

# Arlington Operations Center Redevelopment Project

## Progressive Design-Build Contract

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This **Contract** is made and entered into as of the \_\_\_\_\_, 2023, by and between the following parties, for services in connection with the Project identified below:

**OWNER:**

**Snohomish County**

**DESIGN-BUILDER:**

**Cornerstone General Contractors, Inc.  
11805 North Creek Parkway South, #115  
Bothell, WA 98011**

**PROJECT:**

**Arlington Operations Center Redevelopment Project**

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

# Article 1

## **General**

- 1.1 **Authorization.** This Design-Build Contract (the "Contract") is authorized by and entered in accordance with the Design-Build requirements of RCW 39.10. This Contract shall be interpreted to be consistent with the requirements of those statutory provisions.
- 1.2 **Duty to Cooperate.** County and Design-Builder always commit to cooperate fully with each other and proceed based on trust and good faith to permit each party to realize the benefits afforded under this Contract.
- 1.3 **Definitions.** Terms, words, and phrases used in this Contract shall have the meanings given them in the *General Conditions of Progressive Design-Build Contract Between County and Design-Builder* ("General Conditions").
- 1.4 **Design Services.** Design-Builder shall, consistent with applicable state licensing laws, provide design services, including architectural, engineering, and other design professional services required by this Contract. Such design services shall be provided through qualified, licensed design professionals who are either (i) employed by Design-Builder, or (ii) procured by Design-Builder from independent sources. Nothing in this Contract is intended to create any legal or contractual relationship between County and any independent design professional.

# Article 2

## **Scope of Services**

Design-Builder shall perform all design and construction services, provide all material, equipment, tools, and labor necessary to complete the Work (including Validation, Phase 1 and Phase 2 Services) described in, and reasonably inferable, from the Contract Documents. The Design-Builder is fully responsible to design and to build the Project, as described in the County Initial Programming and Overview, as may be revised in accordance with Section 2.1.2 hereof.

### **2.1 General Services.**

**2.1.1** County has provided Design-Builder with access to the County Provided Information listed in **Exhibit B**. County provides such documents to Design-Builder for information only, and subject to the conditions and qualifications identified in Section 3.2.1 of the General Conditions.

**2.1.2** County's Initial Programming and Overview describing County's preliminary program objectives for the Project are in **Exhibit A**. If County's Initial Programming and Overview have not been developed prior to the execution of this Contract, Design-Builder will assist County in developing the final Project Program, with such service deemed to be the first task of the Validation Phase. The Design-Builder shall review the County's Initial Programming and Overview, including recommendations to County for innovative approaches to the design and construction of the Project. The parties shall meet to discuss Design-Builder's written evaluation of County's Initial Programming and Overview and agree upon what revisions, if any, should be made.

**2.1.3** Design-Builder shall review and prepare a written evaluation of County's Initial Programming and Overview during the Validation Phase, including recommendations to County for innovative approaches to the design and construction of the Project. The parties shall meet to discuss Design-Builder's written evaluation of County's Initial Programming and Overview and agree upon what revisions, if any, should be made to such criteria. Any modifications shall be incorporated into the Phase 1 Proposal, Phase 2 Proposal (Section 2.3) and GMP Amendment (Section 2.3.2.2).

## 2.2 Phased Services.

**2.2.0 Validation Services.** Design-Builder shall perform investigation planning and verification of the County's goals and objectives as required to finalize a Program and Scope for the Project, as set forth the Validation Plan Amendment.

**2.2.1 Phase 1 Preconstruction and Design Services.** Design-Builder shall perform the services of design, pricing, and other services for the Project as may be revised in accordance with Section 2.1 hereof, as set forth in the Phase 1 Amendment. The Phase 1 Scope of Services includes completion of Final Design Documents. However, County and Design-Builder may reach agreement on the GMP Amendment for Phase 2 at any point following Design-Builder's completion of the Basis of Design, including incorporation of any County comments. As a result, Phase 1 may overlap with Phase 2. The Contract Price and GMP for Phase 2 shall be developed during Phase 1 on an open-book basis. Design-Builder's Compensation for Phase 1 Services is set forth in Article 7 of this Contract.

**2.2.2 Phase 2 Services.** Design-Builder's Phase 2 services shall consist of, but not be limited to, ensuring Continuous Operations of County Services at the site, the procurement of all materials and equipment for the Project, the performance of construction services for the Project, development of various documents associated with Phase 2, training of County's operations staff, and the provision of warranty services, all as may be described in the Phase 2 Proposal and GMP Amendment.

**2.2.3 Early Works Packages.** County and the Design Builder may agree to early work packages prior to the GMP Amendment. Scope of work, bonding (consistent with the requirements of Article 11), insurance (consistent with the requirements of Article 11), pricing, and other terms for any Early Work Packages shall be negotiated and memorialized in a written executed Amendment prior to issuance of a notice to proceed. Pricing shall be substantially similar to the pricing structure for Phase 2 set forth in Article 7 of this Contract and any General Conditions and pro-rated to the scope of General Conditions Work included in the early works package.

**2.3 Phase 2 Proposal.** Design-Builder may develop a Phase 2 Proposal at any point following completion of the conceptual design and any other Basis of Design Documents upon which the parties may agree. Design-Builder shall submit a proposal to County (the "Phase 2 Proposal") for the construction for the Project, and associated work, and for the Contract Price. The Contract Price in the Phase 2 Proposal shall be based on the Design-Build Fee (Section 7.5), the Construction General Conditions Fee (Section 7.4), Pass-Through Costs (Section 7.6.3) plus the Cost of the Phase 2 Work (Section 7.6) as provided in Article 7 hereof, presented on an open-book basis, all subject to a Guaranteed Maximum Price (GMP).

**2.3.1** The Phase 2 Proposal shall include the following unless the parties mutually agree otherwise:

**2.3.1.1** The Contract Price, subject to a GMP, shall be the sum of :

- i. Construction General Conditions Price as defined in Section 7.4 hereof;
- ii. Design-Builder's Fee as defined in Section 7.5 hereof;
- iii. The Cost of the Phase 2 Work as defined in Section 7.6 hereof, inclusive of any Design-Builder's Contingency as defined in Section 7.7.2 hereof;
- iv. **Pass Through Costs** as defined in Section 7.6.3 hereof.

**2.3.1.2** Basis of Design documents in a completed state as agreed by County.

**2.3.1.3** A list of the assumptions and clarifications made by Design-Builder in the preparation of the Proposal, which list is intended to supplement the information contained in the drawings and specifications;

**2.3.1.4** The Scheduled Substantial Completion Date upon which the Phase 2 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 **Master 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 Phase 2 Proposal, and which, if performed, shall be the basis for an increase in the GMP and/or Contract Time(s);

**2.3.1.9** An expiration date for the Phase 2 Proposal provided that Design-Builder shall not make the Phase 2 Proposal subject to expiration or withdrawal for at least ninety (90) days after submission and County shall provide its initial review and comment on the Phase 2 Proposal within thirty (30) days of submission;

**2.3.1.10** A Permits Plan detailing the permits and governmental approvals not otherwise addressed in the Contract Documents that County and Design-Builder will need and assigning responsibility for each;

**2.3.1.11** A preliminary training plan, if requested.

**2.3.1.12** A **Project Specific Safety Plan**; and

**2.3.1.13** A construction quality plan.

## **2.3.2 Review and Adjustment to Phase 2 Proposal.**

**2.3.2.1** After submission of the Phase 2 Proposal, Design-Builder will discuss and review it with County. County may require modifications to the Phase 2 Proposal that Design-Builder shall in good faith attempt to accommodate. County must approve the Phase 2 Proposal, as originally submitted, or as modified, and enter into a GMP/Phase 2 Amendment incorporating the agreed Phase 2 Proposal in order for the Design-Builder to proceed to Phase 2, including any previously amended Phase 2 Work.

**2.3.2.2 Acceptance of Phase 2 Proposal.** If County accepts the Phase 2 Proposal, as may be modified, the Contract Price and its basis shall be set forth in an amendment to this Contract (GMP Amendment). Once the parties have agreed upon the GMP Amendment and County has issued a Notice to Proceed with Phase 2, Design-Builder shall perform the Phase 2 Services, all as described in the GMP Amendment. Design-Builder acknowledges and agrees that County's acceptance and execution of the GMP Amendment is subject to approval by the County's Council. Design-Builder further acknowledges and agrees that its execution of the GMP Amendment constitutes certification that there are no claims, obligations, or liens outstanding or unsatisfied for labor, services, material, equipment, taxes, or other items performed, furnished, or incurred

for or in connection with the Phase 1 Services through the date of the GMP Amendment that will in any way affect County's interests.

**2.3.2.3 Failure to Accept Phase 2 Proposal.** If County rejects the Proposal or fails to notify Design-Builder in writing on or within ninety (90) day after submission that it accepts the Phase 2 Proposal, the Phase 2 Proposal shall be deemed withdrawn and of no effect. In such event, County and Design-Builder shall meet and confer as to how the Project will proceed, with County having the following options:

- i. Terminate this Contract and pay Design-Builder for all Work performed through the date of termination;
- ii. Terminate this Contract, pay Design-Builder for all Work performed through the date of termination and contract directly with the Design Consultant and Design Sub-Consultants, if any, for completion of the Phase 1 Scope of Services for the agreed upon Contract Price for Phase 1 Services set forth at Section 7.2 minus payments for all Work performed through the date of termination;
- iii. Require Design-Builder to proceed with remaining Phase 1 Scope of Services for the agreed upon Contract Price for Phase 1 Services set forth at Section 7.2 minus payments for all Work performed through the date of termination;
- iv. Require Design-Builder to perform any specific portion of the Work under this Contract based on the Design-Build Fee (Section 7.5), the Construction General Conditions Fee (Section 7.4), Pass-Through Costs (Section 7.6.3) plus the Cost of the Phase 2 Work (Section 7.6.1) as provided in Article 7 hereof without a GMP Amendment, in which case all references in this Contract to the GMP Amendment shall not be applicable; or
- v. Require Design-Builder to continue to proceed with the Work, until further notice (reserving the right to terminate this Contract pursuant to Section 2.3.2.3.i.) on the basis of the Design-Build Fee (Section 7.5), the Construction General Conditions Fee (Section 7.4), Pass-Through Costs (Section 7.6.3) plus the Cost of the Phase 2 Work (Section 7.6.1) as provided in Article 7 hereof without a GMP Amendment, in which case all references in this Contract to the GMP Amendment shall not be applicable.

**2.3.2.4** If County fails to exercise any of the options set forth in Section 2.3.2.3, Design-Builder shall continue the Work as if County had elected to proceed in accordance with Section 2.3.2.3.v above, and be paid by County accordingly, unless and until County notifies Design-Builder in writing to stop the Work.

## Article 3

### Contract Documents

The Contract Documents are comprised of the following, which are incorporated herein by this reference:

- 3.1** All written and fully executed modifications, amendments, minor changes, and **Change Orders** to this Contract issued in accordance with the General Conditions;
- 3.2** The **GMP Amendment** including the Basis of Design Documents;
- 3.3** The Phase 1 Amendment

**3.4** The Validation Amendment

**3.5** This Contract, including all exhibits and attachments but excluding the County Initial Programming and Overview and County Provided Information attached to this Contract. The County Initial Programming and Overview and County Provided Information are not Contract Documents, and are provided for information only;

**3.6** The General Conditions;

**3.7** Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions;

**3.8** County's Request for Qualifications, its Request for Proposals, and any issued Addenda;

**3.9** Design-Builder's Statement of Qualifications, Proposal, and Attachments accepted by the County.

## **Article 4**

### **Interpretation and Intent**

**4.1** Design-Builder and County, at the time of acceptance of the Phase 2 Proposal by County in full, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents for any conflicts or ambiguities. Design-Builder and County will discuss and resolve any identified conflicts or ambiguities prior to execution of the Phase 2/GMP Amendment.

**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 to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of inconsistencies, conflicts, or ambiguities between or among the Contract Documents discovered after County's acceptance of the Proposal, Design-Builder and County 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 Article 3 herein.

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

**4.4** Design-Builder may propose modifications to and expansion of the County's Initial Programming and Overview. Prior to presenting its Phase 2 Proposal, the Design-Builder shall identify any items in the County's Initial Programming and Overview that conflict with or in any way impede Design-Builder's ability to meet any Performance Standards set forth in the County's Initial Programming and Overview.

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

**4.6** In the event of an ambiguity in the Contract Documents, the parties shall be deemed to have jointly authored them, and as such, nothing shall be construed against or in favor of one party based on its being deemed the sole author.

**4.7** **Changes in the Legal Requirements.** The County and Design-Builder acknowledge that numerous aspects of the Project are governed by federal, state, and local laws, rules, and regulations and that the intent is to complete all Work in compliance with the Legal Requirements. Design-Builder is required to account for applicable changes in the Legal Requirements that occur during Phase 1 in its Phase 2 Proposal, the GMP Amendment, and the Phase 2 schedule. Changes in the Legal Requirements

that become effective prior to execution of the GMP Amendment shall in no event form the basis for an adjustment of Design-Builder's compensation and/or time of performance for Phase 2 Services. Changes in the Legal Requirements that become effective after execution of the GMP Amendment may form the basis for an adjustment to Contract Time or Contract Price, in accordance with the requirements of the General Conditions Section 9.1.3.

## **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, furnished by Design-Builder to County under this Contract ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights, and/or patents, subject to the provisions set forth in Sections 5.2 through 5.5 below.

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

**5.3 County's License upon County's Termination for Convenience or Design-Builder's Election to Terminate.** If County terminates this Contract for its convenience as set forth in Article 9 hereof, or if Design-Builder elects to terminate this Contract in accordance with Section 11.4 of the General Conditions, Design-Builder shall, upon County's payment in full of the amounts due Design-Builder under the Contract Documents, grant County a perpetual license to use the Work Product to complete the Project and subsequently occupy and maintain the Project, and County shall thereafter have the same rights as set forth in Section 5.2 above, conditioned on the following: (a) Any modification, completion or derivation of the Work Product undertaken by County after the effective date of the termination is to the extent of such alteration at County's sole risk and without liability or legal exposure to any Indemnified Party and (b) the County's obligation to provide the indemnity set forth in Section 5.5 herein..

**5.4 County's License upon Design-Builder's Default.** If this Contract is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions, then Design-Builder grants County a perpetual license to use the Work Product to complete the Project and subsequently occupy and maintain the Project, and County 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 was not in default, County shall be deemed to have terminated the Contract for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 5.3 above.

**5.5 County's Indemnification for Use of Work Product.** If County is required to indemnify any Indemnified Parties, identified in Section 5.2, based on the use or alteration of the Work Product under any of the circumstances identified in this Article 5, County shall defend, indemnify, and hold harmless the Indemnified Parties from and against all claims, damages, liabilities, losses, and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product.

## **Article 6**

### **Contract Time**

**6.1 Date of Commencement.** The Validation phase shall commence as directed by the Notice to Proceed. Similarly, Phase 1 Services shall commence within five (5) days of Design-Builder's receipt of

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

## **6.2 Substantial Completion and Final Completion.**

6.2.1 Substantial Completion of the Project shall be achieved no later the date as agreed to in the Master Project Schedule.

6.2.2 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 1.2.27 of the General Conditions.

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

**6.3 Time is of the Essence.** County and 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.** Liquidated damages, if any, shall be established in the Phase 2/GMP Amendment.

## **Article 7**

### **Price**

**7.1 Validation Price.** For the completion of Validation scope of services, the County shall pay the Design-Builder for the Agreed sum as negotiated and added to this Contract by amendment.

**7.2 Phase 1 Price.** For completion of the Scope of Services (**Exhibit D**), County shall pay Design-Builder in accordance with Article 8 of this Contract. Phase 1 Services shall be billed at the billing rates and labor categories as developed and agreed by the County and Amended to this Contract. Any rates agreed to as part of the Validation Amendment, shall not be subject to increase for any Phase 1 services. The Design-Build Fee shall apply to Design-Builder's direct costs incurred during Phase 1, including (a) fully burdened labor costs for all individuals as agreed upon in the Phase 1 Amendment, and (b) payments properly made by Design-Builder to Design-Consultants for performance of Phase 1 Services. Unless otherwise provided in the Contract Documents, the Phase 1 Services compensation excludes Washington State Sales Tax but includes all other taxes mandated by applicable Legal Requirements.

**7.3 Phase 2 Price.** For Phase 2 Services, County shall pay Design-Builder in accordance with Article 8 of this Contract and Article 6 of the General Conditions a contract price ("Contract Price") set forth in the GMP Amendment which shall be equal to the Pass-Through Costs (as defined in Section 7.6.3 hereof), plus Design-Build Fee percentage (as defined in Section 7.5 hereof) applied to the Cost of the Phase 2 Work, plus the Construction General Conditions Fee (as defined in Section 7.4 hereof), plus the Cost of the Phase 2 Work (as defined in Section 7.6.1 hereof), subject to the GMP established in the GMP Amendment and governed by Section 7.7 hereof, and any adjustments made in accordance with the General Conditions.

**7.4 Construction General Conditions Price.** County shall pay the Lump Sum Construction General Conditions Price for all Construction General Conditions Work to be defined in the Phase 2/GMP Proposal. The Construction General Conditions Fee shall be paid monthly based on the percent of Cost of Work completed in the month covered by Design-Builder's pay application during Phase 2. The Construction General Conditions Fee shall cover all Construction General Conditions Work, regardless of whether the work is completed by the Design-Builder, a Key Firm, or Subcontractor.

## 7.5 Design-Build Fee.

**7.5.1** The Design-Build Fee shall be Three and Seventy-Six hundredths percent (3.76%), a multiplier to the (direct) cost of work at any phase, as adjusted only in accordance with Section 7.5.2 below.

**7.5.2** Design-Build Fee may be adjusted as follows for any changes in the Work as set forth in a Change Order and in accordance with the requirements of Article 9 of the General Conditions. It is agreed that Design-Builder shall receive the Design Build Fee for any accepted additional cost incurred and authorized by Change Order.

**7.5.3** The Design-Build Fee is intended to compensate Design-Builder for **all** (direct) costs and expenses **not specifically included** in the Pass-Through Costs (as defined in Section 7.6.3 hereof), the Cost of the Phase 2 Work (as defined in Section 7.6.1 hereof) and the Construction General Conditions Costs (as defined in Section 7.4 hereof). The Design-Build Fee shall compensate Design-Builder for all other costs, including but not limited to the following:

**7.5.3.1** Contractor's profit on all self-performed work.

**7.5.3.2** Profit Margins or similar mark-ups on cost for work performed by related parties or entities of the design builder.

**7.5.3.3** Administration (overhead) costs associated with support staff normally stationed in the Design Builder's home office, such as HR, accounting IT, or similar, unless specifically approved in advance by the County.

**7.5.3.4** Cost of centralized and generally shared information technology, equipment, enterprise software and data processing.

**7.5.3.5** Cost associated with bonuses or profit sharing.

**7.5.3.6** Discretionary costs, such as clothing, awards or similar expenses.

**7.5.3.7** Business and Occupancy (B&O) Taxes.

## 7.6 Cost of the Phase 2 Work.

**7.6.1** Cost of the Phase 2 Work includes only those items expressly defined in this Section 7.6.1 that are reasonably incurred by Design-Builder in the proper performance of the Phase 2 Work. The Cost of the Phase 2 Work shall not include any Pass-Through Costs (as defined in Section 7.6.3 hereof), Construction General Conditions Work (as defined in Section 7.4 hereof), or costs intended to be covered by the Design-Build Fee (as defined in Section 7.5 hereof). For the avoidance of doubt, any confusion about the categorization of cost items between the Cost of the Phase 2 Work and Pass-Through Costs shall be resolved in favor of Pass-Through-Costs. Further, any confusion about the categorization of cost items between the Cost of the Phase 2 Work and Construction General Conditions Fee or Design-Build Fee shall be resolved in favor of Construction General Conditions Fee and Design-Build Fee, respectively.

The Cost of the Phase 2 Work shall include only the following:

**7.6.1.1** Except for those supervisory and administrative personnel who are covered by the Construction General Conditions and employees billed at fully burdened rates as agreed in previous phase amendments, **wages of direct employees** of Design-Builder performing the Work at the Site or, with County's agreement, at locations off the Site.

**7.6.1.2** Except for those supervisory and administrative personnel who are covered by the General Conditions (**Exhibit C**) and employees billed at fully burdened billing rates as

shown in phase amendments, **wages or salaries of Design-Builder's 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.

**7.6.1.3** Except for those supervisory and administrative personnel who are covered by the General Conditions (**Exhibit C**) and employees billed at fully burdened billing rates as shown in phase amendments, **wages or salaries of Design-Builder's personnel stationed at Design-Builder's Project Office, but only to the extent such personnel perform tasks directly associated with the Project.**

**7.6.1.4** The Design-Builder fee multiplier of **3.76%** shall be applied to all Phase 2/GMP direct costs, and the cost of the employees of Design-Builder covered under Sections 7.5.3.1 through 7.5.3.3 hereof to account for overhead and profit.

**7.6.1.5** Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work.

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

**7.6.1.7** Costs of removal of debris and waste from the Site(s).

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

**7.6.1.9** 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 County, paying legal judgments against Design-Builder resulting from such suits or claims, and paying settlements made with County's consent.

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

**7.6.1.11** Costs incurred in preventing damage, injury, or loss in case of an emergency affecting the safety of persons and property except to the extent caused by Design-Builder's negligence.

**7.6.1.12** Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by County.

**7.6.1.13** Site security, temporary fencing, signage and similar security and safety measures for active construction areas.

**7.6.1.14** Costs for agreed-upon Allowance Items as described and defined in Section 7.8 herein.

**7.6.2 Non-Reimbursable Costs.** The following shall be excluded from the Cost of the Phase 2 Work:

**7.6.2.1** Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in connection with Sections 7.6.1.1, 7.6.1.2, and 7.6.1.3, costs associated with Construction General Conditions Work, items intended to be covered by the Design-Build Fee, and Pass-Through Costs.

**7.6.2.2** General expenses not specifically provided for herein.

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

**7.6.2.4** 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, unless the County has approved an Adjustment or Change Order.

**7.6.2.5** Any bonuses or incentive pay that is the obligation of Design-Builder to pay.

**7.6.3 Pass-Through Costs.** The following costs shall be "passed through" and paid without mark-up or any added Design-Build Fee:

**7.6.3.1** Premiums for insurance and bonds required by this Contract or the performance of the Work.

**7.6.3.2** Sales, use, or similar taxes, tariffs, or duties incurred in the performance of the Work.

**7.6.3.3** Costs for permits, royalties, licenses, tests, and inspections.

**7.6.3.4** Costs for the work of any personnel charged at fully burdened, market-based billing rates.

## **7.7 The Guaranteed Maximum Price (GMP).**

**7.7.1** Design-Builder guarantees that it will not exceed any GMP that may be established in the GMP Amendment. Documents used as basis for the GMP shall be identified in the GMP Amendment. ***Design-Builder does not guarantee any specific line item*** provided as part of the GMP, provided, however, **it does guarantee** the line item(s) for its general project management and general conditions costs ("General Conditions Cap"). Design-Builder agrees that it will be responsible for paying the applicable general conditions costs more than 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(s) and the GMP may be adjusted in accordance with the Contract Documents.

**7.7.2** The GMP shall include a Design-Builder's contingency, in an amount that is no less than two-point five percent (2.5%) and no more than five percent (5%) of the estimated Cost of the Work, which will be negotiated between the Design-Builder and the County as a part of the Phase 2 Proposal. The percentage shall depend upon the level of completion of the Design-Build Documents and certainty of subcontractor pricing at that time and depending upon any other risk factors agreed upon between the Design Builder and the County.

The final amount of the contingency shall be stated in the GMP Amendment and included in the GMP amount. **The contingency is a sum established for the Design-Builder's sole use to cover the Design-Builder's costs that are properly reimbursable as a Cost of the Work but not the basis for a Change Order**, such as, for example, design errors and omissions, buy-out or estimating error, post-GMP unanticipated market conditions, scope gaps, coordination between trades, overtime, acceleration requested by Design-Builder, failure of a Subcontractor of any tier, or expediting costs for critical materials.

The Design-Builder shall use the contingency only with the County's prior written consent, which shall not be unreasonably withheld or delayed. Design-Builder shall provide County notice of all anticipated charges against the Contingency and shall provide County as part of the monthly status report required by Section 2.1.2 of the General Conditions an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months.

Design-Builder agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

**7.7.3 Savings.** If the sum of the actual Design-Build Fee (as defined in 7.5 hereof), the Construction General Conditions Price(Section 7.4), Pass-Through Costs (Section 7.6.3) plus the Cost of the Phase 2 Work (Section 7.6.1) as provided in Article 7 hereof is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference (“Savings”) may be incorporated back into the Project as agreed, or returned to the County. The Design Builder will keep the County informed of the status of all costs and opportunities to increase the outcomes of the project.

## **7.8 Allowance Items and Allowance Values.**

**7.8.1** Any and all Allowance Items, as well as their corresponding Allowance Values, shall be set forth in the GMP Amendment.

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

**7.8.3** No Work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from County. County agrees that if Design-Builder is not provided written authorization to proceed by the date set forth in the Project Schedule approved with the GMP Amendment, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

**7.8.4** The Allowance Value includes the direct cost of labor, materials, equipment, transportation, taxes, and insurance associated with the applicable Allowance Item.

**7.8.5** Whenever the actual cost for an Allowance Item is more than or less than the stated Allowance Value, the Design-Builder shall report such difference to County so that County can maintain a running tally of Allowance Item costs against Allowance Values. Prior to final payment, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 7.8.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for all Allowance Items and the total Allowance Value.

## **Article 8**

### **Procedure for Payment**

**8.1 Validation Payments.** Validation Services shall be by the County based on a reimbursable, not-to-exceed price in accordance with the Validation Plan Amendment. Validation expenses may be invoiced to the County on a monthly basis, on the day agreed to during Partnering activities. Application for payment will be based on cost incurred during the previous payment period and will be reviewed for consistent with the agreed cost, schedule and deliverables received.

**8.2 Phase 1 Payments.** Phase 1 Services shall be paid by County based on the not-to-exceed **Phase 1 price** and the fully burdened billing rates and labor categories as will be agreed upon in the Phase 1

Amendment. No markups beyond those included in **the Phase 1 Amendment** shall be added to billings from any subconsultants or subcontractors for Phase 1 services. Fully burdened billing rates and labor categories shall not be subject to any overtime pay obligations incurred by Design-Builder nor any rate increases during Phase 1.

8.2.1 Phase 1 Services may be invoiced to the County on a monthly basis on the day agreed to during Partnering activities. Application for payment will be based on cost incurred during the previous billing cycle. Draft applications for payment will be reviewed and agreed during weekly project meetings to ensure that costs and expenses are paid as incurred and not held until a later billing period.

### **8.3 Phase 2 Payments.**

**8.3.1** Progress payments will be made monthly for work duly certified, approved, and performed during the calendar month preceding the Application in accordance with the following procedure:

**8.3.1.1 Draft Application.** Design-Builder shall submit to County an accounting of the current progress of the Work as compared to Design-Builder's Master Project Schedule, and a draft, itemized application for payment for work performed during the current payment period on a form supplied or approved by County. This shall not constitute a payment request. Design-Builder and County shall discuss regarding the current progress of the Work and the amount of payment to which Design-Builder is entitled. County may on occasion request Design-Builder to provide data substantiating Design-Builder's right to payment, such as, but not limited to copies of invoices from Subcontractors of any tier, and reflecting retainage as provided elsewhere in the Contract Documents.

**8.3.1.2 Payment Request.** After Design-Builder and County have met and agreed regarding the updated draft application, and Design-Builder has furnished all progress information required and all data requested by County under 8.3.1.1 above, Design-Builder shall submit Design-Builder's Application for Payment for Work completed during the previous month in accordance with Article 6 of the General Conditions on a form supplied or approved by County. Among other things, the Application shall attest those prevailing wages have been paid in accordance with the pre-filed statements of intent to pay prevailing wages on file with County and that all payments due Subcontractors of any tier from County's payment the prior month have been made.

**8.3.1.3 Disputed Amounts.** If Design-Builder believes it is entitled to payment for Work performed during the prior billing cycle in addition to the agreed-upon amount, Design-Builder may, , submit to County along with the approved payment request a separate written payment request specifying the exact additional amount due, the category in the Schedule of Values in which the payment is due, the specific Work for which the additional amount is due, and why the additional payment is due. Furthermore, Design-Builder and all Subcontractors shall file with County certified copies of all payroll records relating to the additional amount due. Disputed Amounts are due ten (10) working days following the prior approved Payment Application.

**8.3.1.4 Validity of Payment Requests.** A payment request shall not be valid unless it complies with the requirements of the Contract Documents.

**8.3.2** County shall make payment within 30 days after County's receipt of each properly submitted and accurate Application for Payment, but in each case less the total of payments previously made, less retainage, and less amounts properly withheld under Section 6.3 of the General Conditions.

### **8.4 Retainage on Phase 2 Progress Payments.**

**8.4.1** Pursuant to Chapter RCW 60.28, the County will retain five percent of each approved Application for Payment to be retained as a trust fund for the protection and payment of the claims of any person arising under the contract and the state with respect to taxes imposed pursuant to Titles 50, 51, and 82 RCW which may be due from Design-Builder. The moneys reserved may, at the option of Design-Builder, be retained in accordance with the provisions of Chapter 60.28 RCW.

**8.4.2** If the Design-Builder elects to submit a retainage bond on behalf of itself or one or more of its Subcontractors in accordance with Chapter 60.28 RCW, each such bond must be issued on a form acceptable to County by a surety licensed to do business in the state where the Work is located with an A.M. Best rating of A-/IX or better on behalf of Design-Builder or A-/V on behalf of a Subcontractor. Design-Builder is responsible for submitting retainage bond(s) that meet these requirements to County on behalf of itself and/or any Subcontractor. County will not accept retainage bonds submitted directly to it by a Subcontractor.

**8.4.3** Sixty (60) days after Final Acceptance of the entire Work, which is an action by the Council, County shall release to Design-Builder all retained amounts in accordance with chapter RCW 39.12 and chapter RCW 60.28, provided that Design-Builder has submitted: (1) pursuant to RCW 39.12.040, an "Affidavit of Wages Paid" from Design-Builder and from each Subcontractor of any tier certified by the Industrial Statistician of the Department of Labor and Industries, with the fees paid by Design-Builder or Subcontractor of any tier, (2) pursuant to RCW 60.28.021, certificates from the Department of Revenue, the Employment Security Department, and the Department of Labor and Industries. If there are either unpaid taxes or unsatisfied claims of lien against the retained percentage, disbursement of retainage funds will be made in accordance with state law.

**8.5 Payment to Subcontractors.** Design-Builder shall ensure payment to any Subcontractor (or Sub-Subcontractor), at any tier every thirty (30) days for any Work satisfactorily completed and not disputed, regardless of being paid by the County. The Design-Builder and the County jointly commit to reviewing and agreeing eligible costs, back up and completed work as they become due and available for review.

**8.6 Final Payment.** Design-Builder shall submit its Final Application for Payment to County in accordance with Section 6.7 of the General Conditions. County shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within 30 days after County's receipt of the Final Application for Payment, provided that (a) Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions and (b) County shall have the right to withhold all amounts to which County is entitled to withhold pursuant to Section 6.3 of the General Conditions.

**8.7 Interest.** Payments due and unpaid by County to Design-Builder, whether progress payments or final payments, shall bear interest as specified by RCW 39.76.

**8.8 Record Keeping and Finance Controls.** Design-Builder acknowledges that this Contract is to be administered on an *Open-Book* arrangement relative to the Cost of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents.

During the performance of the Work and for a period of six (6) years after Final Payment, County and County's accountants shall be afforded access to, and the right to audit from time to time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to the Work, all of which Design-Builder shall preserve for a period of six (6) years after Final Payment.

Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the County and Design-Builder as part of this Contract are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Contract, but the composition of such multiplier or markup is not subject to audit.

## **Article 9**

### **Termination for Convenience**

**9.1** In addition to County's other termination rights in the General Conditions to Contract, County may terminate the Contract for convenience. Upon ten (10) days' written notice to Design-Builder, County may, for its convenience and without cause, elect to terminate this Contract or any portion of this Contract. In such event, County shall (subject to the limitation set forth in Section 8.3 above) pay Design-Builder for that portion of the Contract Price that corresponds to the percentage of completion of Work in accordance with the Contract Documents, plus the reasonable administrative costs of the termination, but shall not be entitled to any other costs or damages whatsoever (including without limitation fee or profit on terminated Work).

**9.2** The total sum to be paid to Design-Builder under this Article 9 shall not exceed the Contract Price as reduced by the amount of payments otherwise made, the price of Work not terminated, and as otherwise permitted by this Contract. The amounts payable to Design-Builder shall exclude the fair value of property not under County's control which is destroyed, lost, stolen or damaged to become undeliverable to County.

**9.3** Any claim, request for equitable adjustment or other demand for extra compensation or time extension by Design-Builder arising from or related to acts, events, occurrences, or omissions prior to the effective date of the convenience termination shall continue to be subject to and resolved in accordance with the rules (contractual or legal, express, or implied) in effect prior to the termination. The convenience termination will not convert this Contract into a cost reimbursement contract.

## **Article 10**

### **Representatives of the Parties**

#### **10.1 County's Representatives.**

**10.1.1** County designates the individual listed below as its Project Manager ("County's Project Manager"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.7.2 of the General Conditions to the extent permitted by the Legal Requirements:

Randy Blair ([randy.blair@snoco.org](mailto:randy.blair@snoco.org))

**10.1.2** County designates the individual listed below as its County's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions to the extent permitted by the Legal Requirements:

Eric Nordstrom ([eric.nordstrom@snoco.org](mailto:eric.nordstrom@snoco.org))

#### **10.2 Design-Builder's Representatives.**

**10.2.1** Design-Builder designates the individual listed in the table in Section 10.3 below as its Principal-In-Charge ("Design-Builder's PIC"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.7.2 of the General Conditions.

**10.2.2** Design-Builder designates the individual listed in the table in Section 10.3 below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions.

**10.3 Key Personnel.** The Design-Builder has been selected for this Project based on not only its qualifications as a corporate entity(ies), but also upon the basis of the qualifications of the Key Team

Members it intends to employ to perform the Work. Design-Builder agrees to provide all professional personnel necessary, at adequate staffing levels, to perform the required services under this Contract, including the key team members identified below:

<b>Position Title</b>	<b>Name of Individual</b>
Design-Builder Principal In Charge	Dave Flynn
Design-Builder Project Manager	Sam Comer
Design-Builder Design Manager	Trish Sherman
Design-Builder Superintendent	Kurt Belanger
Design-Builder Continuous Operations Lead	Kurt Belanger

These key personnel, all of whom were named in Design-Builder’s proposal submitted in response to the County’s Request for Qualifications and Proposals for the Project, will be assigned to the Project. Except in the event of the death of the employee or their separation of employment with Design-Builder, these key personnel shall remain assigned for the duration of the Project unless otherwise agreed to in writing by the County, which approval shall not be unreasonably withheld.

In the event Design-Builder **proposes to substitute** any of the key personnel due to death or employment termination, the individual(s) proposed must demonstrate the qualifications indicated in the Request for Proposals for their respective role(s), and experience as required to successfully perform such duties. County shall have the sole right to determine whether key personnel proposed as substitutes are qualified to work on the Project. Design-Builder will remove from the Project any personnel assigned to the Project if, after the matter has been thoroughly considered by County and Design-Builder, County considers such removal necessary and in the best interest of the Project, and County so notifies Design-Builder in writing and allows a reasonable period for the transition to different personnel.

**10.4 Key Firms.** Design-Builder has been selected for this Project based on not only its qualifications as a corporate entity, but also upon the basis of the qualifications of the key firms it intends to engage to perform the Work. Design-Builder agrees to engage such firms to perform the required services under this Contract, including the key firms identified below:

<b>Firm</b>	<b>Role</b>
Dykeman Architects	Principal Designer
Hargis	Mechanical & Electrical Engineer
Reid Middleton	Civil & Structural Engineer
Facility Planning Services	Industrial Engineer
TRC	Environmental Engineer

These key firms, all of whom were named in Design-Builder proposal submitted in response to the County's Request for Qualifications and Proposals for the Project, will be engaged on the Project. These key firms shall be engaged for the complete scope identified in the Design-Builder's proposal. In the event Design-Builder proposes to substitute any of the key firms, Design-Builder shall demonstrate that the replacement firm possesses sufficient qualifications to perform the Work in question. County shall have the sole right to determine whether key firm proposed as substitutes is qualified to work on the Project.

## Article 11

### **Bonds and Insurance**

**11.1 Design-Builder's Insurance** The Design-Builder, its consultants, designers, subcontractors, and sub-sub-contractors shall maintain Insurance and Bond coverage as stated in this Section. If a party and/or coverage limits are not explicitly mentioned in this Section, the Design-Builder will assure that Insurance and Bond coverage is held commensurate and proportional to any subcontract scope and risk.

Unless a longer period of coverage is specified elsewhere in this Contract, prior to commencing Work, Design-Builder shall obtain at its sole expense and keep in force the following insurance coverages for a period of 365 days from Substantial Completion of all Work with insurance companies approved by the State Insurance Commissioner pursuant to Title 48 RCW.

(a) All policies will name the County, its officers, officials, employees, and agents as additional insureds, except for the Design-Builder's Professional Liability policy and workers' compensation. Prior to Design-Builder commencing any work, Design-Builder shall provide the County with copies of insurance certificates and additional insured endorsements, all in a form acceptable to the County. The insurance provided must be with an insurance company with a rating of A: VIII or higher in the A.M. Best's Key Rating Guide or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII., which is licensed to do business in the state of Washington (or issued as a surplus line by a Washington Surplus lines broker). County reserves the right to approve the security of the insurance provided, the company, terms and coverage, the certificates of insurance, and endorsements and reserves the right to obtain complete copies of all policies from Design-Builder upon request.

**11.1.1 Coverages and Limits.** The insurance shall provide the minimum coverages and limits set forth below. County shall be provided 45 days written notice of cancellation. County does not warrant or represent that such coverages and limits are appropriate or adequate to protect Design-Builder. Neither County's specification or approval of the insurance in this Contract, nor of its amount, nor providing coverage in these stated minimum limits shall be construed to relieve Design-Builder from liability more than such limits. Coverages are the minimum to be provided and are not limitations of liability under the Contract, indemnification, or applicable law provisions. Design-Builder may, at its expense, purchase larger coverage amounts.

The cost of any claim payments falling within the deductible shall be the sole responsibility of Design-Builder. Design-Builder's insurance shall be primary and non-contributory as respects the County, and any self-insurance or any other insurance maintained by the County shall be excess and not contributing insurance with the Design-Builder's insurance. The Design-Builder's insurance coverage shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability. Design-Builder shall submit upon execution of this Contract Certificates of Insurance and additional insured endorsements acceptable to County as evidence of all insurance required herein:

**11.1.1.1 Commercial General Liability Insurance.** A policy of Commercial General Liability Insurance on an industry standard insurance occurrence form: (CG 00 01) or equivalent, with limits of at least \$1,000,000 per occurrence / \$2,000,000 aggregate, including all coverage known as:

Per Project Aggregate endorsement (CG2503)

Premises/Operations Liability

Products/Completed Operations—for a period of six years following Substantial Completion

Personal/Advertising Injury

Contractual Liability

Independent Contractors Liability

Stop Gap or Employers Contingent Liability

The CGL insurance shall not exclude XCU or subsidence perils

**11.1.1.2 Employers Liability:**

- (1) \$1,000,000 Each Accident
- (2) \$1,000,000 Disease - Policy Limit
- (3) \$1,000,000 Disease - Each Employee

**11.1.1.3 Automobile.** Commercial Automobile Liability with a combined single limit of not less than \$1,000,000 for each accident and including coverage for transportation of pollutants. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If pollutants are to be transported, MCS 90 and CA 99 48 endorsements are required on the Automobile Liability insurance policy unless in-transit pollution risk is covered under a Pollution Liability insurance policy.

**11.1.1.4 Excess or Umbrella Liability.** \$10 million per occurrence and aggregate in excess of the primary CGL during construction and with Product/Completed Operations coverage for a period of six (6) years following Substantial Completion.

**11.1.1.5 Contractors Pollution Liability.** A policy providing coverage for claims involving remediation, disposal, or other handling of pollutants arising out of Design-Builder's work or operations for others; from the transportation of hazardous materials; or involving remediation, abatement, repair, maintenance or other work with lead-based paint or materials containing asbestos. Such Pollution Liability policy shall provide at least \$2,000,000 per occurrence coverage for Bodily Injury and Property Damage. If the services involve lead-based paint or asbestos identification/remediation, the Contractors Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

**11.1.1.6 Design-Builder's Professional Liability.**

- (1) The Design-Builder, the Design Consultant, of Record and any architect or Engineer of Record will maintain for at least six (6) years after Substantial Completion Professional Liability/Errors and Omissions Liability insurance in an amount of not less than \$8,000,000 per claim and \$8,000,000 annual aggregate (deductible of up to \$100,000 permitted).
- (2) The Design-Builder, Design Consultant(s), Design Sub-Consultants, and any other

Subcontractor (including subcontractors of any tier) performing design services will maintain for at least six (6) years after Substantial Completion Professional Liability/Errors and Omissions Liability insurance in an amount of not less than \$2,000,000 per claim and annual aggregate (deductible of **up to** \$150,000 permitted).

(3) The Design-Builder, the Design-Builder's Design Consultant, Engineer, other design consultants, and any Subcontractors of any tier will promptly notify the County of any material changes to, interruption of, or termination of this insurance, and will immediately procure replacement coverage. The Design-Builder, the Design Builder's Design Consultant, Engineer, other design consultants, and any Subcontractor of any tier will either maintain active policy coverage, or an extended reporting period, providing coverage for claims first made and reported to the insurance company within six (6) years of Substantial Completion or termination of the Work under this Contract, whichever occurs first. The County may modify these insurance requirements for certain entities, on a case-by-case basis, by providing written agreement of such modifications. (4) If this policy is issued on a claims-made basis:

- a) The retroactive date must be shared and this date must be before the execution date of the contract or the beginning of contract work.
- b) Insurance must be maintained and evidence of insurance must be provided for at least six (6) years after completion of contract work.
- c) If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Contractor must purchase extended reporting period coverage for a minimum of six (6) years after completion of contract work.
- d) A copy of the claims reporting requirements must be submitted to the Entity for review.

**11.1.1.7 Worker's Compensation.** Worker's Compensation coverage, as required by RCW Title 51. If Design-Builder is qualified as a self-insurer in accordance with RCW 51.14, Design-Builder shall so certify by letter signed by a corporate officer indicating that it is a qualified self-insured and setting forth the limits of any policy of excess insurance covering its employees.

**11.1.1.8 Builder's Risk.** Prior to the start of any construction work the Design-Builder shall procure and maintain during the life of the Contract, or until acceptance of the project by the County, whichever is longer, "All Risk" Builders Risk Insurance at least as broad as ISO form number CP0020 (Builders Risk Coverage Form) with ISO form number CP0030 (Causes of Loss – Special Form) including coverage for collapse, theft, and if applicable, off-site storage and property in transit. The coverage shall insure for direct physical loss to property of the entire construction project, for 100% of the replacement value thereof and include earthquake and flood and including County-furnished equipment valued at \$29,000,000.00. The policy shall include coverage for cost of making good for faulty workmanship and defective design (Leg 3 endorsement), and be endorsed to cover the interests, as they may appear, of Snohomish County, Design-Builder, Subcontractor, and Subcontractors of all tiers with Snohomish County and Subcontractors listed as a Named Insured. In the event of a loss to any or all the work and/or materials therein and/or to be provided at any time prior to the final close-out of the Contract and acceptance of the project by Snohomish County, the Design-Builder shall promptly reconstruct, repair, replace or restore all work and/or materials so destroyed. Nothing herein provided for shall in any way excuse the Design-Builder or its surety from the obligation of furnishing all the required materials and completing the work in full compliance with the terms of the Contract.

**11.1.2 Self-Insurance.** At its sole option and in its sole discretion, County may accept Design-Builder's self-insurance for liability coverage in lieu of insurance from a commercial insurer.

Design-Builder must provide a letter from its Corporate Risk Manager or appropriate Finance Officer representing and warranting the following minimum information: whether the self-insurance program is actuarially funded; the fund limits; any excess declaration pages to meet the contract requirements; a description of how Design-Builder would protect and defend County as an Additional Insured in their Self-Insured layer; and claims-handling directions in the event of a claim. Any amounts due to, sought by, or paid to third party claimants shall be the sole responsibility of Design-Builder, irrespective of whether such amount falls wholly within the level or amount of Design-Builder's self-insured retention.

**11.1.3 Waiver of Subrogation.** Design-Builder and the County waive all rights against each other any of their subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extent of proceeds paid by the Builder's Risk insurance or other property insurance obtained pursuant to the Contract Documents. The policies shall provide such waivers by endorsement or otherwise.

**11.1.4 Design-Build Exclusions.** Design-Builder is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in this Contract. Design-Builder's liability insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build nature of the Project. Any professional liability insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build nature of the Project.

**11.1.5 Insurance Review.** The parties agree that if the price of the Contract, as described in Article 7, increases more than 50%, the County's Risk Manager may, at his or her sole discretion, require, based on reasonably prudent risk management practices and insurance industry standards, alterations to the insurance requirements described in Section 11. Any increase in premium from the Risk Manager's decision under this Section 11.1.5 shall not form the basis of an adjustment to the GMP and shall be the responsibility of Design-Builder. Any failure by the County to exercise its rights under Section 11.1.5 shall not constitute a waiver of any future right of review.

**11.1.6 Subcontractors (at any tier).** Except as otherwise agreed by the County in writing: the Design-Builder shall furnish separate evidence of insurance as stated above for each Subcontractor; and all coverage for Subcontractors shall be commensurate with scope and risk of their subcontract (including specifically that the County, its officers, officials, employees and agents be named as an additional insured on such insurance).

**11.2 Performance and Payment Bond.** Design-Builder shall secure from a surety company acceptable to County, admitted and licensed in the State of Washington, and shall pay for performance and payment bonds covering the faithful performance of the Contract and payment of obligations arising under the Contract Documents, each in the full amount of the GMP plus sales tax, pursuant to RCW 39.08, "Contractor's Bond." The bond shall be on a form provided by County. The bond must be executed by a duly licensed surety company that is listed in the latest Circular 570 of the United States Treasury Department as being acceptable as surety on federal bonds. No surety's liability on the bond shall exceed the underwriting limitations for the respective surety specified in Circular 570. Said bonds shall meet all requirements of RCW 39.08 and shall also be issued by a surety with an A.M. Best rating of A/IX or better. All reinsurers that may be called upon to support or share in a surety's obligations specified in connection with the performance and payment bond obligations required of the Contractor by the Contract Documents must also have an A.M. Best rating of A/VIII or better. The scope of the bond or the form thereof prescribed in these Contract Documents shall in no way affect or alter the liabilities of Design-Builder to County as set forth herein. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond. The bond shall cover all Change Orders without further consent from the surety.

## **Article 12**

### **Other Provisions**

**12.1 Contract Exhibits.** The Exhibits to this Contract, incorporated herein by reference, are as follows:

**Exhibit A** County's Initial Project Program and Overview

**Exhibit B** County Provided Information

**Exhibit C** General Conditions

**Exhibit D** Scope of Services

**Exhibit E** Design Builder's Inclusion Plan (as proposed and accepted)

**Exhibit F** Title VI Assurances

**12.2 CPARB Reporting.** Design-Builder shall provide the County and, if requested, the Capital Projects Advisory Review Board ("CPARB") any project information required to be submitted by the Design-Builder in accordance with the provisions of Chapter 39.10 RCW and the requirements of CPARB.

**12.3 Subcontractor Reporting.** Design-Builder shall submit plans for subcontracting, apprentices, and inclusion of underutilized firms as subcontractors and suppliers as requested by the County. Design-Builder shall track and provide the County and the Office of Minority and Women's Business Enterprises ("OMWBE") any project information required to be submitted by the Design-Builder in accordance with the provisions of Chapter 39.10, 39.12, or similar RCW and as requested by OMWBE.

**12.4 Notices.** All notices required to be given by any party to the other party under this Contract shall be in writing and shall be delivered either in person, by United States mail, or by electronic mail (email) to the applicable Administrator or the Administrator's designee. Notice delivered in person shall be deemed given when accepted by the recipient. Notice by United States mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, and addressed to the Administrator, or their designee, at the addresses as follows. Notice delivered by email shall be deemed given as of the date and time received by the recipient.

County:  
Douglas McCormick, County Engineer  
Snohomish County  
Public Works Department  
3000 Rockefeller Ave., M/S 607  
Everett, WA 98201

Design-Builder:  
Sam Comer  
Cornerstone General Contractors, Inc.  
11805 North Creek Parkway South, #115  
Bothell, WA 98011  
[sam@cornerstonegci.com](mailto:sam@cornerstonegci.com)



## **EXHIBIT A**

### **Initial Program and Project Overview**

*Please note – No information contained here or provided by the County reflects requirements for the project approach. The County fully expects the Design-Builder to engage with the County and key stakeholders to program and design the site and improvements in accordance with the project expectations and goals. Information contained here is for illustrative purposes only and should not be relied upon.*

#### **1. INTRODUCTION**

Snohomish County (“the County”) is seeking to work collaboratively with the selected Design-Builder to achieve the most cost effective, creative, operationally efficient, and programmatically balanced project possible. The goal is to construct a new road maintenance operations facility and site improvements with the best value within the County’s estimated budget of \$25M.

Arlington Operations Center is located at 19620 - 67<sup>th</sup> Ave NE Arlington WA 98223. This facility will address current and anticipated growth and improve response times for road needs in the north and east parts of the County. This project is in support of continuous Road Maintenance operations and emergency response and is designed to address continued community growth in geographically dispersed areas of north Snohomish County.

The Project scope includes design and construction of a new 15,000 sq ft commercial building and new stormwater detention and drainage system including coordination and collaboration with multiple parties affected by the project.

#### **2. FUNDING/AUTHORITY**

This procurement is being conducted pursuant to RCW 39.10.330 after approval from the Capital Projects Advisory Review Board Project Review Committee, obtained on May 29<sup>th</sup>, 2022. The Arlington Operations Center Rehabilitation has been approved by the County Council and has full funding.

Non-voted bonds are being issued to partially fund this project. Bonds were issued in November 2022. The bonds require that **85% of the project budget expended within 3-years of bond issuance**. Meeting this timeframe will be a requirement of the Project.

#### **3. ROAD MAINTENANCE ADMINISTRATION BUILDING (BUILDING A)**

Owner intends to design and construct the facility and related site work for approximately \$25M. This facility will likely have a similar “feel” as the County’s Cathcart Facility, which houses crews and equipment for south County operations.

The Project is expected to include the new construction of an approximately 15,000 square foot commercial structure and associated site improvements in Arlington, Washington. One or two stories is anticipated. In addition to the building, energy, and occupation code requirements for a commercial facility, the County has thought about the following regarding use and needs of the building.

The County has the need to accommodate up to 120 staff, which includes seasonal workers, supervisors, leads, administrative professionals, occasional trainers and similar. The new building needs to have meeting space/rooms (8-10 people), office space, copy/file area, with cubical and “touch

down” workspaces, as well as various options for storage of general supplies, office supplies and cleaning supplies, as well as specialty field equipment, small machines, and tools.

There needs to be a large meeting space (accommodate up to 200 people) that can be divided into smaller meeting spaces or be used as an emergency operations center.\* This large space could also double as roll call and assembly area even at maximum capacity.

*\*Emergency Operations Center: this site is not intended to be the County’s primary emergency operations center, but the intent is to have a place that could operate in a limited capacity in a disaster as a regional emergency response facility but also potentially serve as backup location for our primary emergency operation center should our primary location become damaged/unusable. It needs to be a space that can accommodate communication and technology along with back-up power and utilities in case of a power failure or similar. The County would like it to be a space that can also support such partners as the Sheriff, various cities or other Snohomish County community first-response and disaster relief needs.*

The site and facility need to be secure with controlled/access cards at all entry points, camera, movement detection lighting, and security fencing/barriers around the perimeter. All trucks, equipment, personal and public vehicles need to be secured behind a gate.

The facility needs to have bathrooms, showers, and secure locker space. Given the nature of field operations such as paving, there needs to be a dirty/mud room that is “wet” for easy cleaning. This needs to accommodate paving tack and similar.

Employees need a commercial-type kitchen with eating, storage, and prep areas large enough to host events. Currently crews are receiving and storing large amounts of bottled water service and ice for the large quantities of field crews. If the County needs to continue to use these services, storage will need to be provided (e.g., room for 60 – 5-gallon water bottles and outside freezer for bags of ice).

Outside the facility needs to have covered gathering areas and break areas that can also accommodate vending machines. There needs to be a covered, designated smoking area.

As a modern commercial facility, upgraded utilities and power sources, internet, and similar are all anticipated, along with HVAC and fire suppression. Technology is part of life so proper technology storage, Wi-Fi throughout the buildings and across the site, and extenders, with appropriate power are all expected. As part of the sustainable, high performance of the facility it would be good to have options for alternative, renewable power.

It would be nice to have:

- Built in boot dryers/heaters
- 220 volts and more outlets in kitchen for multiple appliances
- Separate room “mud room” “roll call” etc. for paving crew with appropriate finishes that are accessible from the outside.

[See an itemized list at the end of the document.]

Maintenance Crew comments:

The County’s facility maintenance and operations crew would like careful consideration when suggesting design elements to this building. The Cathcart facility has been a challenge to maintain and operation with systems that go down repeatedly and lack of proper access to make repairs. The facility’s maintenance leads expect to be working closely with the Design Builder to ensure that efficient

operations of this building are a collaborative part of this Project. The County's facility maintenance crew has put together a list of general comments that is part of the Owner's Provided Information (RFQ Attachment E).

#### **4. SITE DEVELOPMENT**

The Design Build team will need to work together to collaborate and manage the unique challenges of the site. The site has known soil contamination that will need to be addressed. The County anticipates the DB team will help think of creative solutions that meet permitting requirements, do not cut corners, and still afford enough cost to accommodate undergrounding the stormwater facilities, construct the operations building, and provide full site improvements with noted exceptions.

The Design Build team will need to work with authorities having jurisdiction (AHJ)s and franchises for all general site improvements and the necessary easements or similar. The retention structure is not up to code and needs to be improved and placed underground. Water, sewer, and power are to the site but are anticipated to need upgrades and options. Frontage improvements, landscaping, and access into and out of the site will most likely be part of the permitting requirements. Additionally, the County anticipates the need to accommodate electrical vehicle charging on site and will need back-up power generation and is willing to look at photovoltaic options.

Although not required, the County anticipates the new building to be on the high side of the property but will consider options.

The County needs more parking on the site and is anticipating parking accommodations beyond any code requirements. Parking for personal vehicles, equipment, County operations vehicles, as well as fleet needs 6 stalls for "dead vehicle" parking. Equipment and heavy machinery often need over-length parking. The County also anticipates other departments will need parking from time to time. The detachable plows and sanding units will need storage, preferably under cover.

Given the nature of NPDES and paving operations, the project must determine the adequacy of current decant and tack waste containment facilities and consider improvements. A wash rack for large equipment and trucks is needed. Material such as sand, salt, treated metal and timber will all need compliant storage. Crews also use hazardous materials that will also need a space to be properly and securely stored.

The site needs to accommodate a fabrication shop, equipment storage area, and tool room/shed for the bridge crew as noted in the end-user overview attached.

It would also be nice to have:

- Fuel pumps
- "Field training and equipment" area
- Covered equipment parking
- Enclosed/heated parking
- Covered storage for "chips"
- Heli pad/landing area (building or ground)
- Upgrade signage to "digital messaging" or reader board

[See itemized list at the end of this document.]

## **5. MAINTAIN PARKING AND BUILDING ACCESS**

It is critical to maintain adjacent property owners' driveways and parking lots with minimal disruption and direct, unhindered access to all adjacent buildings during the construction associated work. The Design-Builder is responsible for working with the City of Arlington and neighboring properties to phase and manage site improvements to maintain access and smooth traffic flow.

## **6. CONTINUOUS OPERATIONS**

North County Road Maintenance and Fleet Operations must stay operational throughout the Project. The Design Builder will be expected to present options and prices that provide the least disruption and impact to Road Maintenance and Fleet operations that will continue to serve north County. Safety and security of County employees, equipment and contractor employees and equipment is expected. Any plan for continuous operations must have a daily communication strategy in multiple formats. Additionally, any continuous operations approaches should include analysis and address such topics as the following:

- Accessibility to, and frequency of, real estate sharing, safety considerations, off-limit, or limited access zones
- Maintaining the minimum amounts of needed operations space
- A continuous operations plan that shows how to efficiently use areas (how much, when to switch, etc.)
- Access to storage, equipment, water, ice, restroom facilities, covered and heated break areas
- Accommodate higher traffic times in mornings and evenings when crews are deployed and returning
- Consider night construction work if possible, or times when road maintenance crews are minimally staffed
- A Continuous Operations Plan must give advanced notice when taking things off-line
- Planning for unknowns
- Seasonal considerations (employee accommodations and equipment e.g., winter paving we can move off site for example, but need access to sand and salt)
- Plan with options, cost considerations, lots of communication and identification of successful operations factors.
- Contractor needed space such as staging and storage for construction equipment.

The County Road Maintenance and Fleet operations work in seasonal approaches with the use of equipment and materials fluctuating with weather and planned projects. The Design Builder is expected to help anticipate work and seasonal need fluctuations and ensure access to the proper equipment, tools, and materials is available when needed.

- Access to all necessary equipment, materials, and tools
- Equipment staged within walking distance of designated POV parking area
- Maintain Emergency response times within District 1 like emergency response times from current facility
- Access to a decant facility
- Access to a vehicle wash facility or services
- Access to quarry products (3/8", 5/8", 2", 2x4", 4x8" etc. per current inventory bins). Commercial quarries may serve this purpose temporarily if needed
- Minimal disruption of road maintenance and road construction capabilities

If temporarily relocating personnel and operations, the following is expected and may be required:

- A temperature-controlled building or buildings that will fully accommodate the number of staff being relocated for the period needed
- Crew cohesion
- Restroom facilities
- Break and smoking areas
- Access to running water
- Secure areas for supervisor/manager positions
- Site security (locking fenced perimeter, etc.)

If certain accommodations cannot be maintained on the current site at certain points during construction, then the County expects other options.

The County has additional funds to improve a Granite Falls property to not only support this project but accomplish future north County operational goals. Along those same lines, the County can make available **additional resources and support sites** that may be considered as a temporary staging or operations locations if they prove advantageous to support Continuous Operations. During Validation, the County expects the Design Builder to help assess useability and value around the use of these support sites which includes, but is not limited to, cost or necessary improvements, time, and logistics in using a different site for either staging or temporary housing of various divisions of crew. (Support site possibilities and general information is provided at the end of this document.)

## 7. EXISTING INFORMATION

Several years ago, the County engaged Otak, Wagner Architects, Shannon & Wilson, and CDM Smith to perform a feasibility study for the site. The purpose of the study was to identify some of the site challenges and constraints to start fund raising and budgeting.

The team also prepared a potential building program through Wagner Architects. The purpose was to understand the general uses and accommodations that could be feasible with the estimated square footage. Those studies are provided with the solicitation. Design Build teams should not rely on this information or consider them a basis of design. All existing information is for illustrative and general information only.

[See *County Provided Information (RFQ Attachment E)*]

## 8. GEOTECHNICAL DATA AND ENVIRONMENTAL CONCERNS

Shannon and Wilson performed early geotechnical and environmental research. Their initial conclusion was that there are levels of contamination on, and around, the project site. The extent and any potential remediation/mitigation strategy will need to be reevaluated by the Design Build team and options will need to be presented. The County expects the Design Build team to bring in subject matter experts to do their own investigation and provide viable and compliant approaches to address any geotechnical and environmental concerns on the project site without depleting the other parts of the project budget. The County desires to accomplish as much contaminated soil remediation as will be feasible and practical with this phase of the site redevelopment.

## 9. OTHER CONSIDERATIONS

### A. SUSTAINABILITY

In addition to other expectations, the Design Build team is anticipated to provide design and construction that minimizes adverse effects on the exterior environment, enhances the quality of the indoor environment and minimizes consumption of energy, water, construction materials, and other

resources. The County's code for Green and High-Performance Building (Ch. 3.06) requires this facility to meet a minimum of LEED Gold rating and attain certification through the U.S. Green Building Council. However, options to exceed sustainability expectations should be considered in planning and designing the site and buildings.

#### **B. AMERICANS WITH DISABILITIES**

The County has a [transition plan](#). The expectation for this Project is that in addition to ADA requirement for municipal buildings and uniform building code, the Design Builder provides design options with accommodations aligned with the US ADA Access Board guidance for [Architectural Barriers](#), including but not limited to accessible routes, general site and building elements, plumbing elements, communication elements, rooms and spaces.

#### **C. LOCAL BUSINESS**

The County has a desire to find meaningful ways to engage and support local businesses in this project.

#### **D. DIVERSE BUSINESSES**

As required by the *Contract Documents*, the Design Build team is expected to provide a plan for the utilization and inclusion of underutilized, disadvantaged, and small businesses on this project. The County is open to various definitions and strategies to accomplish inclusion of these businesses. The County does not expect a Design Build team to only focus on Certified OMWBE firms but to expand participant pools and look at the community around the site. (e.g. tribal and veterans).

#### **E. COMMUNITY**

The County has a rich, diverse community and desires to serve them well. This project is expected to recognize this diversity and maximize opportunities to share in that community, create spaces that represent the various cultures, reflect their needs, and connects in ways that may not be possible in other locations or projects. There are several monuments, artwork, and memorials that the County would like considered in the Project expectations.

### **10. SAFETY**

The County expects that any activity associated with this Project is executed safely. Beyond what is required for municipal and commercial construction requirements (e.g. OSHA, WISHA, L&I, etc.), the Design Build team needs to fulfill the spirit of the requirements and ensure that each activity is performed with the right training, preparation, and equipment. We expect that every possible measure is taken to mitigate any incidents. [See the Contract Documents.]

## ***Arlington Operations Center Reconstruction: End User Overview***

[In no order]

1. Road Maintenance Admin Building
  - a. Roll Call Room/conference and training center—dividable into smaller rooms.
  - b. Audio/Video conferencing system
  - c. Men's bathroom/locker room
  - d. Women's bathroom/locker room
  - e. Mud room (may be combined with locker rooms)
  - f. Lunchroom
  - g. Small conference room
  - h. Supervisor offices
  - i. Lead worker offices
  - j. Operations Manager offices
  - k. Admin/Drop in area and cubicles
  - l. Electrical room
  - m. Electronics room
  - n. Network and communications room
  - o. Copy room
  - p. Storage room
  - q. Janitor closet
  - r. Fire suppression system
  - s. Potable water system
  - t. Sewer system
  - u. Wi-Fi and cellular connectivity throughout
  - v. Storage area for up to 60 – 5-gallon water bottles and space to hold returns
  - w. Covered area for ice storage (consumable ice cube machine)
  - x. Designated smoking area
  - y. Outdoor covered space for inventory vending machines (contracted)
  - z. Key card security at all building entrances
2. Underground surface water retention vault
  - a) Multiple cleanout access points
3. Security perimeter
  - a. Entry barrier (fencing, walls, etc.)
  - b. LAN or sufficient Wi-Fi to all security cams
  - c. Security cameras
  - d. Lighting
  - e. Movement detection lighting
  - f. Employee POV coverage
  - g. Key card entry at all vehicle entrances—needs a method for private company deliveries
  - h. Must accommodate large vehicle entry for at least 1 entrance
  - i. Warning lights for gate opening/closing activity
4. Emergency generator
5. Vehicle wash facility
  - a. Oil water separation system
  - b. Covered wash area

- c. High pressure heated wand with hot water option
  - d. Emergency shutoff access
  - e. Wastewater treatment and containment
  - f. Solids cleanout access
  - g. Underside/wheel wash
6. Inventory storage
- a. Secured area
  - b. Continuity of Operations (COOP) storage
  - c. Heavy duty shelving/vertical storage
  - d. Covered storage and flooring that drains and/or does not retain water for dry goods and construction materials such as hay bales and coir fabric.
  - e. Bridge Crew Storage (if Bridge Crew remains onsite)
    - i. Materials storage area that meets requirements for storing galvanized metal
    - ii. Materials storage area that meets requirements for storing treated timber
    - iii. Covered equipment parking
    - iv. Inventory and tool shed
    - v. Fabrication Center this must be covered and sheltered enough for welding, meet electric requirements for fab work, etc.
    - vi. Larger Haz material storage for weed eaters and gas tools.
  - f. Fenced area for culvert/pipe storage
  - g. Locking storage for hand tools
  - h. BMP/Spills supply covered storage
7. Employee parking area
- a. Number of stalls pursuant to AMC 20.72.010 and OTAK Report for 120 employees; this number should include spares for parks and engineers
  - b. Minimize pedestrian conflict
  - c. Secured perimeter
  - d. Covered by security cameras
8. Light duty parking area
- a. Reference OTAK Report for Number of Stalls
  - b. Closer to admin bldg. than POV parking
  - c. Electric vehicle stations?
9. Containment Pad Covered
- a. Hazardous materials picked up from ROW. Batteries, Paint, Oil, 50-gallon drums, Etc.
10. Heavy duty parking area
- a. Reference OTAK Report for Number of Stalls
  - b. 6 Stalls clearly marked for "Dead Vehicle" parking near Fleet bldg.
  - c. Electrical connections in asphalt and distributor truck bays (for overnight heating)
11. Over-length vehicle parking area
- a. Number of stalls?
  - b. Minimum length?
12. Covered equipment staging area
- a. Spill control
13. Heated vehicle storage building(s)
- a. Consider anti-condensation measures in heated buildings
14. Plows storage area
15. Covered sanders storage area

- a. Crane required
- 16. Sand shed
  - a. Reuse existing if possible
- 17. Sand/Salt mix shed
  - a. Reuse existing if possible
- 18. White salt shed
  - a. Containment as requirements
- 19. Blue salt shed
  - a. Containment as requirements
- 20. Quarry materials bays
  - a. 5/8" bay
  - b. 2" bay
  - c. 2x4" bay
  - d. 4x8" bay
  - e. Bay for larger rock- bridge
  - f. Bay for reusable materials-bridge
  - g. Bay for waste wood temp storage-bridge
  - h. Double washed 3/8" BST chips bay.
    - i. Covered, if possible, to avoid dust/contaminants
    - ii. Minimum 60'x100'
- 21. Materials disposal storage bay(s)
- 22. Waste asphalt bay
- 23. Waste Oil/Emulsion containment facility
  - a. Include secondary containment
  - b. Minimum 5000-gallon capacity
- 24. Calcium Chloride storage and containment facility
  - a. Storage capacity equal or greater than current
  - b. Containment and secondary containment
- 25. Vactor/Sweeper decant facility
  - a. Decant bay(s)
  - b. Solids bay(s)
  - c. Containment
  - d. Water supply requirements?
- 26. Drainage network and system
- 27. Signs storage warehouse
- 28. BST Oil storage tanks
  - a. Containment and secondary containment
  - b. Heated tanks
- 29. Electrical supports heated tanker?
- 30. Electronic reader board along 67<sup>th</sup> Ave NE (not critical)

## Support Site Possibilities

### Granite Falls

*Public Works owns an undeveloped 1.8-acre parcel in Granite Falls on Gun Club Road (Tax Parcel: 30071800207400, no address) that the County would like to see developed as a part of this Project.* The development of this site will assist with PW's long term needs and allow for temporary staging of Arlington crews during this project. Site improvements will include security fencing with automatic gate, paving, stormwater, covered material storage, electrical and water utilities, relocation of a mobile office building from Arlington, and road frontage improvements. These improvements will need to be designed and permitted through the City of Granite Falls.

### Bryant Landfill

Public Works owns a former landfill property north of Arlington on Grandview Road east of State Route 9 (Tax Parcel: 32052700100100, no address) that may be available for staging of materials, equipment, or crews. No project related improvements are planned at this site unless needed to accommodate a temporary staging plan.

### Trafton Pit

Public Works owns a former rock quarry pit NE of Arlington on State Route 530 (Tax Parcel: 32063000400500, no address) that may be available for staging of materials, equipment, or crews. No project related improvements are planned at this site unless needed to accommodate a temporary staging plan.

### Machias Pit

Department of Conservation and Natural Resources (Parks) owns a former gravel quarry pit east of Lake Stevens on N Machias Rd (Tax Parcel: 29061600101600, no address) that may be available for staging of materials, equipment, or crews. No project related improvements are planned at this site unless needed to accommodate a temporary staging plan.

### Material Storage Sites

The following sites have the capability for material storage (not crew or equipment):

- Bunk Foss Rd – paved and gated area at 4723 99<sup>th</sup> Ave SE, Snohomish
- Ramstad Rd – site on NW corner of Ramstad Rd and SR530, west of Oso
- Gold Bar – site north of SR2 at 42819 State Route 2, Gold Bar

### Arlington Airport

The City of Arlington potentially has space for lease around the Arlington Airport for staging of materials, equipment, or crews. The Operations Manager (Marty Wray: 360-403-3477) will be the contact to discuss any potential options.

## **EXHIBIT B COUNTY PROVIDED INFORMATION**

The following is a list of studies, surveys, or similar the County gathered in preparing a budget and planning for the redevelopment of the Arlington Operations Center.

All information is provided as reference and is not to be relied upon or taken as requirements for the project. Per Phase 1 expectations and the General Conditions, the selected Design Builder will need to conduct their own investigations and form their own assessment of needs for the Project.

- 1) Hydrogeologic Assessment – Stormwater Infiltration Facility, Assoc. Earth Sciences (Jan. 2000)
- 2) Facility Stormwater System Design, RW Beck (Jan. 2000)
- 3) Infiltration Ponds & Drainage Features Map
- 4) Phase 1 Site Plan, Otak (2020)
- 5) Infiltration Pond Routing Map
- 6) Phase 1 ESA, CDM Smith (Aug. 2015)
- 7) Revised Program, Snohomish County Road Maintenance Facility, Wagner Architects (Apr. 2020)
- 8) Conceptual Design Memo, Otak (May 2020)
- 9) Conceptual Remediation Cost Estimate Memo, CDM Smith (Jun. 2020)
- 10) Record of Survey, Snohomish County (2006)
- 11) Land Use Master Plan/Landscape Plan (2004)
- 12) Decant Facility Civil Plans, Snohomish County (2003)
- 13) Aviation Easement (2003)
- 14) Electrical Service Exhibit
- 15) Water Service Schematic Map, City of Arlington (2017)

# **Exhibit C**

## **Arlington Operations Center Redevelopment Project**

### **General Conditions of Progressive Design-Build Contract Between County and Design-Builder**

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# **Article 1**

## **General**

### **1.1 Mutual Obligations**

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

### **1.2 Basic Definitions**

**1.2.1** *Additional Services* refers to those services defined or described in Section 2.3.1.8 of the Contract.

**1.2.2** *Allowance Items* are specific portions of the Phase 2 Work set forth in the GMP Amendment with the cost for such Work estimated in an assigned dollar amount.

**1.2.3** *Allowance Values* are the dollar amounts assigned to Allowance Items.

**1.2.4** *Application for Payment* is the Design-Builder's request for payment prepared and submitted in compliance with Article 8 of the Contract and Article 6 of these General Conditions of Contract.

**1.2.5** *Authority Having Jurisdiction* is any regulatory authority, federal, state, or local, who is charged with the enforcement of applicable codes and legal requirements.

**1.2.6** *Basis of Design Documents* are those documents specifically identified in the Phase 2 Proposal and GMP Amendment as being the "Basis of Design Documents" and shall include, but not be limited to, agreed upon modifications to the County's Initial Programming and Overview.

**1.2.7** *Change Order* is defined or described in Section 9.1 of these General Conditions of Contract.

**1.2.8** *Claim* is a demand or assertion by Design-Builder for itself or for the benefit of any Subcontractor or supplier of any tier seeking an adjustment of GMP or Contract Time, or both, or any other relief with respect to the terms of the Contract Documents.

**1.2.8** *Construction Documents* are the documents, consisting of drawings and specifications, to be prepared and/or assembled by the Design-Builder consistent with the agreed Final Program unless an adjustment has been made and is specifically set forth in a Change Order executed by both the County and Design-Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

**1.2.9** *Construction General Conditions Price* is defined or described in Section 7.4 of the Contract.

**1.2.10** *Construction General Conditions Work* includes all work set forth as agreed and included separately in the Phase 2/GMP Amendment.

**1.2.11** *Contract* refers to the Progressive Design-Build Agreement between County and Design-Builder dated \_\_\_\_\_, 2023 (Modified DBIA 544), as negotiated.

**1.2.12** *Contract Documents* are as defined in Article 3 of the Contract.

- 1.2.13** *Contract Price* is defined or described in Section 2.3.1.1 of the Contract.
- 1.2.14** *Contract Time(s)* are the dates for Substantial Completion, Acceptance and Final Completion set forth in, or calculable from, Article 6 of the Contract.
- 1.2.15** *Cost of the Phase 2 Work* is defined or described in Section 7.6 of the Contract.
- 1.2.16** *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.
- 1.2.17** *Design-Build Team* is comprised of the Design-Builder, the Design Consultant (Engineer of Record), and Key Subcontractors (Key Firms) identified by the Design-Builder in its proposal in response to the County's Request for Proposals. The Key Firms are identified in Section 10.4 of the Contract.
- 1.2.18** *Design-Builder* is Cornerstone General Contractors, Inc.
- 1.2.19** *Design-Builder's Contingency* is defined or described in Section 7.7.2 of the Contract.
- 1.2.20** *Design-Build Fee* is defined or described in Section 7.5 of the Contract.
- 1.2.21** *Design Builder's Representative* is defined or described in Section 10.2.2 of the Contract.
- 1.2.22** *Design Builder's Principal-In-Charge* is defined or described in Section 10.2.1 of the Contract.
- 1.2.23** *Design Consultant and/or Engineer of Record* is Key Team Member procured as part of the Design Builder's Team, a licensed design professional or employed or retained to furnish design services required under this Contract. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of the Design Consultant but is retained by the Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents. The Engineer of Record shall be a professional engineer licensed in the state of Washington.
- 1.2.24** *Differing Site Conditions* are defined or described in Section 4.2.1 of these General Conditions of Contract.
- 1.2.25** *Electronic Data* is defined or described in Section 12.1.1 of these General Conditions of Contract.
- 1.2.26** *Final Application for Payment* is defined or described in Section 6.7 of these General Conditions of Contract and 8.4 of the Contract.
- 1.2.27** *Final Completion* is the date on which all Work, except for warranties, is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list and the submission of all documents set forth in Section 6.7.2 of these General Conditions of Contract.
- 1.2.28** *Force Majeure Events* are those unanticipated events that are beyond the control of both Design-Builder and County, including the events of war, floods, labor disputes (but not labor disputes involving Design-Builder), earthquakes, pandemics, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God. Force Majeure Events shall not include known events or conditions (and associated Legal Requirements) in existence at the time of execution of the GMP Amendment.

- 1.2.29** *General Conditions of Contract* refer to this Document.
- 1.2.30** *GMP or Guaranteed Maximum Price* is defined or described in Section 7.6 of the Contract
- 1.2.31** *GMP Amendment* is an amendment to the Contract contingent upon County's approval of the Phase 2 Proposal as defined or described in Section 2.3.2.2 of the Contract.
- 1.2.32** *Hazardous Conditions* are any materials, wastes, substances, and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.
- 1.2.33** *Legal Requirements* are all applicable federal, state, and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.
- 1.2.34** *Notice to Proceed* is a formal written notice from County to Design-Builder instructing it to commence with all or some portion of the Work.
- 1.2.35** *Open-Book* means that all costs and expenses of any kind chargeable to the County shall be open and transparent to County. County has the right, directly or through agents or representatives of its choosing, to access and audit all information used or obtained by Design-Builder in formulating the price in Article 7 of the Contract. Any adjustment to price throughout the Project shall be made on an Open-Book basis as well. Open-Book pricing and payment procedures will not apply to a Lump Sum payment structure.
- 1.2.36** *Owner* is Snohomish County ("County").
- 1.2.37** *County's Initial Programming and Overview* are developed by or for County to describe County's program opportunities and objectives for the Project, including use, space, price, time, site, and expandability requirements, as well as other expectations or wants that may be used to evaluate the Design-Builder's performance of the Work. The County's Initial Programming and Overview are set forth in **Exhibit A** to the Contract.
- 1.2.38** *County's Representative* is defined or described in Section 10.1.2 of the Contract.
- 1.2.39** *County's Project Manager* is defined or described in Section 10.1.1 of the Contract.
- 1.2.40** *Inclusion Plan* is defined or described in Section 2.11.3 of these General Conditions of Contract.
- 1.2.41** *Owner's Representative* is defined as the professional consultant hired by the County to support the administration this Project and alternative contracting method.
- 1.2.42** *Owner Provided Information* will also be known as County Provided Information and are those documents itemized and linked in **Exhibit B** to the Contract.
- 1.2.43** *Pass-Through Costs* is defined or described in Section 7.6.3 of the Contract.
- 1.2.44** *Phase 1 Work* is that portion of the Work defined and described in the Phase 1 Scope of Services and includes but is not limited to the development of the Phase 2 Proposal.
- 1.2.45** *Phase 1 Scope of Services* is included in the Phase 1 Amendment to this Contract.
- 1.2.46** *Phase 2 Work* is that portion of the Work defined and described in the GMP/Phase 2 Amendment.

**1.2.47** *Phase 2 Proposal* is defined and described in Section 2.3 of the Contract.

**1.2.48** *Project* is the Arlington Operations Center Redevelopment and all Work associated herewith.

**1.2.50** *Scheduled Substantial Completion Date* is the date set forth in the Contract, and the Master Project Schedule, at Section 6.2.1 and is subject to adjustment in accordance with these General Conditions of Contract.

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

**1.2.52** *Subcontractor* is any person or entity retained by the Project (Designer or Builder) as an independent contractor, or service provider, to perform a portion of the Work at any tier and shall include materialmen and suppliers.

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

**1.2.54** *Substantial Completion* or *Substantially Complete* means the Work, except for agreed punch list items, is sufficiently complete in accordance with the Contract Documents such that County can occupy and use the Project or a portion thereof for its intended purposes, and Design-Builder has provided all documentation and other information as is required by Section 6.6 of these General Conditions of Contract.

**1.2.55** *Validation Plan* means the accepted scope, schedule and deliverables Awarded to the Design Builder for the work required to verify, validate, and confirm the feasibility of the Project within the County's estimated budget.

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

**1.2.57** *Work Change Directive* is defined and described in Section 9.2 of these General Conditions of Contract.

**1.2.58** *Work Product* is defined and described in Section 5.1 of the Contract.

## **Article 2**

### **Design-Builder's Services and Responsibilities**

#### **2.1 General Services.**

**2.1.1** Design-Builder's Representative shall be reasonably available to County and County's Project Manager and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Project Manager shall communicate regularly with County and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Project Manager, or any Key Staff, may be replaced only with the mutual agreement of County and Design-Builder. Design-Builder shall be lawfully licensed, bonded, and insured in the jurisdiction where the Project is located. The Design-Builder shall be and operate as an independent contractor in the performance of the Work and shall have complete control over and responsibility for all personnel

performing the Work. The Design-Builder is not authorized to enter into any agreements or undertakings for or on behalf of the County or to act as or be an agent or employee of the County.

**2.1.2** Design-Builder shall provide County's Project Manager with a monthly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; (iv) status of all costs and expenses of the Project to the extent provided for in the Contract; and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work, within the GMP, for the Contract Price and within the Contract Time(s).

**2.1.3** Pursuant to Section 2.3.1.4 of the Contract, Design-Builder shall prepare and submit a schedule for the execution of the Phase 2 Work for County's review and response (Project Schedule). The Project Schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when County information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The Project Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. County's review of, and response to, the Project Schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences, and techniques for executing the Work.

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

## **2.2 Design Professional Services.**

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

## **2.3 Standard of Care for Design Professional Services.**

**2.3.1** The standard of care for all design professional services performed to execute the Work shall be the (i) the care and skill necessary to comply with the requirements of this Contract and (ii) care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project, whichever is greater. Notwithstanding the preceding sentence, if the County's Initial Programming and Overview contains specific performance standards for any aspect of the Work, the design professional services shall be performed to achieve such standards.

## **2.4 Design Development Services.**

**2.4.1** Design-Builder and County shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that County may wish to review, which interim design submissions may include design criteria, drawings, diagrams, and specifications setting forth the Project requirements. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1 hereof and Section 2.1.1 of the Contract. On or about the time of the scheduled submissions, Design-Builder and County shall meet and confer

about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3 hereof, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, County shall review and approve the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

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

**2.4.3** County's review and approval of interim design submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Work. Neither County's review nor approval of any interim design submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to County.

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

## **2.5 Legal Requirements.**

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

## **2.6 Government Approvals and Permits.**

**2.6.1** Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

## **2.7 Design-Builder's Construction Phase Services.**

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

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

**2.7.3** Design-Builder shall employ only Subcontractors who are duly licensed in the state of Washington and qualified to perform the Work consistent with the Contract Documents. County approves Subcontractors identified in Section 10.3 of the Contract as Key Firms and Key Personnel. County may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that County's decision impacts Design-Builder's cost and/or time of performance.

**2.7.3.1** The Design-Builder shall include the language of this sub-paragraph 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 County, Design-Builder shall promptly provide documentation to County demonstrating that the Subcontractor meets the subcontractor responsibility criteria below. The requirements of this subsection apply to all subcontractors regardless of tier. At the time of subcontract execution, Design-Builder shall verify that each of its first tier Subcontractors meets the following bidder responsibility criteria:

- a) Have a current certificate of registration as a contractor in compliance with Chapter 18.27 RCW, which must have been in effect at the time of subcontract bid submittal;
- b) Have a current Washington Unified Business Identifier (UBI) number;
- c) If applicable, have:
  - i. Industrial Insurance (workers' compensation) coverage for the subcontractor's employees working in Washington, as required in Title 51 RCW;
  - ii. A Washington Employment Security Department number, as required in Title 50 RCW;
  - iii. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
  - iv. An electrical contractor license, if required by Chapter 19.28 RCW;
  - v. An elevator contractor license, if required by Chapter 70.87 RCW.
  - vi. Receipt of training on the requirements related to public works and prevailing wages under Chapters 39.04 and 39.12 RCW to a person or persons designate by Bidder. This training must be provided by the Department of Labor and Industries (L&I) or by a training provider whose curriculum is approved by L&I. L&I, in consultation with the prevailing wage advisory committee, will determine the length of this training. Bidders that have completed three or more public works projects and have had a valid business license in Washington for three or more years are exempt from the training requirement stated in this subparagraph.
- d) Not be disqualified from bidding on any public works contract under RCW

39.06.010 or 39.12.065(3).

- e) Not be disqualified from bidding on any public works contract under Federal Executive Order 12549.

**2.7.4** Design-Builder assumes responsibility to County for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between County and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

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

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

**2.7.7 Prevailing Wages:** The Design-Builder must comply with the provisions of Chapter 39.12 of the Revised Code of Washington, relative to the employment of Washington residents at or above the prevailing wages for the specific type of work involved as determined by the United States Department of Labor and will be required to certify to this effect prior to each and any payments made by the County. <https://lni.wa.gov/forms-publications/f700-032-000.pdf>

The prevailing rate of wages to be paid to all workers, 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, and any amendments thereto. 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.

In case any wage 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 and his or her decision shall be final and conclusive and binding on all parties involved in the dispute as provided for by RCW 39.12.060, or as amended.

The Design-Builder shall acquaint itself with all conditions affecting labor rates and impending negotiations for labor agreements. The Design-Builder shall pay new schedules, when and if required, without additional cost to the County.

Forms may be obtained from the Department of Labor & Industries. The fees for each "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" shall accompany each form submitted to the Department of Labor & Industries. The Design-Builder is responsible for payment of these fees and shall make all applications directly to the Department of Labor & Industries. Such application, and any supplemental statements which may be necessary, shall be filed in accordance with the practices and procedures required by the Department of Labor and Industries.

Prior to commencing work, each Design-Builder and each and every Subcontractor (subject to prevailing wage) shall file a sworn "Statement of Intent to Pay Prevailing Wages" (L&I Form #F700-029-000) with the Department of Labor and Industries certifying the rate of hourly wages to be paid each classification of laborers, workers, or mechanics employed upon the work by the Design-Builder or Subcontractor which shall be not less than the prevailing rate of wage. Fringe benefits for each job classification to be utilized shall also be included.

Prior to any payment, the Design-Builder and each Subcontractor shall submit to the County a "Statement of Intent to Pay Prevailing Wages" approved by the Washington State Department of Labor & Industries.

Each voucher claim or invoice submitted by a Design-Builder for payment on a project shall state: "Prevailing wages have been paid in accordance with the pre-filed Statement of Intent to Pay Prevailing Wages on file with the public agency in accordance with RCW 39.12.04". Each invoice shall list sales tax as a separate line item.

Retainage shall be held by the County in accordance with Chapter 60.28 RCW.

For projects over \$10,000, the Design-Builder must post an approved copy of the Statement of Intent, (listing the labor classification and wages used on the project) at the job site. In the event the Statement of Intent has not been approved by the Department of Labor & Industries before work begins, the complete listing of prevailing wage rates for that County may be posted and distributed in lieu of the approved Statement of Intent.

The Design-Builder shall use <https://www.lni.wa.gov/licensing-permits/public-works-projects/contractors-employers/contractor-portal> (PWIA) to file weekly certified payrolls.

Upon completion of work, the Design-Builder and each and every Subcontractor (subject to pay prevailing wage) shall file a sworn "AFFIDAVIT OF WAGES PAID" (L&I Form #F700-007-000) with the Department of Labor and Industries certifying the rate of hourly wages paid each classification of laborers, workers, or mechanics employed upon the work by the Design-Builder or subcontractor which shall be not less than the prevailing rate of wage. Fringe benefits for each job classification to be utilized shall also be included.

Upon completion of this contract, the County must receive from the Design-Builder and each and every Subcontractor (subject to prevailing wage) a copy of the "Affidavit of Wages Paid" approved by the State Department of Labor & Industries. Retainage, or Bond, will be released upon receipt of all necessary documentation (including but not limited to releases from the Department of Labor & Industries, Department of Employment Security and, when applicable, Department of Revenue), the settlement of any liens, and in accordance with Chapter 60.28 of the Revised Code of Washington.

The County is required by RCW 39.12.030 to include a provision stating the required prevailing rate(s) in the solicitation and contract documents. To comply with this requirement, the County is providing the following applicable prevailing wage rate information:

A. State of Washington prevailing wage rates published by the Washington State Department of Labor and Industries (L&I) are obtainable from the L&I website address:

<https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>

B. This project is located in Snohomish County; therefore, the Snohomish County wage rates must be used.

C. The effective prevailing wage date is the same date as the Execution Date of the amendment authorizing such work.

A copy of the applicable prevailing wage rates are also available for viewing at the County's Purchasing office located in the Robert J. Drewel Building, 6th Floor, 3000 Rockefeller Avenue, Everett, WA 98201.

Upon request, the County will mail a hard copy of the applicable prevailing wage rates for this Project.

## **2.8 Design-Builder's Responsibility for Project Safety.**

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

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

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

**2.8.4** The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work, including observance of drug testing and all smoking, tobacco, drug, alcohol, parking, safety, weapons, background checks, sexual harassment, and other rules governing the conduct of personnel at the County's property and at the Project Site. The Design-Builder shall remove from the Work and Work Site any employee or other person in violation of this Section 2.8.4 without change to the GMP or Contract Time. Failure to comply with these requirements is grounds for immediate termination of the Contract for Cause.

**2.8.5** The Design-Builder shall comply with the pertinent provisions of RCW 49.17, "Washington Industrial Safety and Health Act," and Ch. 296-155 WAC, "Safety Standards for Construction Work."

**2.8.6** Pursuant to RCW 49.70, "Worker and Community Right to Know Act," and WAC 296-307-560 et seq., the Design-Builder shall provide the County copies of and have available at the Project Site a workplace survey and material safety data sheets for all "hazardous" chemicals under the control or use of Design-Builder or any Subcontractor of any tier at the Project Site.

**2.8.7** A Site-specific Covid-19 safety plan is required. The Design-Builder shall prepare and implement a Site-specific Covid-19 safety plan, which complies with applicable construction job site requirements as established by the state of Washington's Phased Business Activity Guidelines. The Covid-19 safety plan must be available at the job site and readily available upon request for inspection by state and local authorities. The Design-Builder shall designate a supervisor in its Site-specific Covid-19 safety plan. The Design-Builder shall fully implement the safety plan and provide regular status updates relative to compliance at each progress meeting.

## **2.9 Warranties and Guaranty.**

**2.9.1** Design-Builder warrants to County that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Work, materials, or equipment not conforming to these requirements, including substitutions not properly approved and authorized, are considered defective. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides County with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide County with all manufacturers' warranties upon Substantial Completion.

## **2.10 Correction of Defective Work.**

**2.10.1** Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents or otherwise unacceptable to the County ("Defective Work"), including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Final Completion or within such longer period to the extent required by any specific warranty included in the Contract Documents.

**2.10.2** Design-Builder shall, within seven (7) days of receipt of written notice from County that the Work is Defective, submit a corrective action plan that details steps to correct Defective Work, including the correction, removal or replacement of the defective Work and any damage caused to other parts of the Work affected by the Defective Work.

The County will review and approve a corrective action plan and provide authorization to commence corrective action. If Design-Builder fails to start corrective action within seven (7) business days, or as otherwise approved by the County, the County, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder's Bonding Agent with written notice of defective work and Design-Builder corrective action plan. The conditions of the Performance Bond will be enforced.

If in the event the County must correct the Defective Work, Design-Builder shall be responsible for all costs incurred by County in performing such correction. If the Defective Work creates an emergency requiring an immediate response, emergency response costs are also the responsibility of the Design-Builder.

**2.10.3** The one-year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct Defective Work and is not intended to constitute a period of limitations for any other rights or remedies County may have regarding Design-Builder's other obligations under the Contract Documents.

## **2.11 Non-Discrimination.**

**2.11.1** Design-Builder shall not discriminate on the grounds of race, color, sex or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. Design-Builder shall not participate either directly or indirectly in such discrimination,

including discrimination in employment practices. The Design-Builder shall comply with the substantive requirements of Chapter 2.460 SCC, which are incorporated herein by this reference. Execution of this contract constitutes a certification by the Design-Builder of the Design-Builder compliance with the requirements of Chapter 2.460 SCC. In the event of Design-Builder's noncompliance with the nondiscrimination provisions of the Contract Documents or Chapter 2.460 SCC, County shall impose such sanctions as it, or the County's funding agencies, may determine to be appropriate, including, but not limited to: (a) withholding of payments to Design-Builder until Design-Builder complies, and (b) termination or suspension of the Contract, in whole or in part.

**2.11.2** Design-Builder shall comply with all requirements of the **Title VI Assurances**, as attached as **Exhibit F** to the Contract. Snohomish County, as a condition of receiving State transportation funds, have agreed to place these assurances in all public works contracts. Washington State Department of Transportation is not funding any part of this project but has the right to audit any public works contract the County may enter.

**2.11.3** Pursuant to the Design-Builder's proposed subcontractor Inclusion Plan, attached as **Exhibit E** to the Contract, the Design-Builder shall actively and in good faith provide opportunities for underutilized, disadvantaged, and/or small businesses as subcontractors, subconsultants, and/or suppliers in the performance of the Work. As part of the Inclusion Plan, the Design-Builder shall implement an Outreach Plan, the Inclusion Plan will be reviewed, and approved by the County prior to the execution of this Contract. The Inclusion Plan will outline the proactive strategies, resource commitments, and specific steps Design-Builder will take to effectively engage these firms for utilization and performance of this Project. The Design-Builder shall furnish evidence of its compliance with the Inclusion Plan on the monthly project master report.

As used in this section, these firms may include, but are not limited to, firms certified by the Office of Minority and Women Owned Enterprises (OMWBE), the US Government, other certification agencies, or those that are self-identified and accepted by the County.

## **2.12 Apprenticeship.**

The Design-Builder shall comply with the apprentice requirements set forth in chapter 3.05 SCC (Snohomish County Code).

The apprenticeship utilization participation goal for the Project is fifteen percent (15%) of total project labor hours performed by registered Apprentices with the Washington State Apprenticeship and Training Council (WSATC). "Labor hours" refers to the total number of hours worked by workers receiving an hourly wage who are directly employed by the contractor and all subcontractors at any tier on the Project.

When requested by the County, Design-Builder will submit an Apprentice Utilization Plan, in substantially the same form located at: <https://www.snohomishcountywa.gov/2361/Apprenticeship>. The Apprentice Utilization Plan must detail the Design-Builder's plan to utilize registered apprentices to perform at least fifteen percent (15%) of the total project labor hours. The Design-Builder shall update the Apprentice Utilization Plan throughout the project (Subcontracting and Inclusion Plan) to reflect changes to their plan to meet the labor hour goal.

When directed by the County, the Design-Builder shall use <https://www.lni.wa.gov/licensing-permits/public-works-projects/contractors-employers/contractor-portal> to track and report apprenticeship utilization and prevailing wage. (PWIA) The Design-Builder shall include a revised Apprentice Utilization Plan when changed conditions or circumstances affect the method or schedule of the Design-Builder's previously submitted plan to meet the labor hour goal.

Failure by the Design-Builder to comply with the apprenticeship requirements set forth in chapter 3.05 SCC or this Contract, unless otherwise waived or reduced by the Executive or designee in

writing pursuant to SCC 3.05.040, shall be deemed a breach of contract for which the County shall be entitled to all remedies allowed by law and under the contract. Failure to comply with the apprenticeship requirements may also be considered as evidence bearing on the Design-Builder's qualification for award of future contracts with the County.

## **Article 3**

### **County's Services and Responsibilities**

#### **3.1 Duty to Cooperate.**

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

**3.1.2** County shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in the Project Schedule.

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

#### **3.2 Furnishing of Services and Information.**

**3.2.1. Owner Provided Information.** County has provided Design-Builder with access to the Owner Provided Information (the "County Provided Information") listed in **Exhibit B** to the Contract. County provides such Owner Provided Information to Design-Builder for information only. Design-Builder understands and agrees that County shall not be responsible or liable in any respect for any loss, damage, injury, liability, cost or cause of action whatsoever suffered by Design-Builder by reason of any use of any information contained in the Owner Provided Information or any action or forbearance in reliance thereon. Design-Builder further acknowledges and agrees that (a) if and to the extent Design-Builder or anyone on Design-Builder's behalf uses any of the information in the Owner Provided Information in any way, such use is made on the basis that Design-Builder, not County, has approved and is responsible for such information, and (b) Design-Builder is capable of conducting and obligated hereunder to conduct any and all studies, analyses and investigations as it deems advisable to verify or supplement such information, and that any use of such information is entirely at Design Builder's own risk and at its own discretion.

**3.2.2** Except as otherwise provided in the Contract Documents, County is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. County is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

#### **3.3 Reserved.**

#### **3.4 County's Representative.**

**3.4.1** County's Representative shall be responsible for providing County-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. County's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions, or defects in the performance of the Work. Provided, however, that the failure of County's Representative to provide such notice shall not relieve Design-Builder from the obligation to perform the Work and deliver the Project in a manner consistent with its obligations under the Contract Documents. County's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of County.

### **3.5 Government Approvals and Permits.**

**3.5.1** Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees for the Project, that are not required by law to be obtained by the County.

### **3.6 County's Separate Contractors.**

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

## **Article 4**

### **Hazardous Conditions and Differing Site Conditions**

#### **4.1 Hazardous Conditions.**

**4.1.1** Design-Builder and Owner understand and acknowledge that preliminary assessments of the Project site indicate the likely presence of Hazardous Conditions.

**4.1.2** Design-Builder is generally responsible for Hazardous Conditions at the Site, including:(a) performing all assessments, reviews and investigations necessary to identify any existing Hazardous Conditions; (b) developing an appropriate strategy and/or plan to remediate, rehabilitate and or mitigate the impact of such Hazardous Conditions at the Project Site and upon the Project work; and (c) conducting remediation, rehabilitation and/or mitigation work during Phase 2 of the Project, in accordance with the approved Contract Documents.

**4.1.3** Design Builder shall perform all Project work associated with Hazardous Conditions in accordance with applicable Legal Requirements, including (as appropriate) obtaining all necessary approvals from all government and quasi-government entities having jurisdiction over the Project or Site.

**4.1.4** Design-Builder shall not be entitled to an adjustment in the GMP and/or Contract Time(s) on the basis of alleged impacts due to the presence of Hazardous Conditions at the Project Site.

**4.1.5** To the fullest extent permitted by law, Design-Builder shall indemnify, defend, and hold harmless the County, its officers, officials, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from Hazardous Conditions encountered at the Site (including any preexisting Hazardous Conditions or Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable) or Hazardous Conditions introduced to other properties by Design-Builder, Subcontractors or anyone for whose acts they may be liable in the performance of the Work. The obligations contained in this paragraph do not apply to any claims, losses, damages, liabilities or expenses arising out of or resulting from Hazardous Conditions outside of the Site boundaries, provided that the Hazardous Conditions were not introduced by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

**4.1.6** Design Builder shall not use or otherwise incorporate any asbestos-containing materials or products in the Work. At the time of final acceptance, Design-Builder shall submit a letter to the County that no asbestos-containing materials or products have been installed in the building in violation of this contractual provision and applicable laws.

#### **4.1.7 Training and Reporting**

**4.1.7.1** All workers onsite who are involved in demolition, construction, installation, or excavation activities must have current Asbestos Awareness Training, as required by WAC 296-62-07722(6).

**4.1.7.2** Prior to bringing onsite any chemicals listed in 6 CFR part 27, Appendix A, the Design-Builder shall submit for itself and for all Subcontractors a completed "Contractor Declaration and Reporting Form for Department of Homeland Security – Chemicals of Interest."

#### **4.1.8 General Requirements When Design-Builder Performs Hazardous Conditions Abatement**

**4.1.8.1 SUPERVISORY AUTHORITY:** Design-Builder assumes all responsibilities and shall perform all required work under applicable regulations related to their supervisory authority over Subcontractors and personnel performing work related to hazardous materials.

**4.1.8.2 ACCESS RESTRICTIONS:** Work described in the Contract Documents includes restriction of access to work areas during hazardous materials activities. Access to various work areas by the general public, Subcontractors, and other individuals will not be possible during certain hazardous materials work sequences, as specified in the Contract Documents. Design-Builder shall coordinate the Work to facilitate access by Subcontractors while enforcing work area restrictions and shall minimize disruption to building occupants and services.

**4.1.8.3 WORKING HOURS:** No hazardous materials work shall occur when building users have access to work areas. Schedule all hazardous materials work to occur in accordance with schedule requirements outlined elsewhere in the Contract Documents, and when work areas have been vacated by building users.

**4.1.8.4 EMERGENCY CONTACTS:** Designated qualified representatives of the Contractor and specific hazardous materials Subcontractors are to be available on a 24-hour emergency basis for the duration of the Work. Provide contact information to the County's Representative for inclusion in the Project emergency contact list.

**4.1.8.5 GENERAL HAZARDOUS MATERIALS SUBMITTALS:** Design-Builder shall review the scope of work and submittal requirements outlined in the Contract Documents. Design-Builder shall submit and require all subcontractors performing the work of handling or disposing of any hazardous materials to submit, pertinent information required by the Contract Documents. Examples of work and impact may include abatement, demolition, saw cutting, roto-hammering, welding, sanding, drilling, scraping or other remodeling and metals-related impact, impact of asbestos-containing joint compound or other material with <1% asbestos, PCB ballast removal or light tube removal and disposal.

**4.1.8.6 REGULATIONS, LAWS, and ORDINANCES:** Design-Builder shall comply with all applicable regulations, laws and ordinances concerning the impact, removal, handling, storage, disposal, monitoring and protection against exposure or environmental pollution related to hazardous or regulated materials and conditions. Impacts to hazardous or regulated materials that may be required by the Work may include, but are not limited to: manual demolition, mechanical demolition, cutting, sawing, drilling, sanding, scraping, welding, power-washing or torch-cutting. Confirm required impacts with other applicable specification sections and drawing sheets. Design-Builder shall furnish all labor, materials, equipment, services, and insurance that is specified, shown, or reasonably implied for the removal and handling of hazardous materials as part of the Work.

## **4.2 Differing Site Conditions.**

**4.2.1 Differing Site Condition.** If Design Builder encounters conditions at the Site which are subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents and confirmed in Validation, or 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 (collectively, a "Differing Site Condition"), then Design Builder shall give written notice to County within 72 hours after becoming aware of such condition. Design-Builder shall not further disturb the Differing Site Condition or perform any Work in connection therewith (except for an emergency) until receipt of written order to do so. After receipt of such written notice, County will promptly review the pertinent condition.

### **4.2.2 Possible GMP and Contract Time Adjustments**

**4.2.2.1** If Design-Builder seeks to have the GMP or the Contract Time, or both, adjusted due to the existence of a Differing Site Condition, Design-Builder shall comply with the provisions of Article 9 in addition to the requirements of this Section 4.2.

**4.2.2.2** Design-Builder shall not be entitled to any adjustment in the Contract Price or Contract Time if:

- a) Design-Builder knew of the existence of such conditions at the time Design-Builder and County negotiated this Contract; or
- b) Design-Builder failed to give the written notice as required by Section 4.2 and/or comply with Article 9.
- c) Design-Builder knew or should have known of such conditions during Phase 1 of the Project but failed to accurately indicate such conditions in the Contract Documents or otherwise take into account the conditions in its design of the Project.

**4.2.2.3** If Design-Builder complies with the provisions of Article 9 and this Section 4.2 and County and Design-Builder are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the GMP or Contract Time, or both, a Claim may be made by Design-Builder as provided in Article 10.

## **Article 5**

### **Insurance and Bonds**

**5.1 Insurance.** The Design-Builder shall provide insurance consistent with and in accordance with the requirements of Article 11 of the Contract.

**5.2 Bonds.** The Design-Builder shall provide performance and payment bonds consistent with and in accordance with the requirements of Article 11 of the Contract.

## **Article 6**

### **Payment**

#### **6.1 Application for Payment.**

**6.1.1** The Design-Builder shall submit a Schedule of Values, or approved cost tracking tool, at least 15 days prior to submitting their first Application for Payment. The Schedule of Values, unless otherwise agreed, shall reasonably allocate the Contract Sum among the various portions of the Work; be complete; be organized to include detailed breakdown of each major unit of the Work; be organized to correspond to Design-Builder's schedule; break down the Contract Sum showing the value assigned to each part of the Work; be so organized as to facilitate assessment of work and payment of Subcontractors; and be balanced. To the greatest extent possible, the breakdown shall use the same tasks or units as the Design-Builder's Master Project Schedule or Project Management tool. Design-Builder shall provide documentation substantiating the cost allocation if asked by the County. Upon acceptance of the Schedule of Values by the County, it shall be used as a basis for all requests for payment.

**6.1.2** The County will timely review and approve the Schedule of Values so as not to delay the submission of the Design-Builder's first application for payment. The County and Design-Builder shall timely resolve any differences so as not to delay the Design-Builder's submission of its first application for payment.

#### **6.2 Payments.**

County shall make payments for Validation, Phase 1 and Phase 2 Services in accordance with Section 8 of the Contract.

#### **6.3 Withholding of Payments.**

**6.3.1** On or before the date established in the Contract, County shall pay Design-Builder all amounts properly due, less statutory retainage. If County determines that Design-Builder is not entitled to all or part of an Application for Payment because of Design-Builder's failure to meet its obligations hereunder, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts County intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify County's concerns. Design-Builder and County will attempt to resolve County's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, to resubmit disputed amounts.

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

#### **6.4 Reserved.**

#### **6.5 Design-Builder's Payment Obligations.**

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

## **6.6 Substantial Completion.**

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

**6.6.1.1** An affidavit certifying that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work through the date of the notice which will in any way affect County's interests;

**6.6.1.2** All operating manuals, warranties, record documents and other deliverables required by the Contract Documents; and

**6.6.1.3** A signed and stamped set of all calculations supporting the design of the Project.

**6.6.2** Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, County shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion, and subject to the Retainage requirements of RCW 60.28 and Section 8.3 of the Contract.

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

## **6.7 Final Payment.**

**6.7.1** After receipt of a Final Application for Payment from Design-Builder, together with all information required by Section 6.7.2 below, County shall make final payment by the time required in the Contract if Design-Builder has achieved Final Completion.

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

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

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

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

**6.7.2.4** All reports, records, training and operating manuals, warranties and other deliverables required by the Contract Documents; and

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

**6.7.3 Reserved.**

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

## **Article 7**

### **Indemnification**

**7.1 Patent and Copyright Infringement.**

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

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

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

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

**7.2 Tax Claim Indemnification.**

**7.2.1** If, in accordance with County's direction, an exemption for all or part of the Work is claimed for taxes, County shall indemnify, defend and hold harmless Design-Builder from and against any liability, penalty, interest, fine, tax assessment, attorneys' fees or other expenses or costs incurred by Design-Builder as a result of any action taken by Design-Builder in accordance with County's directive. County shall furnish Design-Builder with any applicable tax exemption certificates necessary to obtain such exemption, upon which Design-Builder may rely.

**7.3 Payment Claim Indemnification.**

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

**7.4 Design-Builder's General Indemnification.** In addition to any other indemnification of defense obligation that Design-Builder may have under the Contract Documents, Design-Builder shall defend, indemnify, and hold County, its officers, officials, employees, and agents (the "Indemnified Parties") harmless from and against all claims, demands, losses, damages, or costs, including but not limited to damages arising out of bodily injury or death to persons and damage to property, caused by or resulting from:

**7.4.1** The sole negligence or willful misconduct of Design-Builder or any of its Design Consultants or Subcontractors or Suppliers of any tier, or the agents or employees of same (collectively, the "Design-Build Parties");

**7.4.2** The concurrent negligence of the Design-Build Parties, but only to the extent of the negligence of the Design-Build Parties;

**7.4.3** A breach of this Contract by the Design-Build Parties;

**7.4.4** The use of any design, process, or equipment which constitutes an infringement of any United States patent presently issued, or violates any other proprietary interest, including copyright, trademark, and trade secret.

In addition to a remedy authorized by law, the County may retain so much of the money due the Design-Builder as deemed necessary by the County to ensure the defense and indemnification obligations of this section until disposition has been made of such suits or claims.

Pursuant to RCW 4.24.115, claims, suits, or actions result from the concurrent negligence of (a) the Indemnified Parties and (b) the Design-Build Parties the indemnity provisions provided in the preceding paragraphs of this section shall be valid and enforceable only to the extent of the Design-Build Parties' negligence.

In any action against County and any other entity indemnified in accordance with this section, by any employee of Design-Builder, its consultants of any tier, Subcontractors, Sub-subcontractors, agents, or anyone directly or indirectly employed by any of them, the indemnification obligation of this section shall not be limited by a limit on the amount or type of damages, compensation, or benefits payable by or for Design-Builder or any consultant or Subcontractor under Title 51 RCW, the Industrial Insurance Act, or any other employee benefit acts. In addition, Design-Builder waives immunity as to County only, in accordance with Title 51 RCW. The Contractor intends to indemnify, defend and hold the County harmless to the fullest extent allowed by applicable law, and, therefore, any limitation on indemnity shall automatically be deemed amended without further act by either party so as to remove any of the restrictions contained in this section no longer required by then applicable law. To the extent that applicable law invalidates any portion of this section, the remainder shall be construed to provide the broadest protection to the County allowed by applicable law. The parties acknowledge that the foregoing waiver of RCW Title 51 immunity was mutually negotiated and that the provisions of this section shall survive expiration or termination of this Contract by either party for any reason. The Design-Builder shall similarly require that each subcontractor it retains in connection with the project comply with the terms of this paragraph, waive any immunity granted under Title 51 RCW, and assume all liability for actions brought by employees of the subcontractor.

The Contractor shall bear sole responsibility for damage to completed portions of the project and to property located off the project caused by erosion, siltation, runoff, or other related items during the construction of the project. The Contractor shall also bear sole responsibility for any pollution of rivers, streams, ground water, or other waters that may occur as a result of construction operations.

The Contractor shall exercise all necessary precautions throughout the life of the Project to prevent pollution, erosion, siltation, and damage to property

## **Article 8**

### **Time**

#### **8.1 Obligation to Achieve the Contract Times.**

**8.1.1** Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 6 of the Contract. By executing the Contract, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

#### **8.2 Delays to the Work.**

**8.2.1** If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. Delays attributable to and within the control of a Subcontractor or supplier shall be deemed to be delays within the control of Design-Builder. By way of example, events that may entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of County or anyone under County's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events. Design-Builder shall make all reasonable efforts to prevent and mitigate the effects of any delay, whether occasioned by an act of Force Majeure or otherwise.

**8.2.2** Design-Builder is not entitled to a change in Contract Time unless the progress of the Work on the critical path is delayed and completion of the Work within Contract Time is delayed. A

Request for a Change Order that includes a request for an adjustment in the Contract Time shall be delivered to County in accordance with Article 9 herein and, in addition to any requirements in Article 9, shall:

- a. Include a clear explanation of how the event or conditions specifically impacted the critical path and overall construction schedule and the amount of the adjustment in Contract Time requested.
- b. Demonstrate that the delay could not have been avoided by re-sequencing of the Work or other reasonable alternatives.
- c. Be limited to the change in the critical path of a construction schedule, and any updates, attributable to the event or conditions which caused the request for adjustment.

**8.3** In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder may also be entitled to an appropriate adjustment of the GMP. Except as provided herein, , the GMP shall not be adjusted for Force Majeure Events. The GMP may be adjusted for actual costs incurred as a direct result of pandemics and/or epidemics, but only to the extent such costs are unanticipated at the time of execution of the GMP Amendment.

## **Article 9**

### **Changes to the GMP and Contract Time**

#### **9.1 Authorized Changes in the Work**

**9.1.1 General.** After execution of the Contract, Changes in the Work are effective solely by Change Order or Work Change Directive.

**9.1.2 Change Order.** A Change Order is a written instrument issued after execution of the Contract signed by County and Design-Builder, stating their agreement upon all of the following:

**9.1.2.1** The scope of the change in the Work;

**9.1.2.2** The amount of the adjustment to the GMP, if any; and

**9.1.2.3** The extent of the adjustment to the Contract Time(s), if any.

A Change Order shall constitute full payment and final settlement of all Claims for Contract Time adjustment and for direct, indirect, and consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity, related to any Work either recovered or affected by the Change Order, or related to the events giving rise to the request for equitable adjustment.

**9.1.3 Design-Builder Request for Change Order.** Change Order requests may be initiated by Design-Builder in accordance with this subsection 9.1.3.

**9.1.3.1** If Design-Builder believes that it is entitled to relief for any event or condition arising out of or related to the Work or Project, Design-Builder shall provide to County a written Notice of Intent to Submit a Request for Change Order no later than ten (10) days after the event or condition giving rise to the claim for relief.

**9.1.3.2** Unless the County's Representative issues written notice authorizing Design-

Builder additional time to submit the Request for Change Order, Design-Builder shall provide a written Request for Change Order to the County's Representative no later than 21 days after delivery of the Notice of Intent to Submit a Request for Change Order. The Request for Change Order must include (a) a description of the request, rationale, and specific provisions of the Contract Documents, (b) specific dollar amount of the requested change to GMP, covering all costs associated with the requested Change Order; (c) specific request for change in Contract Time (number of days); and (d) all documentation supporting the Request for a Change Order, including but not limited to all cost records, schedule analysis, and the documents identified in the Contract Documents, that are in any way relevant to the Design-Builder's Request for Change Order.

**9.1.3.3** Pending resolution of Design-Builder's Request for a Change Order, Design-Builder shall continue to perform all Work including, at the written request of the County, the work associated with the pending Request for Change Order.

**9.1.3.4** A Request for Change order that is not accepted by County within 30 days after receipt by County is deemed denied.

**9.1.3.5** If Design-Builder disagrees with denial of a Request for Change Order, the Design-Builder's sole remedy shall be to file a fully documented Claim in accordance with Article 10 within 30 days after Design-Builder's receipt of the denial or within thirty (30) days after the denial is deemed to have occurred under Section 9.1.3.4 above.

**9.1.4 Unilateral Change Order.** County may unilaterally issue a Change Order at any time, without invalidating the Contract and without notice to sureties. If any such Change Order causes an increase or decrease in the cost of, or time required for, performance of any part of the Work, County may make an adjustment in the GMP, Contract Time, or both, in accordance with the Contract Documents. If Design-Builder disagrees with the adjustment to the GMP or Contract Time as indicated in a Unilateral Change Order, Design-Builder's only remedy shall be to file a fully documented Claim in accordance with Article 10. Regardless of any such disagreement, the Design-Builder is required to continue with performance of all Work, including work associated with the Unilateral Change Order.

**9.1.5 County Change Order Proposal.** Change requests may be initiated by County through a Change Order Proposal submitted to Design-Builder. Such a request is for information and pricing only and is not an instruction to execute changes or to stop work in progress, unless issued as a Work Change Directive. Upon receipt of the County Change Order Proposal, the Design-Builder shall promptly submit its proposed costs and pricing. If County and Design-Builder agree to the terms of the cost and pricing for the proposed change, they shall execute a mutually acceptable Change Order to authorize the change.

## **9.2 Work Change Directives.**

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

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

### **9.3 Minor Changes in the Work.**

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

### **9.4 GMP Adjustments.**

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

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

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

**9.4.1.3** Costs, fees and any other markups set forth in the Contract; or

**9.4.1.4** If an increase or decrease cannot be agreed to as set forth in items 9.4.1.1 through 9.4.1.3 above and County issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Contract .

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

### **9.5 Emergencies.**

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

## **Article 10**

### **Claims and Disputes**

**10.1 Condition Precedent to Filing a Claim.** The following actions are a mandatory condition precedent to filing a Claim: (a) a Request for Change Order is denied or deemed denied by the County or (b) a Unilateral Change Order is issued by the County.

**10.2 Claim Deadline.** Unless otherwise agreed to in writing by the County, a fully documented Claim shall be received by the County within thirty (30) days after the denial or deemed denial of a Request for Change Order, or, in the case of a Unilateral Change Order, Design-Builder's receipt of County's decision regarding Contract Time or GMP adjustments pursuant to the Unilateral Change Order. Failure to comply with the time requirements set for filing a Claim shall constitute

acceptance by the Design-Builder, on behalf of itself and its Subcontractors and suppliers, of the Unilateral Change Order or the County's denial or deemed denial of a Request for Change Order. Such acceptance shall be considered complete, full, and final settlement of all costs, damages, and Claims related to or arising from the Request for Change Order or Unilateral Change Order.

**10.3 Design-Builder's Obligation to Continue Work.** Pending final decision of a Claim hereunder, the Design-Builder shall proceed diligently with the performance of the Work, including that work associated with the Claim, and maintain its progress with the Work. Failure to proceed as required herein shall constitute grounds for termination for cause under Article 11.

**10.4 Information Required in a Fully Documented Claim.** Every Claim must be submitted by Design-Builder, in writing and clearly designated by Design-Builder as a fully documented Claim. At a minimum, a fully documented Claim must contain the following information:

**10.4.1** A detailed factual statement of the Claim providing all necessary details, locations, and items of Work affected;

**10.4.2** The date on which facts arose that gave rise to the Claim;

**10.4.3** The name of each person employed or associated with Design-Builder, Subcontractors, suppliers, and/or the County with knowledge about the event or condition which gave rise to the Claim;

**10.4.4** Copies of documents and a written description of the substance of any oral communications that concern or relate to the Claim;

**10.4.5** The specific provisions of the Contract Documents on which the Claim is based;

**10.4.6** if an adjustment in the GMP is sought, the exact amount sought, calculated in accordance with the Contract Document and accompanied by all records supporting the Claim;

**10.4.7** If an adjustment in the Contract Time is sought, the specific days and dates for which it is sought; the specific reason Design-Builder believes an adjustment in the Contract Time should be granted; and Design-Builder's analyses of its construction schedule, any specific schedule analysis as required by the Contract Documents, and all updates to demonstrate the reason for the adjustment in Contract Time; and,

**10.4.8** A statement certifying, under penalty of perjury, that after the exercise or reasonable diligence and investigation the Claim is made in good faith, that the supporting cost and pricing data are true and accurate to the best of the Design-Builder's knowledge and belief, that the Claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the GMP or Contract Time for which Design-Builder believes the County is liable.

**10.5 Cooperation/Claims Audit.** Design-Builder shall cooperate with County or its designee in the evaluation of its Claim and provide all information and documentation requested by County or its designee. Claims filed against County shall be subject to audit at any time following the filing of the Claim. Failure of Design-Builder, or Subcontractors of any tier, to maintain and retain reasonably sufficient records to allow County to verify all or a portion of the Claim or to permit County access to the books and records of Design-Builder, or Subcontractors of any tier, shall constitute a waiver of that part of the Claim and shall bar any recovery on that part of the Claim.

**10.6 County Evaluation of Claim.** After Design-Builder has submitted a fully documented Claim that complies with Article 10, County shall respond, in writing, to Design-Builder within sixty (60) days from the date the fully documented Claim is received with a decision regarding the Claim. The

Claim shall be deemed denied upon the 61st day following receipt of the Claim by County. Any Claims not fully resolved must be submitted to Dispute Resolution in accordance with Section 10.7.

## **10.7 Dispute Avoidance and Resolution.**

**10.7.1** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other through the life of the Project, to avoid or minimize disputes or disagreements.

If disputes or disagreements do arise, Design-Builder and County each commit to resolving such disputes or disagreements in an amicable, professional, and expeditious manner to avoid unnecessary losses, delays, and disruptions to the Work. If a matter cannot be resolved through the Project Team (Design Builder, County, and the County's Owner Representative), Design-Builder's Principal-In-Charge/Signatory and County's Signatory, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve any issue.

**10.7.2** If after meeting the Design-Builder's PIC and the County's Signatory, determine that the dispute cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting a formal Claim and request facilitated, non-binding mediation.

The mediation shall be conducted by a mutually agreeable impartial mediator. If the parties have not reached an agreement on a mediator within thirty (30) days of the request, either party may submit the unresolved claims or disputes to JAMS, Seattle, Washington, or such other alternative dispute resolution service to which the parties mutually agree, for appointment of a single mediator. The parties to the mediation shall share the mediator's fee and any filing fees equally. The mediation shall be held near the place where the Project is located unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**10.8 Litigation.** Any Claims, disputes or controversies between the parties arising out of or relating to the Contract, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.7 above shall be decided by litigation, unless the parties mutually agree in writing otherwise. All unresolved Claims of Design-Builder shall be waived and released unless Design-Builder has complied with the time limits of the Contract Documents, and litigation is served and filed within the earlier of (a) 180 days after the Date of Substantial Completion of all the Work designated in writing by County or (b) 60 days after Final Acceptance. This requirement cannot be waived except by an explicit written waiver signed by County and Design-Builder. The pendency of mediation shall toll these deadlines until the earlier of the mediator providing written notice to the parties of impasse or 30 days after the last mediation session ended with no further sessions scheduled by the mediator.

## **10.9 CONSEQUENTIAL DAMAGES.**

**10.9.1** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.9.2 BELOW), NEITHER DESIGN-BUILDER NOR COUNTY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING. Costs and damages for which County shall not be liable under any circumstances include but are not limited to: (a) borrowing or interest costs, charges, or expenses of Design-Builder; (b) alleged lost profit or overhead on any other project; and (c) Design-Builder's failure or inability to obtain other work.

**10.9.2** The consequential damages limitation set forth in Section 10.9.1 does not waive and does

not otherwise affect (1) any payment of liquidated damages that may be established by the parties, and which would be intended, in part, to reimburse the County for some damages that might otherwise be deemed to be consequential; or (2) either party's entitlement to actual direct damages arising out of or related to breach of this Contract by the other.

## **Article 11**

### **Stop Work and Termination for Cause**

#### **11.1 County's Right to Stop Work.**

**11.1.1** County may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work.

**11.1.2** Design-Builder is entitled to seek an adjustment of the GMP and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of the Work by County.

#### **11.2 County's Right to Perform and Terminate for Cause.**

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

**11.2.2** Upon the occurrence of an event set forth in Section 11.2.1 above, County may provide written notice to Design-Builder that it intends to terminate the Contract unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then County may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then County may declare the Contract terminated for default by providing written notice to Design-Builder of such declaration.

**11.2.3** Upon declaring the Contract terminated pursuant to Section 11.2.2 above, County may enter the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to County for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.

In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by County in completing the Work, such excess shall be paid by County to Design-Builder. Notwithstanding the preceding sentence, if the Contract establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed under this Contract. If County's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to County. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by County

in connection with the re-procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

**11.2.4** If County improperly terminates the Contract for cause, the termination for cause will be considered a termination for convenience in accordance with the provisions of Article 9 of the Contract.

**11.3 Reserved.**

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

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

**11.4.1.1** The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by County under Section 11.1.1 hereof, provided that such stoppages are not due to Force Majeure Events, the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

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

**11.4.2** Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to County that it intends to terminate the Contract unless the problem cited is cured, or commenced to be cured, within thirty (30) days of County's receipt of such notice. If County fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to County of its intent to terminate within an additional seven (7) day period. If County, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Contract terminated for default by providing written notice to County of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if County had terminated the Contract for its convenience under Article 9 of the Contract.

**11.5 Bankruptcy of Design-Builder.**

**11.5.1** If Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code, such event may impair or frustrate the County's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

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

**11.5.1.2** The Design-Builder shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Contract within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

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

**11.5.2** The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the County to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code.

## **Article 12**

### **Electronic Data**

#### **12.1 Electronic Data.**

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

#### **12.2 Transmission of Electronic Data.**

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

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

**12.2.3** By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 5 of the Contract. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

#### **12.3 Electronic Data Protocol.**

**12.3.1** The parties acknowledge that Electronic Data may be altered or corrupted, intentionally, or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

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

**12.3.3** The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall

also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

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

## **Article 13**

### **Miscellaneous**

**13.1 Confidential Information.** Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies the information in writing as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project. Except for Confidential Information as defined above, all proceedings, records, contracts, and other public records relating to public works are open to the inspection of any interested person, firm, or corporation in accordance with RCW 42.56, Public Records Act of the State of Washington.

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

**13.3 Successorship.** Design-Builder and County intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors, and assigns.

**13.4 Governing Law.** The Contract and all Contract Documents shall be governed by the laws of the State of Washington without giving effect to its conflict of law principles. Exclusive venue for any dispute arising out of this Contract shall be in Snohomish County Superior Court. Design-Builder shall include a "Stipulation of Venue in Snohomish County" in all subcontracts hereunder. Should the Design-Builder or any member of the Design-Build Team be a non-resident of Washington State, each shall designate a Washington resident as agent upon whom process may be served before commencing work under this Contract.

**13.5 Severability.** If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

**13.6 No Waiver.** The failure of either Design-Builder or County to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

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

**13.8 Notice.** Whenever the Contract Documents require that notice be provided to the other party, notice shall be provided consistent with Section 12.4 of the Contract.

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

**13.10 Public Records.** This contract and all public records associated with this contract shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Design-Builder are needed for the County to respond to a request under the Act, as determined by the County, the Design-Builder agrees to make them promptly available to the County. If the Design-Builder considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Design-Builder shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Design-Builder and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Design-Builder (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Design-Builder fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Design-Builder to claim any exemption from disclosure under the Act. The County shall not be liable to the Design-Builder for releasing records not clearly identified by the Design-Builder as confidential or proprietary. The County shall not be liable to the Design-Builder for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

**-END OF GENERAL CONDITIONS-**

## **EXHIBIT D SCOPE OF SERVICES**

*[DISCLAIMER: This document is a draft and contains the anticipated scope of services and deliverables for Arlington Operations Center Redevelopment Project to be provided during Validation, Phase 1 and 2. This is provided as a draft so staffing and level of efforts may be discussed.*

*The County anticipates the following scopes and services to be performed unless modified or negotiated. Any proposed approach and/or proposal element that is accepted by the County will be incorporated into the final Scope of Services.]*

### **(Draft) Design Build Scope of Services**

#### **PHASE 1 PROJECT DEFINITION AND DESIGN DEVELOPMENT**

Phase 1 will cover all work related to programming, planning, and designing all aspects of the Project up to the County's acceptance of the Guaranteed Maximum Price (GMP) and Phase 2 Proposal. All Work and Services shall be performed with the spirit and intent for which is stated and in accordance with the Contract Documents.

All work product, deliverables, reports or similar shall be in a format acceptable to the County.

Scopes, Services and Work described need not be sequential or linear; the Design Builder is free to perform scopes in any phase, at any time, with mutual agreement.

#### **A. Project Definition (subphase)**

The Project Definition subphase will include Validation of the Project and various work scopes that are anticipated to be necessary before entering into Phase 1, or the design of the Project. Initial meetings and coordination will be led by the Owner's Representative (project consultant). During this subphase, a Project Charter will be developed that includes problem and goals statements, project communication standards, milestones, roles, responsibilities, and similar.

Anticipated deliverables of Project Definition:

- Project Charter with Goals, Objectives, Roles, Responsibilities, and definitions for success
- Communication and Engagement Plan, if requested
- Validation Report
- Programming and Concept Design, including Project Scope Narrative
- Draft Project Schedule
- Draft Project Workplan with initial subcontracting and inclusion plans
- Initial Master Site Development Plan
- Basis of Project Cost, Schedule of Values, Cost Model, or similar

#### **A.1. Validation Plan**

Based on the proposal the Design Builder will prepare a Validation Plan Proposal which will include a detailed Scope of Work (including Critical Information), Schedule, Cost, Subcontracting/Subconsultant Plan, and Staffing Level of Effort. The County, and/or the County's representative will request the Proposal following Notice to Proceed.

The County and the Design Builder will work together to refine the Plan and establish a Not-to-Exceed (NTE) for Validation subphase.

The agreed Scope, Schedule and Price will be amended into the Contract and is intended to cover Design Builder costs to define the Project and set the program.

## **B. Communication and Engagement**

The Project Team will establish a **Project Communications Plan** which will include expectations for all parties regarding the cadence and frequency of meetings, how to maintain project records and decisions, how and when to engage the public, authorities having jurisdiction, and similar.

### **1. Meetings**

Project Meetings will occur [each Wednesday at 1PM Pacific Time] for [90 mins.] unless agreed by the Project Team to adjust. The Design Builder will provide the agenda and will be responsible for keeping meeting minutes. The weekly project meeting may be jointly led by the County's PM, the Owner's Advisor (Consultant), or the Design Builder PM, as mutually agreed. The agenda, at a minimum, will include an overview of the schedule, current phases, subphases, tasks and subtasks, with "look-ahead," responsible parties, and status of each. Additionally, the agenda will include key decisions from the previous meeting and decisions in-process or upcoming. All decisions or agreed resolutions will be recorded in the appropriate **decision log**.

### **2. Project Website**

The Design Builder will host a project website that will be the main form of public communication for the Project throughout the Contract. At a minimum, the Design Builder will include current schedules, work packages, any procurement activities, and subcontracting status, apprentices, and "diverse business" inclusion tracking. Design Builder is expected to work with the County to develop content and communication needs.

### **3. Decision Log(s)**

The Design Builder will develop and maintain a **Project Master Decision Log**. It is reasonable to assume that the Project Decision Log will be made up of different categories and phases with various responsible parties. The Design Builder should integrate with the **Project Master Schedule** and **Workplan**.

### **4. Monthly Reporting**

As part of the payment process and recording keeping for the Project, the Design Builder will provide a comprehensive monthly project status update. At a minimum the update will include at a Project Schedule review, current cost analysis, design progression, work breakdown, procurement and subcontracting statuses, permitting and **Continuous Operations** report. The County and Design Builder will mutually agree on the format and final level of detail for monthly reporting. The County anticipates this to follow the overall project **Workplan**.

## 5. Project Schedule

The Design Builder shall develop, maintain, and communicate a **Master Project Schedule**. The Project Schedule can be *broken into multiple, layered sub-schedules such as design, pre-construction, permitting, and construction*. The County and Design Builder will mutually agree on the format and frequency of schedule updates that may need to occur outside of the Project Meetings. The Master Project Schedule will be “living” and be fully accessible to the entirety of the County’s and the Design Builder’s Project Team.

The development of the Master Project Schedule, including but not limited to, the project phasing and Schedule of Values (cost-loaded schedule), is a vital element of the Design Builder’s ability to deliver this Project in a timely fashion. The County will rely on the Design Builder’s scheduling information to coordinate with its stakeholders, schedule activities in and around the Project, and manage its sites and facilities. A project “look ahead” will be an agenda item covered at the Project Meetings and should cover 3-5 weeks of detailed activities and 30-45 days of major tasks anticipated.

By the date mutually agreed, but no later than 30 days from Notice to Proceed, Design Builder shall submit a **Preliminary Project Schedule with Workplan** that reflects, at a minimum, investigation, design development, continuous operations draft, preconstruction, procurement/subcontracting, and construction activities including the interrelationships of various packages and work breakdown that are anticipated.

- The Schedule shall show the activities of the *County* and *Design Builder* necessary to meet the targeted Project completion requirements.
- The Schedule shall be updated as key information becomes available, not less frequent than monthly, with the level of detail for each schedule update reflecting the information then available.
- If an update to the Preliminary Schedule indicates that a previously approved milestone will not be met, Design Builder shall submit recovery options and revised schedule to the County.

If the County or any Project Team member have comments relative to the Project Schedule, have any update, or find any inconsistencies or inaccuracies in the information presented, the recognizing party should provide comment immediately and notify the Design Builder, who shall make appropriate adjustments.

The Schedule, at a minimum, will contain the following:

- All tasks required to complete the scope of work for the Project
- Estimated durations for all tasks in the project schedule
  - Tasks performed by others, such as AHJs, are also to be included
- Logical ties and sequence of work for every task in the schedule
- Resources for project hours and major material quantities for site construction

Project Schedule shall be detailed and organized according to the Design Builder’s proposed **Workplan and Approach** that was accepted by the County. The project schedule will include all activities and relationships identified in the final **Programming and Project Scope Narrative**. Each major area of work within Design Builder’s scope shall be represented by activities in the schedule.

The **Master Project Schedule and Workplan** shall be submitted to the County for their review. The detailed schedule shall reflect, at a minimum, design, engineering, procurement, construction,

fabrication, and delivery activities for each piece of procured equipment, key drawing release dates by discipline, and logic and interrelationships between activities so that a logical progression of the work is depicted. Project milestones shall also be included in the schedule.

Once the Master Project Schedule and Workplan has been accepted by the County, Design Builder will establish a baseline schedule for phases or deliverables as determined to be most efficient and effective. As the Project progresses, the Design Builder shall advise the County of any proposed schedule or work changes and promptly provide the County with any revisions thereto and recovery plans as required to meet the established dates. All major activities will require thirty (30) calendar days' notice.

### **Master Project Schedule and Workplan Validity and Content**

- Prepare schedules in a format acceptable to the County
- Contain Work Breakdown Structure coding matching deliverables and work packages
- Show all deliverables and tasks mention in the Project Scope Narrative, along with other tasks or deliverables decided
- Schedules shall be coded for grouping by engineering, procurement, construction, etc.
- Project schedule activities that Design Builder is responsible for performing shall be with design, engineering, and procurement activities.
- Design, engineering, procurement, and construction activities shall be included, such that staffing/labor requirements can be determined or verified with schedule. The schedule shall form basis for progress reporting, and payment.
- Critical path for Design-Builder's schedule activities

### **C. Critical Information**

The Design Builder shall assess what information is critical and necessary to design and successfully complete the Project. Any information provided by the County (County Provided Information) is for reference only and may be deemed "not necessary" by the Design Builder. The Design Builder shall provide the County with a **Critical Information List (CIL)** for review. The CIL will communicate to the County all studies, exploratory work, and specific technical analysis the Design Builder determines to be necessary to understanding planning, options, pricing, designing, permitting, and executing the work.

#### **1. Studies, Analysis, and Exploratory Work**

Design Builder shall perform such assessments, reviews, and investigations as determined reasonably necessary accomplish the Project.

Design Builder shall conduct such site investigations, environmental assessments, review of **regulatory and legal requirements and restrictions**, and assess other information as reasonably necessary to understand such restrictions that may be placed on the Project.

Design Builder shall perform site investigations as necessary for Design Builder to **verify project requirements, options analysis, and innovation**. Design Builder shall visit the site(s) and examine thoroughly and understand the nature and extent of the work, site, locality, actual conditions, as-built conditions. Design Builder must recognize all federal, state, and local laws and regulations that in any manner may affect cost, time, progress, performance or furnishing of the work or which relate to any

aspect of the design and the means, methods, techniques, sequences, or procedures of construction to be employed by Design Builder and safety precautions and programs.

Design Builder will study the County's Expectations and Initial Programming as provided in the solicitation and prepare to help the County prioritize and accomplish as many expectations as possible.

**Additional investigations** may need to be conducted to sufficiently identify or characterize utility locations (underground and overhead), site conditions, contaminated materials, and observable or concealed conditions at the project site or support site(s).

Design Builder may conduct subsurface investigation work, including the disturbance of existing vegetation, but cannot proceed until all **required permits** have been obtained. Investigation work may be considered an Early Work Package depending on the scope and approvals needed.

Design Builder will conduct or obtain, and understand all such examinations, investigations, explorations, tests, reports and studies, in addition to or to supplement those referred to above, that pertain to the subsurface conditions, "as-built" conditions, underground facilities and all other physical conditions at or **contiguous to the site** or otherwise that may affect the cost, time, progress, performance or furnishing of Work, as Design Builder considers necessary for the performance or furnishing of Work.

All reports or analyses generated by Design Builder's research, testing, inspections, and investigations, including but not limited to topographic surveys, geotechnical evaluations and hazardous materials studies, archaeological site surveys, hazardous materials investigations, etc., shall be provided to the County within seven (7) business days after such reports are analyzed and generated, unless mutually agreed to another date.

Design Builder shall be responsible for ensuring that its design documents and construction work accurately conform to, and interfaces with, the existing conditions and shall not request a change or claim for unforeseen or concealed conditions except as provided under the provisions of the Contract Documents.

#### **D. Subcontractors**

In addition to the proposed and accepted Key Team Members, it is anticipated that the Design Builder will recommend bringing on technical professionals and trades to inform larger, complex or specialty design and construction scopes immediately following Notice to Proceed (NTP). The County expects the Design Builder to recommend these scopes and the anticipated timing and approach to onboard (sublet) any subcontractor. These early partners will be part of the **Subcontracting and Inclusion Plan** and will be represented, as appropriate, in the Master Project Schedule and Workplan.

The County must concur on all subconsultants, subcontractors, or similar additional team members prior to them joining the Project. The County reserves the right to request additional options or competitive selection processes for any subcontractor or additional team member.

#### **-Phase 1 Design Workplan and Cost Proposal-**

At the conclusion of the Validation subphase, provided the Project has proven feasible for the anticipated budget, the County will request a **Phase 1 schedule and cost proposal** that will cover, tasks, deliverables, staffing to design the project and develop the Phase 2 GMP Proposal.

#### **E. Design Development (subphase)**

## 1. Initial Design/Schematics

At the conclusion of the Project Definition subphase, as the first phase of the architectural design process, the Design Builder will apply any proposal elements that were accepted by the County and project definition requirements into civil, architectural, and tectonic elements of the design. The Design Builder will produce the necessary conceptual and narrative documents to communicate the site analysis and the initial agreed programming. The initial design documents will form the basis and foundation of the Target Value Design Process.

## 2. Master Site Development Plan

During initial phases of the Project, the County expects the Design Builder, and their experts, to develop a *Master Site Development Plan*. The Arlington Operations Center Redevelopment Project, as defined and priced for this initiative, is thought to be a preliminary phase of achieving redevelopment of the entire 17.5 acres of the site. A Master Site Development Plan will assist the permitting process and inform the Authorities Having Jurisdiction (AHJ) on a reasonable and efficient *Development Agreement* that could ultimately save on costs and pro-rated fees if determined to phase development. The County anticipates early meetings with the AHJs will advise a final approach.

## 3. Continuous Operations Design and Plan

Critical to the success of the Project, the Design Builder must protect the continuous work of the north County Road and Fleet Operations. In Phase 1, the Design Builder must develop and coordinate with the County a **Continuous Operations Plan**. The Plan will detail physical space, moves, improvements, enabling projects, coordination and other tasks and activities that will ensure minimum disruption and impact to County operations while the site is being redeveloped and new facility is constructed.

The County anticipates the Design Builder to advance any proposed Continuous Operations concepts that informed an Award decision. The County is open to options both on and off the current Project site and, as discussed in Owner Expectations and Initial Programming, may provide support sites.

Continuous Operations will be part of the **Project Workplan** and will be accounted in the Project Schedule and Cost.

The **Continuous Operations Plan** will include, at a minimum: 1) readiness and preparedness section, 2) relocation and or modified area plans (surge), 3) continuity of operations considerations and assurances, as well as 4) **return to “normal operations.”** Each section of the Plan should include timing, schedule, durations, activities, resources assumed and needed, and ties to the Project Cost. Options for efficiency and cost controls should be presented in the development of the Plan.

To support the success of Continuous Operations, the County may consider moving part or all the Fleet and Road Crews, or equipment, to another site temporarily. The Continuous Operations Plan should initially look at other options, such as the utilization of another site, and provide pricing and benefits or challenges with such considerations. A list of possible other sites is provided with the Owner’s Initial Programming documents.

## 4. Target Value Design Activities

After the Project program, goals, outcomes, etc. have been represented graphically through the Initial **Design Schematics** the Design Builder will prepare to engage the Project Team through a Target

Value Design, consistent with any accepted proposal approach. At a minimum, the Design Builder will lead the Project Team in setting the target cost, forming design “subcommittees” (aka TVD Teams) according to building systems or critical construction scopes, and allocate a cost to each Team. Each TVD Team will evaluate design options against the target values and present to the Project Team during team meetings.

The Target Value Design process is anticipated to form the basis of the Guaranteed Maximum Price (GMP)/Phase 2 Proposal and should be set in a way that clearly translates into the cost and pricing approach necessary to form the Proposal.

## **5. Design Decision Log**

As part of the project tracking, the Design Builder will itemize and record all design decisions. All design decisions should be documented with their corresponding cost. The County may wish to access clear records of how design items evolved, and cost decisions were made.

## **6. Design Documents**

### **a. Preliminary Design Submissions.**

As Design Builder advances the **Design Documents**, Design Builder shall collaborate with the County to submit and review Design Submissions that will be incorporated into the Final Design Documents. The Preliminary Design Submissions will be submitted pursuant to the accepted Design Management approach from the Design Builder’s proposal.

Design Builder shall coordinate with the County to determine the schedule for review of preliminary design submissions packages. Design Builder shall schedule the review of the design submissions packages such that the review of each package submitted is of reasonable scope for prompt and thorough review by the County.

The parties will work collaboratively to adjust in the design submissions and in the proposed Final Design Documents to fit within the County’s Project Goals.

The County and Design Builder shall work collaboratively to develop the Final Design Documents provided as part of the **GMP/ Phase 2 Proposal**. The Design Documents submitted with the GMP/Phase 2 Proposal shall be the **Basis of Design** as described in Article 2 of the Contract.

*Design Builder shall highlight any material differences and developments between the Initial Design Documents, any Design Submissions, and the Final Design Documents as the Design Documents are being developed.*

If the County has any comments relative to any design submission or finds any inconsistencies or discovers inaccuracies in any design submission, the County shall give prompt written notice of such comments or findings to Design Builder, who shall make appropriate adjustments to the proposed Final Design Documents.

The parties will work collaboratively to adjust any design submission and in the proposed Final Design Documents to fit within the Project Charter as well as the GMP.

### **b. Development of Final Design Documents**

As accepted by the County in the Phase 2 Proposal, the Design Builder shall manage the design process in a collaborative, efficient, and coordinated manner, use TVD, conduct design workshops, or similar as necessary to satisfy the County. As mutually agreed, *Basis of Design Documents* will establish the scope of the Work and provide the basis for the GMP/Phase 2 Proposal. The Basis of Design Documents, at a minimum, must be consistent with the Project Definition unless the County has consented to modify the Programming or outcomes in writing (decision log).

Consistent with the proposed approach, the Design Builder must provide for an orderly and timely approval process by the County, any third parties, or authorities having jurisdiction.

The County is committed to review and comment on any design submission in a timely fashion. The Design-Builder will plan for at least five (5) business days for review of design submissions.

Design Builder shall track, in a review log, all responses to the County's design review comments, describing the action taken for each comment. The County understands that technology and/or software may substitute, or enhance, review and comment processes. The Design Builder should present design review efficiencies for consideration.

\*Any design submission is understood to fit within then *current programming and cost assumptions*. However, should innovation or long-term efficiencies become known, creating a value proposition, the Design Builder may submit alternatives or "design options" that may alter the current programming and cost, for consideration, in accordance with the General Conditions.

### **Design Quality Management Plan**

Design Quality Management Plan (DQMP) will be a plan developed by the Design-Builder that provides the organization, relationship and procedures design will take. The DQMP will include, at a minimum, clear lines of responsibility with a well-defined approach for meeting Project requirements, innovation in design approach. The exact contents and format will be agreed to by the Project Team. The County reserves the right to periodically audit design quality.

#### **c. "Final" Design Documents**

The County expects the Design Builder to advance design and fully permit all site development, buildings/facilities, and necessary utilities. The County recognizes that elements of a project may require different levels of design, some scopes being able to be permitted and/or constructed sketches and/or general scopes of work.

**Performance Specifications** may be accepted by the County for some scopes of work. A performance specification must describe, or illustrate, the specific performance, outcomes, or requirements for the scope identification. Typical performance specifications may include but not limited to the following:

- Mechanical, electrical (Power, Emergency Power, Lighting, Low Voltage, Communications, Fire Alarm, Security, etc.) and plumbing systems
- Structural capacities and requirements
- Warranty obligations
- Operations and maintenance requirements

The Design Builder should make the County aware of any design documents or specifications that they plan to under a *Performance Specification*. Performance Specifications cannot be used if an Authority Having Jurisdiction has not agreed.

The Design Builder will **package all designs with technical specifications** in a construction document package. The final deliverables to be included in the Construction Document set may include, *but not be limited to*, the following:

- Concept, Character, and Principals
- Existing Site Photos
- Construction Progress Photos
- Site Plan and Construction Access/Circulation
- Laydown and Staging
- Massing Plan
- Exterior Elevations
- Floor Plate Stacking
- Building Sections
- Building Entries and Circulation
- Photovoltaic Equipment
- Floor Plans and Access Plans specifically addressing ADA
- Materials and Color Palette
- Parking Concept
- Landscape Plan
- Renderings (Exterior/Interior)
- Vehicular turning templates for the fire trucks/ladder to ensure that the movements work within the site as well as getting out of the site
- Storage improvements

## **7. Construction Documents**

The Design Builder will develop a full set of construction documents as appropriate and will maintain as the record of all project improvements. All construction documents must be in accordance with all applicable codes and regulations and must be per industry standard appropriate for the scope of work.

### **a. Project Manual**

The County anticipates the Design Builder create and maintain a Project Manual that includes the drawings/as-builts and specifications used for construction. The design and construction documents with the project manual to include all improvements, building elements and components, that is necessary to fully record the Work.

Design Builder shall schedule the review of all construction documents and project manual and may do so in “packages” such that the review of each package submitted is of reasonable scope for prompt and thorough review by the County.

## **8. Permitting**

At a time mutually agreed, but no later than with the GMP/Phase 2 Proposal, the Design Builder shall provide a **Permitting Plan** detailing the process for obtaining the building and site development permits

for various phases of the project. The Permitting Plan should include environmental or similar Permits the County will obtain.

During Phase 1, the Project Team will meet with the applicable authorities having jurisdiction (AHJ) and develop processes and timelines for reviews and approvals the Project requires. The County anticipates this Plan to be developed as early in the life of the Project as possible and impact the Project Schedule. The County sees this as an opportunity to streamline and create project delivery efficiencies.

## **9. Guaranteed Maximum Price (GMP)**

The GMP will develop throughout Phase 1 culminating as a final price for the project and basis of the Phase 2 Proposal. The timing of the **GMP/Phase 2 Proposal** and the percentage of completeness of the designs and specifications will be mutually determined by the County and the Design-Builder.

### **A. Preliminary Schedule of Values**

As mutually agreed early in the design development subphase, the Design Builder shall submit a preliminary Schedule of Values for the Project in such a form and supported by such data to substantiate its accuracy in reflecting the breakdown for administrative and payment purposes as the County may require. The Schedule of Values shall be further organized to conform to the Construction Specifications Institute (CSI) standard format for divisions and sections.

With the submission of each Design Submission Package, Design Builder shall provide preliminary estimates of costs associated with the Design Submissions in a format acceptable to the County that will be incorporated into a current draft of the GMP.

The preliminary estimates shall be provided at a minimum of weekly basis and shall be updated with new information anytime Design Builder Team incorporates decisions into the Project. The Design Builder shall establish target values for all “major” scopes of work and assume allowances and contingencies where appropriate representing the level of cost risk that may be associated with any scope of work.

### **B. Schedule of Values and Cost Model**

On the Project Schedule, Design Builder shall provide an updated Schedule of Values for the Work with actual start and/or finish dates and percentages complete.

The forecasting and development of accurate project cost estimates throughout each phase of the Project is vital to the County’s financial management strategy. The County relies on the Design Builder to provide and validate current and detailed cost estimates and forecasts that will be incorporated into the overall cost controls for the County. Specifically, costs directly attributed to any *physical asset* will need to be clearly identified.

Updates shall compare the planned progress from baseline schedule with actual progress from the current schedule. The Schedule of Values (SOV) shall be in conformance with the requirements below and in a form and supported by data to substantiate/validate its accuracy in reflecting the breakdown for administrative and payment purposes as the County may require.

The Schedule of Values shall be further organized to conform to the Construction Specifications Institute (CSI) standard format for divisions and sections.

The sum of all values listed shall equal the GMP, reflective of all scopes, phases, direct, indirect and any expense to the Project.

Unless mutually agreed, the Design Builder will continue to update estimates and forecasts in the format acceptable to the County and provide data to the County to reflect real-time information.

Design Builder will provide all pricing, estimates and other data used to develop the Phase 2 Proposal on an open and transparent basis.

1. The Schedule of Values and Cost Model must be consistent with the GMP Amendment/Phase 2 Proposal, and the format required above, unless the parties have agreed on a Change to the terms set forth in the GMP Amendment pursuant to Article 9 of the General Conditions.
2. The "project controls system" used by the Design Builder shall be acceptable to the County and will be capable of being broken down and reported in several different work breakdown structures, including but not limited to organizing the financial data by cost element codes, subcontracts, vendors, Construction Document packages, etc.
3. The Design Builder will coordinate the development of the GMP pricing with the development of the Final Design Documents as well as the Project Schedule so that the County may obtain an accurate understanding of the GMP. The GMP set forth in the Contract shall not be exceeded without a written Change Order.

### **C. Development of GMP Pricing and Phase 2 Proposal**

It is anticipated that nearing the conclusion of Phase 1, on a date mutually agreed, the Design Builder shall provide a draft GMP/Phase 2 Proposal that includes the following:

- GMP Pricing and cost validation (Schedule of Values and Cost Model)
  - Allowances
  - Contingences
  - Alternate Pricing or Unit Pricing
  - Construction General Conditions
- Design Documents (inclusive of decision logs to support)
- Master Project Schedule
- A list of the assumptions and clarifications made by the Design-Builder in preparation of the GMP Proposal
- Project Specific Safety Plan and Job Site Hazard Analysis
- Continuous Operations and Return to Operations Plan
- Permitting Plan
- QA/QC Plans, as applicable
- *Differing Site Conditions Report, if applicable*
- Updated Inclusion Plan (with Subcontracting and Apprenticeship)
- Additional Services, if applicable

#### **Differing Site Conditions Report**

Design Builder shall provide a report of all Differing Site Conditions as defined in the General Conditions of the Contract that are discovered during Phase 1.

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

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

With the GMP/Phase 2 Proposal, Design Builder shall prepare and submit a GMP Pricing and validation of the GMP to the County, in a format acceptable to the County, reflecting Design Builder's total cost for the Project on an open book basis.

#### **D. Setting the GMP**

The GMP in the GMP Proposal shall be at or below the Anticipated GMP (as modified pursuant to the Contract Documents) and shall include:

- Design Builder's Fee as defined in the Contract
- The Cost of the Work as defined in the Contract
- The Construction General Conditions Costs as defined in the Contract
- If applicable, any Allowance established by the Parties pursuant to the Contract
- Design Builder's Contingencies established pursuant to the Contract

Design Builder shall meet with the County to review the proposed GMP and Phase 2. If the County has any comments relative to the proposed GMP or finds any inconsistencies or inaccuracies in the information presented, it shall give prompt written notice of such comments or findings to Design Builder, who shall make appropriate adjustments to the proposed GMP, its basis, or both. The parties will work collaboratively to adjust the Design Documents, Project Schedule, or GMP to meet the County's objectives.

Once there is agreement on the Phase 2 Proposal, the County will issue an Amendment and Notice to Proceed on Phase 2.

With the GMP (Phase 2) Proposal, Design Builder shall provide a **Final Master Project Schedule** that will be accurate to complete Construction and **Return to Operations (R2O)** Activities.

All schedules are anticipated to be in the format of a Critical Path Method (CPM), unless mutually agreed otherwise.

#### **E. Acceptance of the GMP/Phase 2 Proposal**

Should the County and Design Builder be unable to agree on the Phase 2 Proposal the County will follow the process as outlined in the Contract.

**PHASE 2  
CONSTRUCTION AND RETURN TO OPERATIONS**

**A. Construction Services**

The Design Builder should anticipate providing **Construction Services** necessary to execute and complete the construction of the Project pursuant to the **Contract Documents** and shall price and plan for all necessary resources. Construction Services is anticipated to include, but not be limited to, construction administration, project controls, office engineering, scheduling, and sequencing, subcontractor, labor, materials and equipment management and oversight, construction quality, materials testing, reporting, and similar. Construction Services will also include any similar services needed on temporary sites.

**1. Construction Management**

As part of the **Project Schedule and Workplan**, the Design Builder and the Owner may elect to specifically develop a **Construction Management Plan** that outlines roles and responsibilities of the Design Builder, the County, and the County's Owner Representative.

**2. Construction Quality**

The County expects high levels of construction quality and will rely on the Design Builder to ensure this outcome. The County may request a *construction quality management plan* to facilitate and solidify activities and expectations around expected quality standards. The Design Builder should anticipate offering options for setting and realizing construction quality on the Project.

**B. Subcontracting, Apprentices and Diverse Business Inclusion.**

By the date mutually agreed, but no later than the GMP/Phase 2 Proposal, Design Builder shall submit for approval the **Subcontracting and Inclusion Plan** as required in the General Conditions. This plan will also include **Apprentice Utilization Plan**. Apprentices shall be tracked with subcontractors in accordance with the General Conditions. Registered apprentices are required to perform 15% of all labor hours for the Project.

**C. Support Site Construction**

Should another site be used for continuous operations or temporary storage/staging, which will be part of an enabling project, priced and overseen by the DB team, the Design Builder will permit and construct all necessary improvements including moving and staff support to ensure temporary operations are efficient and minimally disrupted.

**D. Safety**

By the date mutually agreed, but no later than the GMP/Phase 2 Proposal, the Design Builder shall submit a **Project Specific Safety Plan** and Job Site Hazard Analysis for the activities associated in both Phase 1 and Phase 2.

No field investigation or construction activities will be authorized without acceptance of safety plans as required for the Work.

## **E. Phased Completion**

In accordance with the Contract, should the Design Builder determine certain construction aspects of the Project may be started and completed early, the County will work collaboratively with the Design Builder to determine a phased Acceptance approach if it proves to be mutually beneficial.

## **F. Return to Operations (R2O) and Completion**

The County anticipates the Design Builder be fully engaged and available through the entire Project, even as the Project is completing and finishing paperwork. The Design Builder shall ensure all subcontractors are also contracted appropriately to provide this level of engagement.

With the GMP/Phase 2 Proposal, the Design Builder shall provide a **Project Completion Plan** that integrates all aspects of project “closeout” proactively over the life of the project.

The **Project Completion Plan** will be a “living” document that will grow and expand as the design and construction progress. The Project Completion Plan should include, but not be limited to tasks, mechanisms, and procedures for:

- Returning Road Maintenance and north County operations to their new space and ensuring form, fit, and function.
- Phased completions and early subcontract closeouts
- Final subcontracting needs
- Commissioning
- Warranties identification, management, and periods of performance
- Training or support needed for County facility maintenance staff
- O&M Documentation (searchable and digital preferred)
- Record document finalization, organization, and storage support
- Cost reconciliations
- Reporting

Design Builder will align the Project Closeout Plan with the Continuous Operations Plan as part of the Return to Operations (R2O) to ensure the mutually agreed level of support and care is provided.

Design Builder shall provide commissioning, testing, and closeout of the Project as agreed to by the County, pursuant to the Contract Documents.

**-END OF SCOPE OF SERVICES-**

**EXHIBIT E  
DESIGN BUILDER'S INCLUSION PLAN**

Aspirational Goal:	<b>25% overall M/WBE (2% Validation &amp; Design, 23% Construction)</b>			
Goal Rationale:	We have focused our design team makeup around key expertise to successfully design for the unique site conditions. Cornerstone General Contractors (CGC) has many trade partners and our outreach strategies are adding more firms every week to help reach construction goals while remaining competitive on pricing. <b>Note that our potential inclusion rate is over 40% M/WBEs! We anticipate many of these firms will also be SBEs and local firms.</b>			
Work Category	Phase	Anticipated % of GMP	Inclusion Strategy	Challenge
Landscape Design	Validation/Design	.50%	Used in the past	None
DEI Consulting	Validation/Design/Construction	.50%	Key CGC Partner	None
Survey	Validation/Design/Construction	.25%	Key CGC Partner	None
Utility Locates	Validation/Design/Construction	.50%	Key CGC Partner	None
Marketing	Validation/Design/Construction	.25%	Key CGC Partner	None
Printing	Validation/Design/Construction	.10%	Key CGC Partner	None
Electrical	Construction	10%	Key CGC Partners	Will need to be price competitive
Mechanical	Construction	12%	Key CGC Partners	Will need to be price competitive
Sitework & Utilities	Construction	10%	Key CGC Partners	Will need to be price competitive
Demo	Construction	3%	Key CGC Partners	Will need to be price competitive
Reinforcing Steel	Construction	1%	Key CGC Partners	Will need to be price competitive
Drywall & Framing	Construction	3%	Key CGC Partners	Will need to be price competitive
Painting	Construction	1%	Key CGC Partners	Will need to be price competitive
Fencing	Construction	.50%	Key CGC Partners	Will need to be price competitive
Waterproofing	Construction	.25%	1-on-1 outreach	Location
Casework	Construction	1%	1-on-1 outreach	Will need to be price competitive
Security	Construction	.15%	Key CGC Partners	None
Signage	Construction	.25%	Key CGC Partners	Will need to be price competitive
Sanitation	Construction	.10%	Key CGC Partner	None
Final Cleaning	Construction	.25%	Key CGC Partner	Will need to be price competitive
Trucking	Construction	.20%	1-on-1 outreach	Location
Fall Protection	Construction	.10%	1-on-1 outreach	Will need to be price competitive
<b>Possible Total Anticipated %</b>		<b>43%</b>		

## Voluntary Aspirational Goals

We have cultivated a culture where it is everyone's job to make sure we reach our diverse business participation goals. Through ongoing outreach, we work with small, MWBE, and local subcontractors in Snohomish, King, Pierce, and Thurston Counties to help them learn more about opportunities to build with Cornerstone.

**Through 1:1 meetings with these trade partners, we learn about their individual capabilities so we can tailor bid packages that give them enhanced opportunities to competitively bid our projects.**

### PROPOSED INCLUSION GOALS & RATIONALE

**MBE: 15% | WBE: 10% | SBE: 5% | Local: 30%**

We based our goals higher than the State of Washington's aspirational goals because our completed projects and outreach efforts have demonstrated that we can exceed the State's goal. For the WBE goal, we set our goal 4% higher than the State standard and for MBE, our goal is 5% higher. The SBE goal will be achieved through "stacking" whereby most M/WBE firms will also count as SBEs.

For the local business goal, many other agencies set this goal at 20%, yet we believe that 30% is achievable and reflective of the participation we expect given our 20-year history working in Snohomish County.

## Opportunities for Inclusion

**The scopes of work that we expect to have the greatest chance for diverse inclusion are:**

- Design Services (Local, SBE)
- Negotiated Support Services (NSS) including trucking, final cleaning, security, flagging, and garbage disposal (Local, SBE, WBE, MBE)

- Division 9: Framing (MBE), Painting (MBE), Gypsum Wallboard (MBE)
- Division 31 Earthwork (Local, MBE, and/or WBE)
- Demolition / Hazardous Materials Abatement (MBE, WBE)
- Concrete Pumping (Local, MBE, and/or WBE)

## Strategies for Inclusion

**Our plan includes ten distinct areas of focus and activities that ensure that work opportunities reach all interested, relevant companies.**

1. Advertise to MWBE & Local Subcontractors
2. Outreach Community Meetings
3. 1:1 Sessions with Subcontractors
4. Address & Eliminate Barriers
5. Local Recruitment Strategy
6. Mentorship Assignments
7. Subcontractor Inclusion Plans
8. Identification of Sub-Tier Businesses
9. Project Support Services
10. Proactive Identification of Firms

### UNDERREPRESENTED SCOPE TO GROW

We see an opportunity to increase diverse and local business participation in concrete pumping. Our **DEI Director, Vicki Puckett, has already been meeting with Snohomish County-based North River Concrete Pumping (Local, WBE) and inviting them to bid on our projects.** Vicki has coached North River on the process and paperwork requirements for public projects, and provided them redacted versions of winning bids to help them become more competitive.

## INCLUSION CHALLENGES

**Number of Firms:** Only one-quarter of the 319 MWBE firms in our database are based in Snohomish County.

**Administration:** Heavy administrative burden and a lack of Snohomish County-based support organizations to provide guidance.

## MITIGATION STRATEGIES

Promote the bidding opportunities to local, small, and MWBE firms in the County, especially those with whom we've worked previously in Snohomish County. We will provide assistance to local firms on certification.

**DEI Director Vicki Puckett** provides mentorship, support, and guidance for navigating admin requirements. She will facilitate peer-to-peer introductions so MWBE and local firms can network and learn from one another in the absence of local support organizations.

**EXHIBIT F**  
**TITLE VI ASSURANCES**

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Washington State Department of Transportation, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Washington State Department of Transportation to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Washington State Department of Transportation, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Washington State Department of Transportation may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor

will take action with respect to any subcontract or procurement as the Recipient or the Washington State Department of Transportation may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

## APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

### **Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).