified payrolls or the affidavits of wages paid, whichever is least. The percentage is not rounded up.
- Good Faith Effort (GFE) describes the Contractor's efforts to meet the Apprentice Utilization Requirement including but not limited to the specific steps as described elsewhere in this specification.
- Labor Hours are the total hours performed by all workers receiving an hourly wage who are subject to prevailing wage requirements for work performed on the Contract as defined by RCW 39.04.310. Labor Hours are determined based on the scope of work performed by the individuals, rather than the title of their occupations in accordance with WAC 296-127.
- State-approved Apprenticeship Training Program is an apprenticeship training program approved by the Washington State Apprenticeship Council.

11.3.3 Electronic Reporting

The Contractor shall use the PWIA System to submit the "Apprentice Utilization Plan". Reporting Instructions are available in the application.

11.3.4 Apprentice Utilization Plan

The Contractor shall submit an "Apprentice Utilization Plan", demonstrating how and when they intend to achieve the Apprentice Utilization Requirement. The Plan shall be in sufficient detail for the Engineer to track the Contractor's progress in meeting the utilization requirements. An Apprentice Utilization Plan shall be updated and resubmitted as the Work progresses or when requested by the Engineer.

If the Contractor is unable to demonstrate the ability to meet the Apprentice Utilization Requirement with their initial Apprentice Utilization Plan submission, an effort must be made to find additional registered apprentices to perform on the contract. If after attempts have been made at every tier and every scope, the Contractor must submit GFE documentation to the Contracting Agency. The Contractor shall actively seek out opportunities to meet the Apprentice Utilization Requirement during the construction Work.

11.3.5 Contacts

The Contractor may obtain information on State-approved Apprenticeship Training Programs by using the [Apprentice Registration and Tracking System \(ARTS\)](https://secure.lni.wa.gov/arts-public/#/program-search) <https://secure.lni.wa.gov/arts-public/#/program-search> or contacting the Department of Labor and Industries directly at:

Specialty Compliance And Services Division, Apprenticeship Section, P.O. Box 44530, Olympia, WA 98504-4530 or by phone at (360) 902-5320.

11.3.6 Compliance

The Contractor is expected to make attempts to employ Apprentices and shall include the requirement in any subcontracts at any tier. In the event that the Contractor is unable to achieve the Apprentice Utilization Requirement, the Contractor shall submit GFE documentation demonstrating the efforts and attempts they made. Final GFE documentation shall be submitted to the Contracting Agency after Substantial Completion but no later than 30 days after Physical Completion.

If the Contractor fails to actively attempt to employ Apprentices, submit GFE documentation, or if the Engineer does not approve the GFE, the Contractor will be assessed a penalty. The Engineer will provide the Contractor with a written notice at Final Acceptance of the project informing the Contractor of the failure to comply with this specification which will include a calculation of the penalty to be assessed as provided for in the Payment section in this special provision.

If the Contractor achieves the required Apprentice Utilization an incentive will be assessed with Final Payment.

11.3.7 Good Faith Efforts

The GFE shall document the attempts (efforts) the Contractor (and any subcontractor at any tier) made to meet the Apprentice Utilization Requirement. Emails, letters, or other written communications with letterhead, titles, and contact information are required.

Documentation must include one or more of the following accepted GFEs:

1. Demonstrated Lack of Availability of Apprentices. Correspondence from State-approved Apprenticeship Training Program(s), with project specific responses confirming there is a lack of availability of Apprentices for this project.
2. Demonstrated Disproportionate Ratio of Material/Equipment/Products to Labor Hours. Documentation explaining the bid includes a disproportionate high cost of material/equipment/products to Labor Hours. (E.g., a \$2 M estimated contract includes \$1 M or more in procurement costs of equipment to be installed.)
3. Demonstrated Lack of Necessary Labor Hours. Correspondence from a State-approved Apprentice Training Programs confirming there is not enough time in the project to meet required journey level to apprentice training ratios.
4. Demonstrated Lack of Available Approved Programs. Correspondence from State-approved Apprentice Training Programs, confirming there are no programs that train for the scopes included/anticipated on the project. Contractor and state programs to submit training program detail needs and details that could be used for future program creation.
5. Funding Precedent. Documentation that shows conflicting, more restrictive, or precedent requirements for other training on the Project. Examples include, but are not limited to, Tribal Employment Rights (TERO), Federal Training Hours, or Special Training that affect the ability to use state-registered apprentices.

6. Warranty Work. Documentation from Original Equipment Manufacturers, or similar, confirming that work performed must only be completed by certified journey-level installers or risk voiding warranty, or similar.
7. Other Effort. The Contractor may submit other evidence, documentation, or rationale for not being able to achieve the required Apprentice Utilization that are not covered in the other efforts named. Other efforts will still need to be corroborated by an independent, knowledgeable third-party.

Contractors may receive a GFE credit for graduated Apprentice hours through the end of the calendar year for all projects worked on as long as the Apprentice remains continuously employed with the same Contractor/subcontractor they were working for when they graduated. If an Apprentice graduates during employment on a project of significant duration, they may be counted towards a GFE credit for up to one year after their graduation or until the end of the project (whichever comes first). Determination of whether Contract requirements were met in good faith will be made by subtracting the hours from the journeyman total reported hours for the project and adding them to the apprentice hour total. If the new utilization percentage meets the Contract requirement, the Contractor will be reported as meeting the requirement in good faith.

11.3.8 Approving Good Faith Efforts

The Contracting Agency will review submitted Good Faith Efforts and issue a determination. The Engineer may request additional information, documentation, evidence or similar in order to approve such efforts. A determination by the Engineer is final. The approved Good Faith Efforts will be loaded into the PWIA system by the Contracting Agency.

11.3.9 Payment

Payment will be made for the following Bid Items and shown on the Schedule of Values: "Apprenticeship Incentive", by calculation

An incentive of \$2,000.00 will be assessed with the Final Payment for Contractors who meet the Apprentice Utilization Requirement without a reduction by Good Faith Effort. For the purpose of providing a common proposal for all bidders, the Contracting Agency has entered an amount in the proposal to become a part of the total bid by the Contractor.

"Apprenticeship Penalty", by calculation.

Apprenticeship Hours will be measured for each hour of work performed by an apprentice as shown on the Monthly Apprentice Utilization Report, based on certified payrolls or the affidavits of wages paid, whichever is least. The percentage is not rounded up. For the purpose of providing a common proposal for all bidders, the Contracting Agency has entered an amount in the proposal to become a part of the total bid by the Contractor.

When the Contractor fails to meet the Apprenticeship goal of 15%, a penalty will be assessed for each hour that is not achieved, unless a Good Faith Effort is approved by the Contracting Agency.

Apprenticeship Utilization Penalty will be calculated as described below:

Percent of Goal Met	Penalty per hour of unmet goal
100%	\$0.00
90% to 99%	\$2.00
75% to 89%	\$3.50
50% to 74%	\$5.00

1% to 49%	\$7.50
0%	\$10.00

The Contractor shall include all related costs in Stipulated Sum for the Total Base Bid, included but not limited to implementing, developing, documenting, and administering an apprenticeship utilization program, recording and reporting hours and all other costs to comply with this provision.

END OF SECTION 00 08 00

SECTION 00 08 10 – SPECIAL CONDITIONS

1.1 RESPONSIBILITY OF CONTRACTOR REGARDING WORK BY OTHERS

If any part of the work under this Contract depends on the results of work by others, the Contractor shall inspect and report, prior to the Contractor beginning work, to the Owner's Representative, any apparent discrepancies or discrepancies of defects in such work of others that render it unsuitable for proper results. Failure of the acceptance of the work of others as fit and proper, except as to latent defects which may develop in the work performed by others after commencement of the work by the Contractor. The Owner, utility companies, and others may be working within the project areas while the work is in progress. If so, the Contractor shall schedule the work in conjunction with these other organizations to minimize mutual interference.

1.2 COORDINATION OF WORK

The Contractor shall maintain the overall coordination for the work being performed under this Contract.

1.3 WASTE MATERIAL

Contractor shall comply with all federal, state and local environmental health rules and regulations. All refuse and waste material shall be disposed of by the Contractor off the Owner's property, at the Contractor's expense. The Contractor shall immediately clean up any spilled material from Owner's property and adjacent roads.

1.4 CONTROL OF SOLVENTS

The use of solvents shall be subject to the approval of the Owner. A written procedure for the control of emissions shall be submitted prior to any use. Areas where solvents are to be used must be isolated and vented to the outside (away from air intakes or pedestrian traffic).

1.5 MANUFACTURER'S INSTRUCTIONS

All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instruction of the applicable manufacturer, fabricator, supplier, or distributor, except as otherwise specifically provided in the contract documents.

1.6 MATERIAL SAFETY DATA SHEETS

All materials used on the construction site in conjunction with the construction of this project shall have a copy of Material Safety Data Sheets (MSDS) on site as soon as said material arrives on site and shall be available to the Owner's Representative upon request for such a copy. A copy of the MSDS shall be given to the Owner's Representative upon request of such a copy. A copy of the MSDS shall be given to the Owner's Representative five (5) working days before the product arrives on site for all products which identify a Health Hazard (Section V; A, B, & C) on the MSDS.

1.7 METHODS AND APPLIANCES

The methods and equipment adopted by the Contractor shall be such as will secure a satisfactory quality of work and will enable the Contractor to complete the work in the time agreed upon. The selection and use of these methods and appliances is the responsibility of the Contractor.

1.8 PUBLIC CONVENIENCE AND SAFETY

The Contractor shall so conduct operations as to offer the least possible obstruction and inconvenience to the public and shall have under construction no greater length or amount of work than can be performed with due regard to the rights of the public.

The Contractor shall provide and maintain such fences, barriers, directional signs, lights, and flag persons as are necessary to give adequate warning to the public at all times of any dangerous conditions to be encountered as a result of the construction work and to give directions to the public.

1.9 MUTUAL RESPONSIBILITY OF CONTRACTOR

Nothing in the contract shall be interpreted as granting to the Contractor exclusive occupancy of the site of the project. The Contractor must ascertain to their own satisfaction the scope of the project and the nature of any other contracts that have been or may be awarded by the Owner in the construction of the project, to the end that the Contractor may perform this contract in the light of such other contracts, if any.

The Contractor shall not cause any unnecessary hindrance or delay to any others working on the project. If the performance of any contract for the project is likely to be interfered with by the simultaneous performance of some other contract or contracts, the Owner, based upon recommendations of the Architect, will decide which Contractor shall cease work temporarily and which Contractor shall continue or whether the work under the contracts can be coordinated so that the Contractors can proceed simultaneously. On all questions concerning conflicting interest of Contractors performing related work, the decision of the Owner shall be binding upon all Contractors concerned and the Owner shall not be responsible for any damages suffered or extra costs incurred by the Contractor resulting directly or indirectly from the award or performance or attempted performance of any other contract or contracts on the project or caused by a decision or omission of the Owner respecting the order of precedence in the performance of the contracts.

1.10 PROJECT SECURITY

The Contractor shall make adequate provision for the protection of its equipment, tools etc. against theft and vandalism.

END OF SECTION 00 08 10

CITY OF MARYSVILLE	BID TAB - 2/24/2025		
1049 STATE AVENUE ADDITION PROJECT			
Bidder	Amount w/ WSST		
CDK Construction	\$ 3,500,400.00		
Faber Construction	\$ 3,429,000.00		
Marpac Construction	\$ 3,440,000.00		
Boyce Construction	\$ 3,380,000.00		
Kassel & Associates	\$ 3,417,000.00		
Reynolds General Contracting	\$ 3,279,000.00		
Western Ventures Construction	\$ 3,602,000.00		
Summit Construction Group	\$ 3,027,000.00		
Valdez Construction	\$ 2,935,718.00	APPARENT LOW BIDDER	
This bid tabulation is from the initial "opening" 2:00 PM February 24th. All bids will still need to be verified and proven to be responsible.			

Jul 22

