



Progressive Design-Build Agreement

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

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

OWNER:

[The City of Kennewick](#)
[210 W. 6th Ave.](#)
[Kennewick, WA 99336-0108](#)

~~DESIGN-BUILDER~~ **PROGRESSIVE DESIGN-BUILDER:**
[\[INSERT\]](#)

PROJECT:

[Wastewater Treatment Plant \(WWTP\) Phase 2 Step 2 Upgrades](#)
[615 E Columbia, Drive](#)
[Kennewick, WA 99336](#)

In consideration of the mutual covenants and obligations contained herein, Owner and ~~Design-Builder~~ [Progressive Design-Builder](#) agree as set forth herein.

Article 1

General

- 1.1 Duty to Cooperate. Owner and ~~Design-Builder~~Progressive Design-Builder commit at all times to cooperate fully with ~~each other, and each other and~~ proceed on the basis of trust and good faith to permit each party to realize the benefits afforded under this Agreement.
- 1.2 Definitions. Terms, ~~words~~words, and phrases used in this Agreement shall have the meanings given them in DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and ~~Design-Builder~~Progressive Design-Builder* (2010 Edition) ("General Conditions of Contract").
- 1.3 Design Services. ~~Design-Builder~~Progressive Design-Builder shall, consistent with applicable ~~state~~Washington State licensing laws, provide design services, including architectural, engineering, and other design professional services required by this Agreement. Such design services shall be provided through qualified, Washington State licensed design professionals who are either (i) employed by ~~Design-Builder~~Progressive Design-Builder, or (ii) procured by ~~Design-Builder~~Progressive Design-Builder from independent sources. Nothing in this Agreement is intended to create any legal or contractual relationship between Owner and any independent design professional.

Article 2

~~Design-Builder~~Progressive Design-Builder's Services and Responsibilities

2.1 General Services.

2.1.1 Owner shall provide ~~Design-Builder~~Progressive Design-Builder with Owner's Project Criteria describing Owner's program requirements and objectives for the Project as set forth in Exhibit A. Owner's Project Criteria shall include Owner's use, space, price, time, site, and performance requirements, and expandability requirements. Owner's Project Criteria may include conceptual documents, design specifications, design performance specifications, and other technical materials and requirements prepared by or for Owner, for example the mandatory use of the FloridaGreen Patented Technology and the procurement of all equipment necessary for the "Pasteurization System" and the "Pelletization System," as further defined in Article 5.1, below.

2.1.2 If Owner's Project Criteria have not been developed prior to the execution of this Agreement, ~~Design-Builder~~Progressive Design-Builder will assist Owner in developing Owner's Project Criteria, with such service deemed to be an additional service for which additional compensation shall be paid by Owner to ~~Design-Builder~~Progressive Design-Builder. If Owner has developed Owner's Project Criteria prior to executing this Agreement, ~~Design-Builder~~Progressive Design-Builder shall review and prepare a written evaluation of such criteria, including recommendations to Owner for different and innovative approaches to the design and construction of the Project, but at all times the Project Criteria must utilize the FloridaGreen Patented Technology and must provide for the procurement of all equipment necessary for the "Pasteurization System" and the "Pelletization System," as further defined in Article 5.1, below. The parties shall meet to discuss ~~Design-Builder~~Progressive Design-Builder's written evaluation of Owner's Project Criteria and agree upon what revisions, if any, should be made to such criteria.

2.2 Phased Services.

2.2.1 ~~Phase 4~~Step 1 Services. ~~Design-Builder~~Progressive Design-Builder shall perform the services of design, pricing, and other services for the Project based on Owner's Project Criteria,

as may be revised in accordance with Section 2.1 hereof, as set forth in Exhibit B, Scope of Services. ~~Design-Builder~~Progressive Design-Builder shall perform such services to the level of completion required for ~~Design-Builder~~Progressive Design-Builder and Owner to establish the Contract Price for ~~Phase 2~~Step 2, as set forth in Section 2.3 below. The Contract Price and GMP for ~~Phase 2~~Step 2 shall be developed during ~~Phase 1~~Step 1 on an "open-book" basis and will be established via an amendment to this Agreement, after Phase 1~~Step 1 is complete~~ (the "Contract Price Amendment"). ~~Design-Builder~~Progressive Design-Builder's Compensation for ~~Phase 4~~Step 1 Services is set forth in Section 7.0 herein. The level of completion required for ~~Phase 4~~Step 1 Services is defined in Exhibit B, Scope of Services (either as a percentage of design completion or by defined deliverables).

2.2.2 ~~Phase 2~~Step 2 Services. ~~Design-Builder~~Progressive Design-Builder's ~~Phase 2~~Step 2 services shall consist of the completion of design services for the Project, the procurement of all materials and equipment for the Project, the performance of construction services for the Project, the start-up, testing, and commissioning of the Project, and the provision of warranty services, all as further described in the Contract Price Amendment. Upon receipt of ~~Design-Builder~~Progressive Design-Builder's proposed Contract Price for ~~Phase 2~~Step 2, Owner may proceed as set forth in Article 2.3.

2.3 Proposal. Upon completion of the ~~Phase 1~~Step 1 Services and any other Basis of Design Documents upon which the parties may agree, ~~Design-Builder~~Progressive Design-Builder shall submit a proposal to Owner (the "Proposal") for the completion of the design and construction for the Project for the Contract Price, which may be based on Lump Sum or ~~Design-Builder~~Progressive Design-Builder's Fee and Cost of the Work with an option for a Guaranteed Maximum Price (GMP); the choice shall be made at Owner's sole discretion.

2.3.1 The Proposal shall include the following unless the parties mutually agree otherwise:

2.3.1.1 The Contract Price that may be based on a Lump Sum or ~~Design-Builder~~Progressive Design-Builder's Fee and Cost of the Work, with an option for a GMP, which shall be the sum of:

- i. ~~Design-Builder~~Progressive Design-Builder's Fee as defined in Section 7.4.1 hereof;
- ii. The estimated Cost of the Work as defined in Section 7.5 hereof, inclusive of any ~~Design-Builder~~Progressive Design-Builder's Contingency as defined in Section 7.6.2 hereof; and
- iii. If applicable, any prices established under Section 7.1.3 hereof;

2.3.1.2 The Basis of Design Documents, which may include, by way of example, Owner's Project Criteria, which are set forth in detail and are attached to the Proposal;

2.3.1.3 A list of the assumptions and clarifications made by ~~Design-Builder~~Progressive Design-Builder in the preparation of the Proposal, which list is intended to supplement the information contained in the drawings and specifications and is specifically included as part of the Basis of Design Documents;

2.3.1.4 The Scheduled Substantial Completion Date upon which the Proposal is based, to the extent said date has not already been established under Section 6.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based and a Project Schedule for the Work;

2.3.1.5 If applicable, a list of Allowance Items, Allowance Values, and a statement of their basis;

2.3.1.6 If applicable, a schedule of alternate prices;

2.3.1.7 If applicable, a schedule of unit prices;

2.3.1.8 If applicable, a statement of Additional Services which may be performed but which are not included in the Proposal, and which, if performed, shall be the basis for an increase in the Contract Price and/or Contract Time(s);

2.3.1.9 If applicable, a Savings provision;

2.3.1.10 If applicable, Performance Incentives;

2.3.1.11 The time limit for acceptance of the Proposal; and

2.3.1.12 An Owner's permit list, a list detailing the permits and governmental approvals that Owner will bear responsibility to obtain.

2.3.2 Review and Adjustment to Proposal.

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

2.3.2.3 Acceptance of Proposal. If Owner accepts the Proposal, as may be amended by ~~Design-Builder~~Progressive Design-Builder, the Contract Price and its basis shall be set forth in an amendment to this Agreement, when mutually agreed between the parties (Contract Price Amendment). Once the parties have agreed upon the Contract Price and Owner has issued a Notice to Proceed with ~~Phase 2 Step 2, Design-Builder~~Progressive Design-Builder shall perform the ~~Phase 2 Step 2~~ Services, all as further described in the Contract Price Amendment, as it may be revised.

2.3.2.4 Failure to Accept the Proposal. If Owner rejects the ~~Proposal, or Proposal or~~ fails to notify ~~Design-Builder~~Progressive Design-Builder in writing on or before the date specified in the Proposal that it accepts the Proposal, the Proposal shall be deemed withdrawn and of no effect. In such event, Owner and ~~Design-Builder~~Progressive Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

i. Owner may suggest modifications to the Proposal, whereupon, if such modifications are accepted in writing by ~~Design-Builder~~Progressive Design-Builder, the Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 2.3.2.3 above;

ii. Owner may authorize ~~Design-Builder~~Progressive Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 7.1.2 hereof without a Contract Price, in which case all references in this Agreement to the Contract Price shall not be applicable; or

iii. Owner may terminate this Agreement for convenience in accordance with Article 9 hereof; provided, however, in this event, ~~Design-Builder~~Progressive Design-Builder shall not be entitled to the payment provided for in Section 9.2 hereof.

If Owner fails to exercise any of the above options, ~~Design-Builder~~Progressive Design-Builder shall have the right to (a) continue with the Work as if Owner had elected to proceed in accordance with Item 2.3.2.4 ii. above, and be paid by Owner accordingly,

unless and until Owner notifies it in writing to stop the Work, (b) suspend performance of Work in accordance with Section 11.3.1 of the General Conditions of Contract, provided, however, that in such event ~~Design-Builder~~Progressive Design-Builder shall not be entitled to the payment provided for in Section 9.2 hereof, or (c) may give written notice to Owner that it considers this Agreement completed. If Owner fails to exercise any of the options under Section 2.3.2.4 within ten (10) calendar days of receipt of ~~Design-Builder~~Progressive Design-Builder's notice, then this Agreement shall be deemed completed. If Owner terminates the relationship with ~~Design-Builder~~Progressive Design-Builder under Section 2.3.2.4(iii), or if this Agreement is deemed completed under this paragraph, then ~~Design-Builder~~Progressive Design-Builder shall have no further liability or obligations to Owner under this Agreement.

Article 3

Contract Documents

3.1 The Contract Documents are comprised of the following:

3.1.1 All written modifications, amendments, minor changes, and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Agreement Between Owner and ~~Design-Builder~~Progressive Design-Builder* (2010 Edition) ("General Conditions of Contract");

3.1.2 The Contract Price Amendment referenced in Section 2.3.2.3 herein or the Proposal accepted by Owner in accordance with Section 2.3 herein.

3.1.3 This Agreement, including all exhibits (List for example, performance standard requirements, performance incentive arrangements, markup exhibits, allowances, unit prices, or exhibit detailing offsite reimbursable personnel) but excluding, if applicable, the Contract Price Amendment;

3.1.4 The General Conditions of Contract;

3.1.5 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract;

3.1.6 Exhibit B, Scope of Services; and

3.1.7 The following other documents, if any:

[INSERT, IF APPLICABLE]

Article 4

Interpretation and Intent

4.1 ~~Design-Builder~~Progressive Design-Builder and Owner, at the time of acceptance of the Proposal by Owner in accordance with Section 2.3 hereof, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents for any conflicts or ambiguities. ~~Design-Builder~~Progressive Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement, or if applicable, prior to Owner's acceptance of the Proposal.

4.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after Owner's acceptance of the Proposal, ~~Design-Builder~~Progressive Design-Builder and Owner shall attempt to resolve any ambiguity, conflict, or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 3.1 hereof. *(Note, the parties are strongly encouraged to establish in the Contract Price Amendment or Proposal (as applicable) the priority of the various documents comprising such exhibit or proposal.)*

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

4.4 If Owner's Project Criteria contain design specifications: (a) ~~Design-Builder~~Progressive Design-Builder is entitled to reasonably rely on the accuracy of the information represented in the design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any design performance specifications; and (b) ~~Design-Builder~~Progressive Design-Builder shall be entitled to an adjustment in its Contract Price and/or Contract Time(s) to the extent ~~Design-Builder~~Progressive Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design specification.

4.5 The Contract Documents form the entire agreement between Owner and ~~Design-Builder~~Progressive Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 5

Ownership of Work Product

5.1 Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by ~~Design-Builder~~Progressive Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and ~~Design-Builder~~Progressive Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights, and/or patents, subject to the provisions set forth in Sections 5.2 through 5.5 below and except that Owner shall retain the ownership and all property interests therein for the mandatory Florida-Green Patented Technology that Progressive Design-Builder shall utilize on this Project. In addition to use of the mandatory Florida Green Patented Technology, Progressive Design-Builder shall procure all equipment necessary for the "Pasteurization System" and the "Pelletization System," some or all of which may be required by Owner to be procured from specific sources. The Pasteurization System is defined as a fuel-fired, two-belt oven used to decrease the moisture content of biosolids and pasteurize the biosolids, associated axial fan and burner, associated cyclone, airlock system and fan, and associated connecting ducts, and any future improvement. The Systems are defined as the complete pasteurization and pelletization processes. All ownership and property rights of the FloridaGreen Patented Technology and Systems are wholly exempt from and not subject to Sections 5.2 to 5.5 below.

5.2 Owner's Limited License upon Project Completion and Payment in Full to ~~Design-Builder~~Progressive Design-Builder. Upon Owner's payment in full for all Work performed under the Contract Documents, ~~Design-Builder~~Progressive Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project, conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of ~~Design-Builder~~Progressive Design-Builder is at Owner's sole risk and without liability or legal exposure to ~~Design-Builder~~Progressive Design-Builder or anyone working by or through ~~Design-Builder~~Progressive Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligation to provide the indemnity set forth in Section 5.5 herein.

5.3 Owner's Limited License upon Owner's Termination for Convenience or ~~Design-Builder~~Progressive Design-Builder's Election to Terminate. If Owner terminates this Agreement for its convenience as set forth in Article 9 hereof, or if ~~Design-Builder~~Progressive Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, ~~Design-Builder~~Progressive Design-Builder shall, upon Owner's payment in full of the amounts due ~~Design-Builder~~Progressive Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 5.2 above, conditioned on the following:

5.3.1 Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party, and on the Owner's obligation to provide the indemnity set forth in Section 5.5 herein, and

5.3.2 Owner agrees to pay ~~Design-Builder~~Progressive Design-Builder the additional sum of Dollars (\$INSERT) as compensation for the right to use the Work Product to complete the Project and subsequently use the Work Product in accordance with Section 5.2 if Owner resumes the Project through its employees, agents, or third parties.

5.4 Owner's Limited License upon ~~Design-Builder~~Progressive Design-Builder's Default. If this Agreement is terminated due to ~~Design-Builder~~Progressive Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract, then ~~Design-Builder~~Progressive Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 5.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that ~~Design-Builder~~Progressive Design-Builder was not in default, any such termination shall be automatically considered to have been a Owner shall be deemed to have terminated the Agreement termination for convenience, and ~~Design-Builder~~Progressive Design-Builder shall be entitled to the rights and remedies set forth in Section 5.3 above.

5.5 Owner's Indemnification for Use of Work Product. Owner recognizes that in the event of an early termination of the Work, whether for convenience or for cause, ~~Design-Builder~~Progressive Design-Builder will not have the opportunity to finish or to finalize its Work Product. Therefore, if Owner uses the Work Product, in whole or in part, or if Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 5, Owner shall defend, indemnify, and hold harmless the Indemnified Parties from and against any and all claims, damages, liabilities, losses, and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product, to the fullest extent permitted by applicable law.

Article 6

Contract Time

6.1 Date of Commencement. The ~~Phase 1~~Step 1 Services shall commence within five (5) calendar days of ~~Design-Builder~~Progressive Design-Builder's receipt of Owner's Notice to Proceed unless the parties mutually agree otherwise in writing. The Work shall commence within five (5) calendar days of ~~Design-Builder~~Progressive Design-Builder's receipt of Owner's Notice to Proceed for ~~Phase 2~~Step 2 Services ("Date of Commencement") if the Proposal is accepted and the Contract Price Amendment is amended to this Agreement unless the parties mutually agree otherwise in writing.

6.2 Substantial Completion and Final Completion.

6.2.1 Substantial Completion of the entire Work shall be achieved no later than INSERT ~~(INSERT)~~ (INSERT ——— (→)) calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

~~**[At the parties' option, the following supplemental language may be inserted at the end of Section 6.2.1.]**~~

~~The parties agree that the definition for Substantial Completion set forth in Section 1.2.18 of the General Conditions of Contract is hereby modified to read as follows:~~

~~"Substantial Completion is the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes, provided, however, that Substantial Completion shall be deemed to have been achieved no later than the date of issuance of a Temporary Certificate of Occupancy issued by the local building official, if a Temporary Certificate of Occupancy is applicable to the Project."~~

~~6.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved as follows: ~~(Insert any interim milestones ("Scheduled Interim Milestone Dates") for portions of the Work with different scheduled dates for Substantial Completion.)~~. See Schedule in RFQ document.~~

~~6.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.7 of the General Conditions of Contract.~~

~~6.2.4 All of the dates set forth in this Article 6 ("Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.~~

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

6.4 Liquidated Damages. ~~Design-Builder~~ Progressive Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. ~~Design-Builder~~ Progressive Design-Builder agrees that if Substantial Completion is not attained by ~~by [INSERT] (INSERT) ()~~ calendar days after the Scheduled Substantial Completion Date (the "LD Date"), ~~Design-Builder~~ Progressive Design-Builder shall pay Owner ~~[Owner [INSERT] Dollars] [INSERT] Dollars~~ (\$) as liquidated damages for each day that Substantial Completion extends beyond the LD Date. *(If a GMP is not established upon execution of this Agreement, the parties should consider setting liquidated damages after GMP negotiations.)*

~~**[The parties may want to consider the following supplemental language within Section 6.4 if they want to assess liquidated damages for failing to meet Final Completion. In this case, the first sentence in Section 6.2.3 should be deleted and replaced with the following language.]**~~

~~Design-Builder understands that if Final Completion is not achieved within days of Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Final Completion is not achieved within () days of Substantial Completion, Design-Builder shall pay to Owner Dollars (\$), as liquidated damages for each calendar day that Final Completion is delayed beyond the above-referenced number of days.~~

~~**[In lieu of the liquidated damages specified in Section 6.4 or the alternate provided herein, the Parties may decide that the Agreement will provide for actual damages in the event of Project delay, with Owner being cautioned that there is a waiver of consequential damages under Section 10.5.1 of the General Conditions of Contract. In this case, delete Sections 6.4 and 6.5 and insert the following.]**~~

~~6.4 Design-Builder and Owner have agreed not to provide for liquidated damages in this Agreement for failure of Design-Builder to achieve the Contract Time(s) set forth in this Article 6. Design-~~

~~Builder understands, however, that Owner may suffer actual damages in the event the Contract Time(s) set forth herein are not achieved. Owner shall be able to recover damages from Design-Builder to the extent it can demonstrate that said actual damages have been incurred, are directly related and caused by Design-Builder's failure to meet the Contract Time(s) set forth herein, and are not waived by Section 10.5.1 of the General Conditions of Contract. Notwithstanding the foregoing in no event shall Design-Builder's liability for actual damages for delays exceed _____ Dollars (\$_____).~~

6.5 Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties, and any other damages, whether special or consequential, and of whatsoever nature, incurred by Owner which are occasioned by any delay in achieving Substantial Completion, Interim Milestone Dates (if any) or Final Completion.

~~**[The Parties may also desire to cap the liquidated damages payable under this Agreement, in which case the following language should be included at the end of Section 6.5.]**~~

~~Owner and Design-Builder agree that the maximum aggregate liability Design-Builder has for any liquidated damages that may be assessed under this Agreement shall be _____ Dollars (\$_____).~~

6.6 Early Completion Bonus. If Substantial Completion is attained on or before [INSERT] (_____) calendar days before the Scheduled Substantial Completion Date (the "Bonus Date"), Owner shall pay ~~Design-Builder~~Progressive Design-Builder at the time of Final Payment under Section 8.4 hereof an early completion bonus of [INSERT] Dollars (\$ _____) for each day that Substantial Completion is attained earlier than the Bonus Date. *(If a GMP is not established upon execution of this Agreement, the parties should consider setting the early completion bonus after GMP negotiations. If an early completion bonus is applicable to any dates set forth in Section 6.2.2 or 6.2.3 hereof, this Section 6.6 will need to be modified accordingly.)*

~~**[The Parties may also desire to cap the early completion bonus payable under Section 6.6 in which case the following language should be included.]**~~

Owner and ~~Design-Builder~~Progressive Design-Builder agree that the maximum aggregate amount that ~~Design-Builder~~Progressive Design-Builder shall receive as the early Completion Bonus is [INSERT] Dollars (\$ _____).

6.7 ~~**[The Parties may also desire to modify Article 8.2.2 of the General Conditions of Contract relative to compensability of delays that would cause the Contract Time(s) to be extended. In such case, the following option can be used.]**~~

In addition to ~~Design-Builder~~Progressive Design-Builder's right to a time extension for those events set forth in Section 8.2.1 of the General Conditions of Contract, ~~Design-Builder~~Progressive Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price for those events set forth in Section 8.2.1 of the General Conditions of Contract, provided, however, for Force Majeure Events, ~~Design-Builder shall be entitled to an increase in the Contract Price providing that: (i) said events must exceed _____ cumulative days before Design-Builder is entitled to additional compensation; and (ii) said additional compensation shall be limited to:~~

~~**[Check one box only]**~~

~~\$ _____ dollars a day for each day work is delayed beyond the Scheduled Substantial Completion Date.~~

~~or~~

~~the direct costs and expenses Design-Builder can demonstrate it has reasonably actually incurred as a result of such event. As used herein, a Force Majeure Event is an event, circumstance or condition that was unforeseeable and beyond~~

the control of either party or their respective Design Consultants of any tier, contractors, subcontractors, or suppliers at any tier below them.

Article 7

Contract Price

7.1 Contract Price.

7.1.1 Owner shall pay ~~Design-Builder~~Progressive Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of [INSERT] Dollars (\$ →) for the ~~Phase 4~~Step 1 Services, subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the ~~Phase 4~~Step 1 Services compensation is deemed to include all sales, use, ~~consumer~~consumer, and other taxes mandated by applicable Legal Requirements.

7.1.2 For ~~Phase 2~~Step 2 Services, Owner shall pay ~~Design-Builder~~Progressive Design-Builder in accordance with Article 7 of the General Conditions of Contract a contract price ("Contract Price") equal to the Lump Sum amount set forth in Section 7.2 hereof or in the Contract Price Amendment, or equal to the ~~Design-Builder~~Progressive Design-Builder's Fee (as defined in Section 7.4 hereof) plus the Cost of the Work (as defined in Section 7.5 hereof), subject to any GMP established in Section 7.6 hereof or as set forth in the Contract Price Amendment and any adjustments made in accordance with the General Conditions of Contract.

7.1.3 For the specific Work set forth below, Owner agrees to pay ~~Design-Builder~~Progressive Design-Builder, as part of the Contract Price, on the following basis: *(This is an optional section intended to provide the parties with flexibility to identify and price limited services.)*

7.2 Lump Sum. Owner shall pay ~~Design-Builder~~Progressive Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of [INSERT] Dollars (\$ →) ("Contract Price") for the Work for ~~Phase 2~~Step 2 Services, subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, ~~consumer~~consumer, and other taxes mandated by applicable Legal Requirements.

7.3 Markups for Changes. If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Sections 9.4.1.3 or 9.4.1.4 of the General Conditions of Contract, the following markups shall be allowed on such changes:

7.3.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that ~~Design-Builder~~Progressive Design-Builder shall receive a Fee of [INSERT] percent (→ %) of the additional costs incurred for that Change Order, plus any other markups set forth at Exhibit [INSERT] hereto.

7.3.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

[Check one box only]

No additional reduction to account for ~~Design-Builder~~Progressive Design-Builder's Fee or any other markup.

or

An amount equal to the sum of: (a) _____ percent _____ percent (_____ %) applied to the direct costs of the net reduction (which amount will account for a reduction associated with ~~Design-Builder~~Progressive Design-Builder's Fee); plus (b) any other markups set forth at ~~Exhibit~~—Exhibit _____ hereto applied to the direct costs of the net reduction.

7.4 ~~Design-Builder~~Progressive Design-Builder's Fee.

7.4.1 ~~Design-Builder~~Progressive Design-Builder's Fee shall be:

(Choose one of the following:)

_____ Dollars (\$ _____), as adjusted in accordance with Section 7.4.2 below.

or

_____ percent (_____ %) of the Cost of the Work, as adjusted in accordance with Section 7.4.2 below.

7.4.2 ~~Design-Builder~~Progressive Design-Builder's Fee will be adjusted as follows for any changes in the Work:

7.4.2.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that ~~Design-Builder~~Progressive Design-Builder shall receive a Fee of _____ percent _____ percent —((_____ %) of the additional Costs of the Work incurred for that Change Order, plus any other markups set forth at Exhibit _____ hereto.

7.4.2.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

[Check one box only]

No additional reduction to account for ~~Design-Builder~~Progressive Design-Builder's Fee or any other markup.

or

An amount equal to the sum of: (a) _____ a) _____ percent (_____ %) applied to the direct costs of the net reduction (which amount will account for a reduction associated with ~~Design-Builder~~Progressive Design-Builder's Fee); plus (b) any other markups set forth at Exhibit _____ hereto applied to the direct costs of the net reduction.

7.5 Cost of the Work.

7.5.1 The term Cost of the Work shall mean costs reasonably incurred by ~~Design-Builder~~Progressive Design-Builder in the proper performance of the Work. The Cost of the Work shall include only the following:

7.5.1.1 Wages of direct employees of ~~Design-Builder~~Progressive Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site,

provided, however, that the costs for those employees of ~~Design-Builder~~Progressive Design-Builder performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, those rates set forth in an exhibit to this Agreement.

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

7.5.1.3 Wages or salaries of ~~Design-Builder~~Progressive Design-Builder's personnel stationed at ~~Design-Builder~~Progressive Design-Builder's principal or branch offices, but only to the extent said personnel are identified in Exhibit _____ and performing the function set forth in said Exhibit. The reimbursable costs of personnel stationed at ~~Design-Builder~~Progressive Design-Builder's principal or branch offices shall include a _____ percent (_____%) markup to compensate ~~Design-Builder~~Progressive Design-Builder for the Project-related overhead associated with such personnel.

7.5.1.4 Costs incurred by ~~Design-Builder~~Progressive Design-Builder for employee benefits, premiums, taxes, insurance, ~~contributions~~contributions, and assessments required by law, collective bargaining agreements, or which are customarily paid by ~~Design-Builder~~Progressive Design-Builder, to the extent such costs are based on wages and salaries paid to employees of ~~Design-Builder~~Progressive Design-Builder covered under Sections 7.5.1.1 through 7.5.1.3 hereof.

[In lieu of the language in Section 7.5.1.4 above, ~~Design-Builder~~Progressive Design-Builder and Owner may want to include the following language:]

A multiplier of _____ percent (_____%) shall be applied to the wages and salaries of the employees of ~~Design-Builder~~Progressive Design-Builder covered under Sections 7.5.1.1 through 7.5.3.3 hereof.

7.5.1.5 The reasonable portion of the cost of travel, ~~accommodations~~accommodations, and meals for ~~Design-Builder~~Progressive Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work.

7.5.1.6 Payments properly made by ~~Design-Builder~~Progressive Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants.

7.5.1.7 Costs incurred by ~~Design-Builder~~Progressive Design-Builder in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of ~~Design-Builder~~Progressive Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of ~~Design-Builder~~Progressive Design-Builder or those working by or through ~~Design-Builder~~Progressive Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, ~~Design-Builder~~Progressive Design-Builder shall exercise best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained.

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

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

~~7.5.1.10 Costs~~7.5.1.10 Costs of removal of debris and waste from the Site.

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

7.5.1.12 Rental charges and the costs of transportation, installation, minor ~~repairs~~repairs, and replacements, dismantling and removal of temporary facilities, machinery, ~~equipment~~equipment, and hand tools not customarily owned by the workers, which are provided by ~~Design-Builder~~Progressive Design-Builder at the Site, whether rented from ~~Design-Builder~~Progressive Design-Builder or others, and incurred in the performance of the Work.

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

~~7.5.1.14 All~~7.5.1.14 All fuel and utility costs incurred in the performance of the Work.

~~7.5.1.15 Sales~~7.5.1.15 Sales, use, or similar taxes, tariffs, or duties incurred in the performance of the Work.

7.5.1.16 Legal costs, court costs, and costs of mediation and arbitration reasonably arising from ~~Design-Builder~~Progressive Design-Builder's performance of the Work, provided such costs do not arise from disputes between Owner and ~~Design-Builder~~Progressive Design-Builder.

~~7.5.1.17 Costs~~7.5.1.17 Costs for permits, royalties, licenses, ~~tests~~tests, and inspections incurred by ~~Design-Builder~~Progressive Design-Builder as a requirement of the Contract Documents.

~~7.5.1.18 The~~7.5.1.18 The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process, or product required by Owner, paying legal judgments against ~~Design-Builder~~Progressive Design-Builder resulting from such suits or claims, and paying settlements made with Owner's consent.

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

~~7.5.1.20 Costs~~7.5.1.20 Costs incurred in preventing damage, injury, or loss in case of an emergency affecting the safety of persons and property.

~~7.5.1.21 Accounting~~7.5.1.21 Accounting and data processing costs related to the Work.

~~7.5.1.22 Other~~7.5.1.22 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.

[~~Design-Builder~~Progressive Design-Builder and Owner may want to consider adding the following Section 7.5.1.23 to address the payment of warranty work:]

7.5.1.23 Owner and ~~Design-Builder~~Progressive Design-Builder agree that an escrow account in the amount of _____ Dollars (\$ _____) shall be established prior to Final Completion, which escrow shall be used to reimburse ~~Design-Builder~~Progressive Design-Builder for the Costs of the Work incurred after Final Completion to perform warranty Work. The escrow agreement will provide that any sums not used at the expiration of the warranty period shall be returned to Owner, subject to any savings ~~Design-Builder~~Progressive Design-Builder may be entitled to under this Agreement. In the event the warranty escrow account is exhausted, but funds remain under the GMP, Owner shall be obligated to pay ~~Design-Builder~~Progressive Design-Builder the Costs of the Work incurred after Final Completion to perform warranty Work up to the GMP.

7.5.2 Non-Reimbursable Costs. The following shall be excluded from the Cost of the Work:

7.5.2.1 Compensation for ~~Design-Builder~~Progressive Design-Builder's personnel stationed at ~~Design-Builder~~Progressive Design-Builder's principal or branch offices, except as provided for in Sections 7.5.1.1, 7.5.1.2, and 7.5.1.3 hereof.

7.5.2.2 Overhead and general expenses, except as provided for in Section 7.5.1 hereof, or which may be recoverable for changes to the Work.

7.5.2.3 The cost of ~~Design-Builder~~Progressive Design-Builder's capital used in the performance of the Work.

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

(Since the GMP will be agreed upon after execution of this Agreement, the following Section 7.6 has been deleted and will, instead, be included in an amendment to this Agreement setting forth the GMP terms (the Contract Price Amendment). Those terms shall include a contingency of at least 5% of the anticipated GMP.)

~~*(The parties shall comply with the following Section 7.6 based upon whether the GMP is agreed upon before the execution of this Agreement or will be developed and agreed upon after execution of this Agreement. If the parties do not use a GMP, this Section 7.5 shall be deemed inapplicable and compensation to Design-Builder/Progressive Design-Builder shall be based on those fees and costs identified in the balance of this Article 7.)*~~

7.6 The Guaranteed Maximum Price.

~~7.6.1 Design-Builder/Progressive Design-Builder guarantees that it shall not exceed the GMP of _____ Dollars ((\$ _____) _____). Documents used as a basis for the GMP shall be identified in the Contract Price Amendment to this Agreement. Design-Builder/Progressive Design-Builder does not guarantee any specific line item provided as part of the GMP, and GMP and has the sole discretion to apply payment due to overruns in one line item to savings due to underruns in any other line item. Design-Builder/Progressive Design-Builder agrees, however, that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents. (While the Contract Price Amendment will be developed in advance or concurrently with the execution of this Agreement, it is recommended that such exhibit include the items set forth in Section 2.3 above, to ensure that the basis for the GMP is well understood).~~

~~*[In lieu of 7.6.1, Owner and Design-Builder/Progressive Design-Builder may want to include the following language.]*~~

~~Design-Builder/Progressive Design-Builder guarantees that it shall not exceed the GMP of _____ Dollars _____ Dollars ((\$ _____) _____). Documents used as basis for the GMP shall be identified as the Contract Price Amendment to this Agreement.~~

~~Design-Builder/Progressive Design-Builder~~ does not guarantee any specific line item provided as part of the GMP, provided, however, that it does guarantee the line item for its general project management and general conditions costs, in the amount of _____ Dollars ~~Dollars~~ ((\$ _____)), and as set forth in the Contract Price Amendment ("General Conditions Cap"). ~~Design-Builder/Progressive Design-Builder~~ agrees that it will be responsible for paying the applicable general conditions costs in excess of the General Conditions Cap, as well as be responsible for all costs of completing the Work which exceed the GMP, as said general conditions line item and the GMP may be adjusted in accordance with the Contract Documents, including but not limited to the markups for Change Orders set forth in Section 7.3 herein.

~~7.6.2~~ The GMP includes a Contingency in the amount of ~~[INSERT; MUST BE AT LEAST 5% OF CONTRACT VALUE]~~ Dollars ~~VALUE]~~ Dollars ((\$ _____)) which is available for ~~Design-Builder/Progressive Design-Builder's~~ exclusive use for unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs may include: (a) trade buy out differentials; (b) overtime or acceleration; (c) escalation of materials; (d) correction of defective, damaged/damaged, or nonconforming Work, design errors or omissions, however caused; (e) Subcontractor defaults; or (f) those events under Section 8.2.2 of the General Conditions of Contract that result in an extension of the Contract Time but do not result in an increase in the Contract Price. The Contingency is not available to Owner for any reason, including changes in scope or any other item which would enable ~~Design-Builder/Progressive Design-Builder~~ to increase the GMP under the Contract Documents. ~~Design-Builder/Progressive Design-Builder~~ shall provide Owner notice of all anticipated charges against the Contingency, and ~~Contingency~~ and shall provide Owner as part of the monthly status report required by Section 2.1.2 of the General Conditions of Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. ~~Design-Builder/Progressive Design-Builder~~ agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, ~~Design-Builder/Progressive Design-Builder~~ will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. ~~Design-Builder/Progressive Design-Builder~~ agrees that if ~~Design-Builder/Progressive Design-Builder~~ is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

~~7.6.3~~ Savings.

~~7.6.3.1~~ If the sum of the actual Cost of the Work and ~~Design-Builder/Progressive Design-Builder's~~ Fee (and, if applicable, any prices established under Section 7.1.3 hereof) is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall be shared as follows:

(Choose one of the following:)

_____ percent (_____ %) to ~~Design-Builder/Progressive Design-Builder~~ and _____ percent (_____ %) to Owner.

or

The first _____ Dollars (\$ _____) of Savings shall be provided to ~~(choose either Design-Builder/Progressive Design-Builder or Owner)~~ _____, with the balance of Savings, if any, shared _____ percent (_____ %) to ~~Design-Builder/Progressive Design-Builder~~ and _____ percent (_____ %) to Owner.

~~7.6.3.2 Savings shall be calculated and paid as part of Final Payment under Section 8.4 hereof, with the understanding that to the extent Design-Builder/Progressive Design-Builder incurs costs after Final Completion which would have been payable to Design-Builder/Progressive Design-Builder as a Cost of the Work, the parties shall recalculate the Savings in light of the costs so incurred, and Design-Builder/Progressive Design-Builder shall be paid by Owner accordingly.~~

7.7 Allowance Items and Allowance Values.

7.7.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the Contract Price Amendment or the Proposal.

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

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

7.7.4 The Allowance Value includes the direct cost of labor, materials, equipment, transportation, taxes, and insurance associated with the applicable Allowance Item. All other costs, including design fees, ~~Design-Builder/Progressive Design-Builder~~'s overall project management and general conditions costs, overhead and Fee, are deemed to be included in the original Contract Price, and are not subject to adjustment notwithstanding the actual amount of the Allowance Item.

[Alternatively, the parties may want to delete Section 7.7.4 and add the following provision.]

In the event the actual direct cost of labor, materials, equipment, transportation, taxes, and insurance associated with the applicable Allowance Item is _____ percent (_____%) greater than or less than the Allowance Value, ~~Design-Builder/Progressive Design-Builder~~ and Owner agree that ~~Design-Builder/Progressive Design-Builder~~'s right to Fee and markup shall be determined in accordance with Section 7.4.

7.7.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 7.7.4. The amount of the Change Order shall reflect the difference between actual costs incurred by ~~Design-Builder/Progressive Design-Builder~~ for the ~~particular Allowance/Allowance~~ Item and the Allowance Value.

7.8 Performance Incentives.

7.8.1 Owner and ~~Design-Builder/Progressive Design-Builder~~ have agreed to the performance incentive arrangements set forth in Exhibit _____.

[The parties are encouraged to discuss and agree upon performance incentives that will influence project success. These incentives may consist of Award Fees, incentives for safety, personnel retention, client satisfaction, and similar items.]

Article 8

Procedure for Payment

8.1 Payment for Preliminary Services. ~~Design-Builder~~Progressive Design-Builder and Owner agree upon the following method for partial and final payment to ~~Design-Builder~~Progressive Design-Builder for the services hereunder: *(Insert terms.)*

8.2 Contract Price Progress Payments.

8.2.1 ~~Design-Builder~~Progressive Design-Builder shall submit to Owner on the _____
(_____) day of each month, beginning with the first month after the Date of Commencement, ~~Design-Builder~~Progressive Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

8.2.2 Owner shall make payment within ten (10) calendar days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

8.2.3 If ~~Design-Builder~~Progressive Design-Builder's Fee under Section 7.4 hereof is a fixed amount, the amount of ~~Design-Builder~~Progressive Design-Builder's Fee to be included in ~~Design-Builder~~Progressive Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of ~~Design-Builder~~Progressive Design-Builder's Fee.

8.3 Retainage on Progress Payments.

~~8.3.1 Owner will retain _____ percent (%) of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional retention amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.~~

~~*[Design-Builder and Owner may want to consider substituting the following retainage provision.]*~~

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

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

[If Owner and ~~Design-Builder~~Progressive Design-Builder have established a warranty reserve pursuant to Section 7.5.1.23 above, the following provision should be included.]

If a warranty reserve has been established pursuant to Section 7.5.1.23 above, Owner shall at the time of Substantial Completion retain the agreed-upon amounts and establish an escrow account as contemplated by Section 7.5.1.23 above.

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

8.5 Interest. Payments due and unpaid by Owner to ~~Design-Builder~~Progressive Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) calendar days after payment is due at the rate of percent (~~(~~___ %) per month until paid.

8.6 Record Keeping and Finance Controls. ~~Design-Builder~~Progressive Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. ~~Design-Builder~~Progressive Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time to time, upon reasonable notice, ~~Design-Builder~~Progressive Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to the Work, all of which ~~Design-Builder~~Progressive Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at ~~Design-Builder~~Progressive Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and ~~Design-Builder~~Progressive Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, but the composition of such multiplier or markup is not subject to audit. Any lump sum agreed to by the Owner and ~~Design-Builder~~Progressive Design-Builder as part of this Agreement is not subject to audit.

Article 9

Termination for Convenience

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

9.1.1 All services ~~performed~~performed, and Work executed and for proven loss, cost, or expense in connection with the services and Work ~~performed prior to the termination date~~;

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

9.1.3 ~~(Choose one of the following:)~~

~~The fair and reasonable sums for overhead and profit on the sum of items 9.1.1 and 9.1.2 above.~~

or

Overhead and profit in the amount of _____ percent
(_____ %) on the sum of items 9.1.1 and 9.1.2 above.

~~9.2 — In addition to the amounts set forth in Section 9.1 above, Design-Builder shall be entitled to receive one of the following as applicable:~~

~~9.2.1 — If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid _____ percent (_____ %) of the remaining balance of the Contract Price or, if a GMP has not been established, the remaining balance of the most recent estimated Contract Price.~~

~~9.2.2 — If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid _____ percent (_____ %) of the remaining balance of the Contract Price or, if a GMP has not been established, the remaining balance of the most recent estimated Contract Price.~~

9.3 If Owner terminates this Agreement pursuant to Section 9.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 5.3 hereof. Such rights may not be transferred or assigned to others without ~~Design-Builder~~Progressive Design-Builder's express written consent and such third parties' agreement to the terms of Article 5.

[The following Article 10 should only be used if Owner and ~~Design-Builder~~Progressive Design-Builder agree to establish their respective representatives at the time the Agreement is executed rather than during the performance of the Project.]

Article 10

Representatives of the Parties

10.1 Owner's Representatives.

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

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

10.2 ~~Design-Builder~~Progressive Design-Builder's Representatives.

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

10.2.2 ~~Design-Builder~~Progressive Design-Builder designates the individual listed below as its ~~Design-Builder~~Progressive Design-Builder's Representative, which individual has the authority

and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: (Identify individual's name, title, address, and telephone numbers.)

Article 11

Bonds and Insurance

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

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

Performance Bond.

(Check one box only. If no box is checked, then no bond is required.)

Required Not Required

Payment Bond.

(Check one box only. If no box is checked, then no bond is required.)

Required Not Required

Other Performance Security.

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

Required Not Required

Article 12

Other Provisions

12.1 ~~Other provisions, if any, are as follows: (Insert any additional provisions.)~~ Section 10.1 of the General Conditions is revised as follows:

Requests for Contract Adjustments and Relief.

12.1.2 If either ~~Design-Builder~~Progressive Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) calendar days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual

adjustment or relief requested and the basis of such request. The giving and content of notices required by this Section shall be an absolute condition precedent to the ~~Design-Builder~~Progressive Design-Builder's right to make any claim against Owner and any failure by ~~Design-Builder~~Progressive Design-Builder to comply with this condition precedent shall waive and be a complete bar to any claim or other adjustment to this Agreement.

12.2 Section 10.2 of the General Conditions is revised as follows:

Dispute Avoidance and Resolution

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

12.2.2 ~~Design-Builder~~Progressive Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between ~~Design-Builder~~Progressive Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) calendar days of a written notice, as provided for in Section 12.1 unless the Owner and ~~Design-Builder~~Progressive Design-Builder mutually agree in writing otherwise.

12.2.3 If a dispute or disagreement cannot be resolved through ~~Design-Builder~~Progressive Design-Builder's Representative and Owner's Representative within fourteen (14) calendar days of the written notice, as provided in Section 12.2.2, ~~Design-Builder~~Progressive Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) calendar days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) calendar days prior to any meetings between the Senior Representatives, the parties will exchange relevant and/or requested information that will assist the parties in resolving their dispute or disagreement.

12.2.4 If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) calendar days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by the Owner and ~~Design-Builder~~Progressive Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) calendar days of the submission of the dispute to mediation. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is ~~located, unless~~located unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

12.2.5 Claims, disputes, or other matters in controversy arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution.

12.3 Section 10.1 of the General Conditions is revised as follows:

Litigation.

12.3.1 Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 12.2 above, shall be decided by in litigation in a Court of competent jurisdiction in Washington ~~the state~~ in which the Project is located.

12.4 Inclusion of Underutilized Firms. Participation of minority/woman ~~owned~~owned, and controlled business enterprises is encouraged. The ~~Design-Builder~~Progressive Design-Builder agrees that it shall actively solicit the inclusion of minority group members and solicit bids for the subcontracting of goods or services from qualified minority businesses, including firms certified as DBE, W/MBE, or SBE firms by the Office of Minority & Women's Business Enterprises and/or firms certified as a veteran owned business by the Washington State Department of Veterans Affairs ("Minority Firms"). Design Builder agrees it shall diligently attempt to award subcontracts to Minority Firms, as set forth in its response to the Owner's Request for Proposal, and, accordingly, agrees to submit plans for inclusion of Minority Firms as subcontractors and suppliers. The ~~Design-Builder~~Progressive Design-Builder further agrees to consider the grant of subcontracts to said firms on the basis of substantially equal proposals in the light most favorable to said firms.

12.5 Indemnification.

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

12.5.2 In claims against any person or entity indemnified under this Section 12.5 by an employee of the ~~Design-Builder~~Progressive Design-Builder, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 12.5 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the ~~Design-Builder~~Progressive Design-Builder or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts. For the purposes of the foregoing indemnification provision only, and only to the

extent of claims against ~~Design-Builder~~ Progressive Design-Builder by Owner under such indemnification provisions, ~~Design-Builder~~ Progressive Design-Builder and its Subcontractors specifically waive any immunity it or they may be granted under the Washington State Industrial Insurance Act, Title 51 RCW.

12.2 Listing of Exhibits and documents incorporated herein:

Exhibit A – Owner’s Project Criteria

Exhibit B – Scope of Services

DBIA Document No. 535, Standard Form of General Conditions of Contract Between Owner and ~~Design-Builder~~ Progressive Design-Builder (2010 Edition) ("General Conditions of Contract")

Contract Price Amendment, if any.

[Section 2.3.1 of the General Conditions of Contract sets forth a traditional negligence standard as it relates to the ~~Design-Builder~~ Progressive Design-Builder’s performance of design professional services. If the Basis of Design Documents identify specific performance standards that can be objectively measured, the parties by including the following language agree that the ~~Design-Builder~~ Progressive Design-Builder is obligated to achieve such standards.]

Notwithstanding Section 2.3.1 of the General Conditions of Contract, if the parties agree upon specific performance standards in the Basis of Design Documents, the design professional services shall be performed to achieve such standards.

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

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

Article 13

Limitation of Liability

13.1 Limitation. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of ~~Design-Builder~~ Progressive Design-Builder, its Design Consultants, and Subcontractors, surety (if any) and their respective officers, directors, employees, and agents, and any of them, to Owner and anyone claiming by, through or under Owner, for any and all claims, losses, liabilities, costs, or damages whatsoever arising out of, resulting from, or in any way related to, the Project or this Agreement from any cause, including but not limited to the negligence, indemnity, professional errors or omissions, strict liability, breach of contract, or warranty (express or implied) shall not exceed _____ percent (___%) of the Contract Price. The parties agree that specific consideration has been given by the ~~Design-Builder~~ Progressive Design-Builder for this limitation and that it is deemed adequate.

In executing this Agreement, Owner and ~~Design-Builder~~ Progressive Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and

each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

OWNER:
DESIGN-BUILDER:

DESIGN-BUILDER PROGRESSIVE

(Name of Owner)
Builder

(Name of ~~Design-Builder~~ Progressive ~~Design-~~

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

Date: _____

Date: _____

Caution: An original DBIA document has this caution printed in blue. This is a printable copy and an original assures that changes will not be obscured as may occur when documents are reproduced.

