



Spokane Park Board

April 13, 2017– 1:30 p.m.

City Council Chambers, lower level City Hall
808 W. Spokane Falls Blvd, Spokane, Washington

Park Board Members:

- X Chris Wright – President
- X Susan Traver – Vice President
- X Leroy Eadie
- X Ross Kelley
- X Lauren Pendergraft
- X Nick Sumner
- X Ted McGregor
- Greta Gilman (absent/excused)
- X Richard Chase
- X Steve Salvatori
- X Sally Lodato
- X Mike Fagan – Council Liaison

Parks Staff:

Jason Conley
Mark Buening
Garrett Jones
Al Vorderbrueggen
Fianna Dickson
Angel Spell
Jon Moog
Carl Strong
Megan Qureshi
Berry Ellison
Pamela Clarke

Guests:

Mark Janke
Jim Wilson
Matt Walker
Hal McGlathery

MINUTES

1. **Roll Call:** *Pamela Clarke*
See above

2. **Minutes:**
A. March 9, 2017, regular Park Board meeting minutes and study session notes

Motion No. 1: Susan Traver moved to approve the March 9, 2017, regular Park Board meeting minutes and joint study session notes.

Mike Fagan seconded.
Motion carried with unanimous consent.

3. **Additions or Deletions to the Agenda:**
A. First Tee 3-hole project license and development agreement

Motion No. 2: Chris Wright moved to defer action on the First Tee 3-hole project license and development agreement for another month.

Nick Sumner seconded.
Motion carried with unanimous consent.

4. **Special Guests:**
A. None

5. **Claims:** [Claims for the month of March 2016](#) – *Ross Kelley*

Motion No. 2: Ross Kelley moved to approve claims for the month of March 2017 in the amount of \$2,851,813.83.

Mike Fagan seconded.

Motion carried with unanimous consent.

6. **Financial Report & Budget Update:** – *Mark Buening* provided the [March Financial Report & Budget Update](#). Park Fund revenue is tracking at 108.22% of the projected budget. Park Fund expenditures are tracking at 117.87% of the projected budget. The Golf Fund revenue is tracking at 49.47% of the projected budget and the expenditures are tracking at 91.89%. Mr. Buening reported downward trends in the Park Fund are attributable to the closure of Riverfront Park and inclement weather has resulted in lower golf revenues.

7. **Special Discussion/Action Items:**

A. **Park Board member resignation** – Lauren Pendergraft will be stepping down from her position on the Park Board. Board members thanked Ms. Pendergraft for her service and valued input during her term. She expressed her appreciation for the opportunity to serve.

8. **Committee Reports:**

Urban Forestry Tree Committee: April 4, 2017, *Rick Chase*

A. Action items: None

B. The May 2 meeting is canceled. The next scheduled meeting is 4:15 p.m. May 30 at the Woodland Center, Finch Arboretum.

Golf Committee: April 11, 2017, *Nick Sumner*

A. [Esmeralda Golf Course pole barn contract/Bunker Steel Buildings \(\\$64,820, plus tax\)](#) – *Jason Conley* reviewed the proposed Esmeralda Golf Course pole barn contract with Bunker Steel Buildings to build a structure to house golf carts, not to exceed \$64,820, plus tax.

Motion No. 3: Nick Sumner moved to approve the Esmeralda Golf Course pole barn contract with Bunker Steel Buildings not to exceed \$64,820, plus tax.

Ross Kelley seconded.

Motion carried with unanimous consent.

B. The May 9 meeting is canceled. The next scheduled meeting is 8:05 a.m. June 6 in Manito Park conference room.

Land Committee: April 5, 2017, *Susan Traver*

A. [Mower contract/RMT \(\\$53,133.40, plus tax\)](#) – *Susan Traver* presented the proposed Manito Park mower contract with RMT in the amount of \$53,133.40, plus tax.

Motion No. 4: Susan Traver moved to approve the mower contract with RMT in the amount of \$53,133.40, plus tax.

Sally Lodato seconded.

Motion carried with unanimous consent.

B. [MOU/Friends of the Centennial Trail \(\\$75,000\)](#) – *Susan Traver* provided an overview of the recommended Memorandum of Understanding with Friends of the Centennial Trail. The Friends of the Centennial has offered \$75,000 donation to Parks for 30% design of the Don Kardong Bridge.

Motion No. 5: Susan Traver moved to approve the Memorandum of Understanding with Friends of the Centennial Trail, as presented, in the amount of \$75,000.

Sally Lodato seconded.

Motion carried with unanimous consent.

C. [Bosch Lot Letter of Intent](#) – *Garrett Jones* presented the draft Bosch Lot Letter of Intent. The purpose of the LOI is to codify an understanding with Public Works, Finance Division, and the Parks and Recreation Division with respect to the development of properties and projects on the Bosch Lot. The Bosch Lot has RCO restrictions which require the property to be used for outdoor recreation. It is possible to offer transfer RCO restrictions to “like” property. Mr. Jones presented a map illustrating where RCO restrictions could be lifted from Bosch Lot to two parcels of city-owned property. The proposed parcels are located across from the library where the new CSO tank is being placed and the Summit Boulevard street right-of-way located across the street from the Bosch Lot.

Motion No. 6: Susan Traver moved to approve the Bosch Lot letter of Intent with noted edits.

Mike Fagan seconded.

Motion carried with unanimous consent.

D. The May 3 meeting is canceled. The next regular scheduled meeting is 3 p.m. May 31 at the Park Operations Complex, 2304 E. Mallon.

Recreation Committee: April 6, 2017, *Lauren Pendergraft*

A. [Mission Park Adaptive Field phase II contract/Coffman Engineers \(\\$61,889\)](#) – *Carl Strong* presented the Mission Park Adaptive Field phase II engineering and construction management contract with Coffman Engineers in the amount of \$61,889.

Motion No. 7: Lauren Pendergraft moved to approve the Mission Park Adaptive Field phase II contract with Coffman Engineers in the amount of \$61,889.

Susan Traver seconded.

Motion carried with unanimous consent.

B. The May 4 meeting is canceled. The next scheduled meeting is 3 p.m. June 1 at the Park Operations Complex, 2304 E. Mallon.

Riverfront Park Committee: April 12, 2017, *Ted McGregor*

A. [Pavilion design-build contract/Garco Construction \(Validation phase: \\$250,000\)](#) – *Berry Ellison* and *Matt Walker* presented the proposed Pavilion design-build contract with Garco Construction for the program validation phase not to exceed \$250,000. Mr. Ellison explained the contract will be amended at a later date to reflect the agreed guaranteed maximum price (GMP). Mr. Walker, Pavilion progressive design-build project manager, explained the 120-day validation phase involves the Garco team meeting with the Executive Team and other stakeholders to confirm the program that was issued in the RFP. Garco will then create a design for the Pavilion project. They will also validate the budget and schedule during this period. The public will also have an opportunity to view the progress of the project. The April 13 study session discussion is scheduled to include a presentation from the Garco regarding the Pavilion project.

Motion No. 8: Ted McGregor moved to approve the selection of Garco Construction as the Pavilion design-build team not to exceed \$250,000 for the program validation phase.

Sally Lodato seconded

Motion carried with unanimous consent.

B. [Riverfront Park redevelopment budget amendment](#) – *Berry Ellison* presented a summary of the Riverfront Park redevelopment budget amendment which involves program-level contingencies and reallocations which reflect actual conditions. Mr. Ellison explained the reallocation of funds is necessary for internal accounting purposes. The budget bottom line was not changed.

Motion No. 9: Ted McGregor moved to approve the Riverfront Park redevelopment budget amendment as presented.

Steve Salvatori seconded

Motion carried with unanimous consent.

C. [Rotary Fountain budget and scope \(Total: \\$950,000, includes \\$200K bond reallocation, \\$750K non-bond\)](#) – *Ted McGregor* and *Garrett Jones* provided an overview of the recommended Rotary Fountain budget and scope. Mr. Jones explained the recommendation involves giving staff direction to move forward with the project, and to identify which fund “bucket(s)” will cover the cost of the project. The plan is to restore the fountain to its original state. The proposed contract amendment with Walker Construction will include repair, and improvements to the mechanical, plumbing and electrical systems. The recommendation for the \$950,000 project would be funded from four areas: 1) \$150,000 bond – art budget, specifically for “new” art; 2) \$50,000 bond – excess legal fees; 3) \$350,000 – 2017 Park Fund capital; and 4) \$400,000 – excess Park Fund balance. Mr. Jones explained the \$150,000 from the art budget would be a last resort if the dollars are not available from other sources. Park Board members shared concerns on taking any dollars from the bond art budget or to use excess fund balance.

Motion No. 10: Ted McGregor moved to approve the recommended Rotary Fountain budget and scope as presented with the \$950,000 coming from the four identified areas with the caveat that the \$150,000 from the art budget would be the first to be reimbursed once funds are available.

Mike Fagan seconded.

Friendly amendment: Susan Traver offered the following friendly amendment to reword the motion to read: To approve the Rotary Fountain budget and scope in the amount \$950,000 with the set funding sources to be decided by the Park Board at a later date.

Mr. Fagan accepted the friendly amendment

The amended motion carried with unanimous consent.

F. The next scheduled meeting is 8:05 a.m. May 8 in the City Council Briefing Center.

Finance Committee: April 11, 2017, *Ross Kelley*

A. [SBO – 2017 Giveaway Tree Program/Reforest Spokane \(\\$50,000\)](#) – *Ross Kelley* presented the Special Budget Ordinance in the amount of \$50,000 for the Urban Forestry

program to pay Reforest Spokane for the 2017 giveaway tree program.

Motion No. 11: Ross Kelley moved to approve the Special Budget Ordinance in the amount of \$50,000 to pay Reforest Spokane for the 2017 Giveaway Tree Program. Funding source is the Stormwater Utility Fund.

Susan Traver seconded

Motion carried with unanimous consent.

B. The May 9 meeting is canceled. The next scheduled meeting is 3 p.m. June 6 in City Conference Room 2B.

Bylaws Committee: *Ross Kelley*

A. No action items

10. **Reports:**

Park Board President: *Chris Wright*

1. Chris Wright reported he and Susan Traver met with Mayor Condon and Rick Romero to discuss the Bosch Lot and the process to fill the Park Board vacancy created by Ms. Pendergraft's resignation.

Liaison reports:

1. Conservation Futures Liaison – *Steve Salvatori*
A. No report
2. Parks Foundation Liaison – *Ted McGregor* reported on a recent meeting with the Parks Foundation to discuss how Parks and the foundation will move forward on a community fundraising campaign.
3. Council Liaison – *Mike Fagan*
A. No report

Director's report: *Leroy Eadie*

1. Leroy Eadie provided an overview of an unauthorized road which was cut into Park property on the High Drive bluff. Updates and talking points were provided to the Park Board. Parks staff is reviewing what lead to the road construction and why it took place without proper permitting or Parks' approval. Plans for remediation are under review. Mr. Eadie also announced Jennifer Papich has been selected and approved as the new recreation director. Ms. Papich comes to Parks and Recreation with more than 10 years' experience with the city of Spokane Valley. Her first day is scheduled for April 24.

11. **Correspondence:**

A. Letters/emails: Affordable Family Entertainment (SAFER)

B. Newsletters: Corbin Senior Activity Center
Hillyard Senior Center
Sinto Senior Activity Center
Southside Senior and Community Center

12. **Public Comments:**

A. *Mark Janke* addressed a concern on the decision-making process to install a sidewalk in

the Audubon Park area. For future consideration, Mr. Janke suggested a list of activities and uses be compiled for each park. By having such an inventory, park users can review proposed projects on the inventory list. Mr. Janke explained this tool could improve communications with all types of park users and could offer a user-friendly way for citizens to make comments to Parks during the planning phase.

B. *Jim Wilson*, president of Friends of The Bluff, addressed the Park Board regarding the recent road construction on the High Drive bluff. Mr. Wilson presented [a letter on behalf of the organization](#) requesting the following: 1) a list of disclosures on the road construction and tree removal; 2) revoke the permit for tree removal; 3) cease discussions/negotiations regarding the proposed First Tee three-hole golf course until the road construction damage is completely remediated; 4) supply weekly reports on the progress; and 5) in advance of the next Park Board discussion regarding the First Tee golf course proposal, issue a public statement explaining whether the city followed all applicable laws and policies, the details regarding any communications that led to the road construction, and steps taken to prevent similar unauthorized activity in the future.

13. **Executive Session:** None

14. **Adjournment:** 3:32 p.m.

15. **Meeting Dates:**

A. Committee meeting dates:

Urban Forestry Committee: The May 2 meeting is canceled. The next meeting is 4:15 p.m. May 30 at the Woodland Center, Finch Arboretum.

Golf Committee: The May 9 meeting is canceled. The next meeting is 8:05 a.m. June 6 in the Manito Park conference room, Manito Park.

Land Committee: The May 3 meeting is canceled. The next meeting is 3 p.m. May 31 at the Park Operations Complex, 2304 E. Mallon.

Recreation Committee: May 4 meeting is canceled. The next meeting is 3 p.m. June 1 at Park Operations Complex, 2304 E. Mallon.

Riverfront Park Committee: 8:05 a.m. May 8 in the City Council Briefing Center

Finance Committee: The May 9 meeting is canceled. The next meeting is 3 p.m. June 6 in Conference Room 2B.

B. Park Board: 1:30 p.m. May 11, 2017, Council Chambers

C. Joint City Council/Park Board Study Session: 3:30 p.m. May 11 in Conference Room 5A, 5th floor City Hall

Minutes approved by:



Leroy Eadie, Director of Parks and Recreation

**CITY OF SPOKANE PARK AND RECREATION DEPARTMENT
MAR 2017 EXPENDITURE CLAIMS
FOR PARK BOARD APPROVAL - APR 13, 2017**

PARKS & RECREATION:

SALARIES & WAGES	\$	835,557.79
MAINTENANCE & OPERATIONS	\$	272,879.67
CAPITAL OUTLAY	\$	106,460.31
PARK CUMULATIVE RESERVE FUND	\$	59,283.33
CAPITAL IMPROVEMENTS - 2008 - PARK	\$	-
FRANKLIN PARK PROJECT - WATER DEPT.	\$	-

RFP BOND 2015 IMPROVEMENTS:

CAPITAL OUTLAY	\$	1,420,474.24
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GOLF:

SALARIES & WAGES	\$	105,625.40
MAINTENANCE & OPERATIONS	\$	51,533.09
CAPITAL OUTLAY	\$	-
TOTAL EXPENDITURES:	\$	2,851,813.83

CITY OF SPOKANE PARKS & RECREATION

The logo is a dark blue circle containing a white stylized figure of a person in a dynamic pose, possibly jumping or running. A white flower with five petals is positioned above the figure, and a white curved line, resembling a leaf or a path, arches over the figure.

Financial Report
March 2017

City of Spokane Parks & Recreation

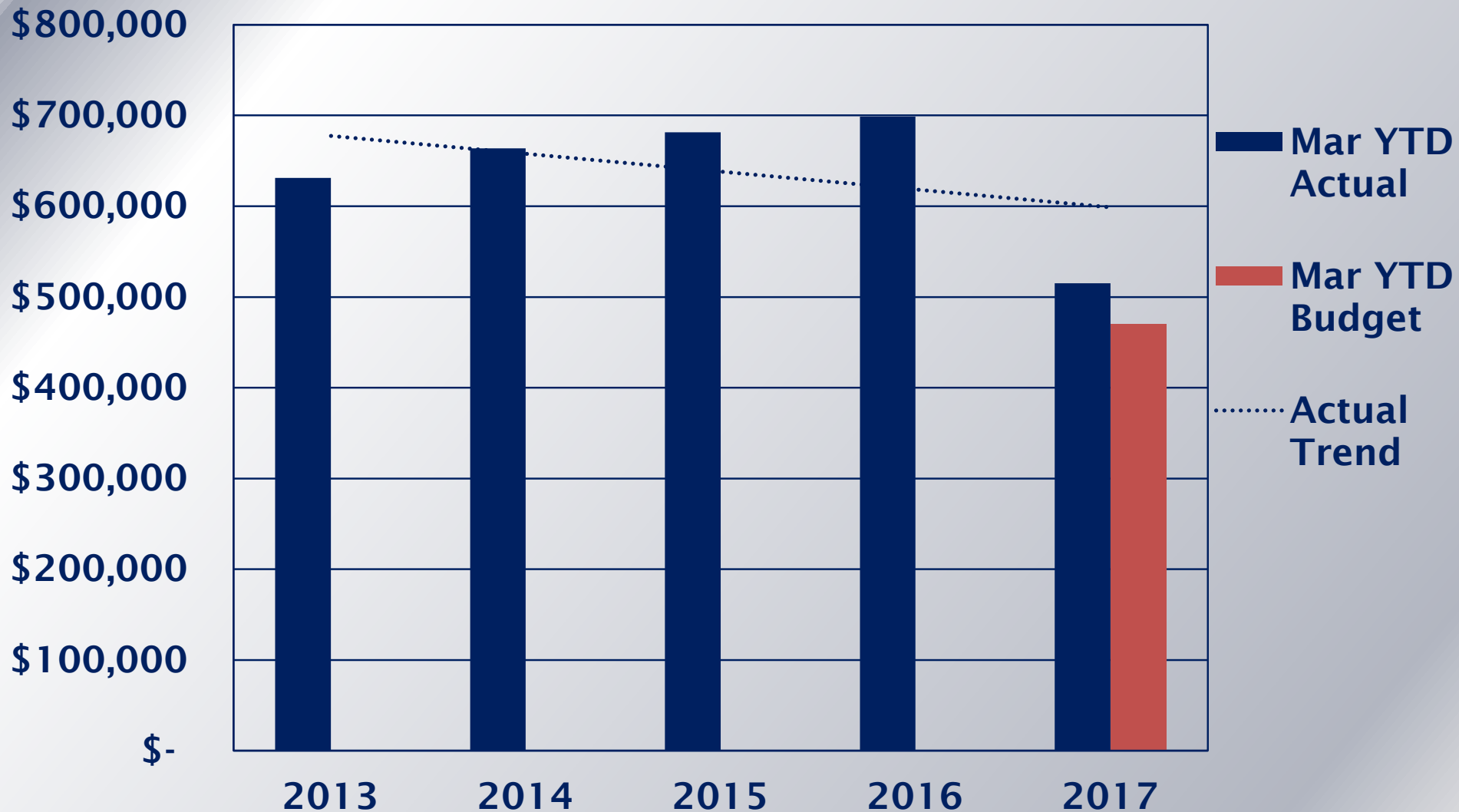
PARK FUND – Revenues & Expenditures

As of March 2017 (in millions)	2017 Budget	YTD Budget	YTD Actual	% YTD Budget
Park Revenue	4.65	0.48	0.52	108.22%
Transfers In	13.81	3.24	3.77	116.29%
Funds Available	18.46	3.71	4.28	115.25%
Expenditures	-15.97	-2.31	-2.73	117.87%
Transfers Out	-0.32	-0.14	0.00	0.00%
Capital Outlay	-4.14	-0.13	-0.21	154.59%
2015 Windstorn	-0.08	-0.02	-0.01	24.43%
NET	- 2.05	1.11	1.34	
Beg. Noncommitted Bal*	0.29			
End Noncommitted Bal	1.63			

*For clarification purposes, the 7% Reserve is a reduction against the Beginning Balance.

Park Fund Revenue

5 Year Trend & YTD Budget



City of Spokane Parks & Recreation

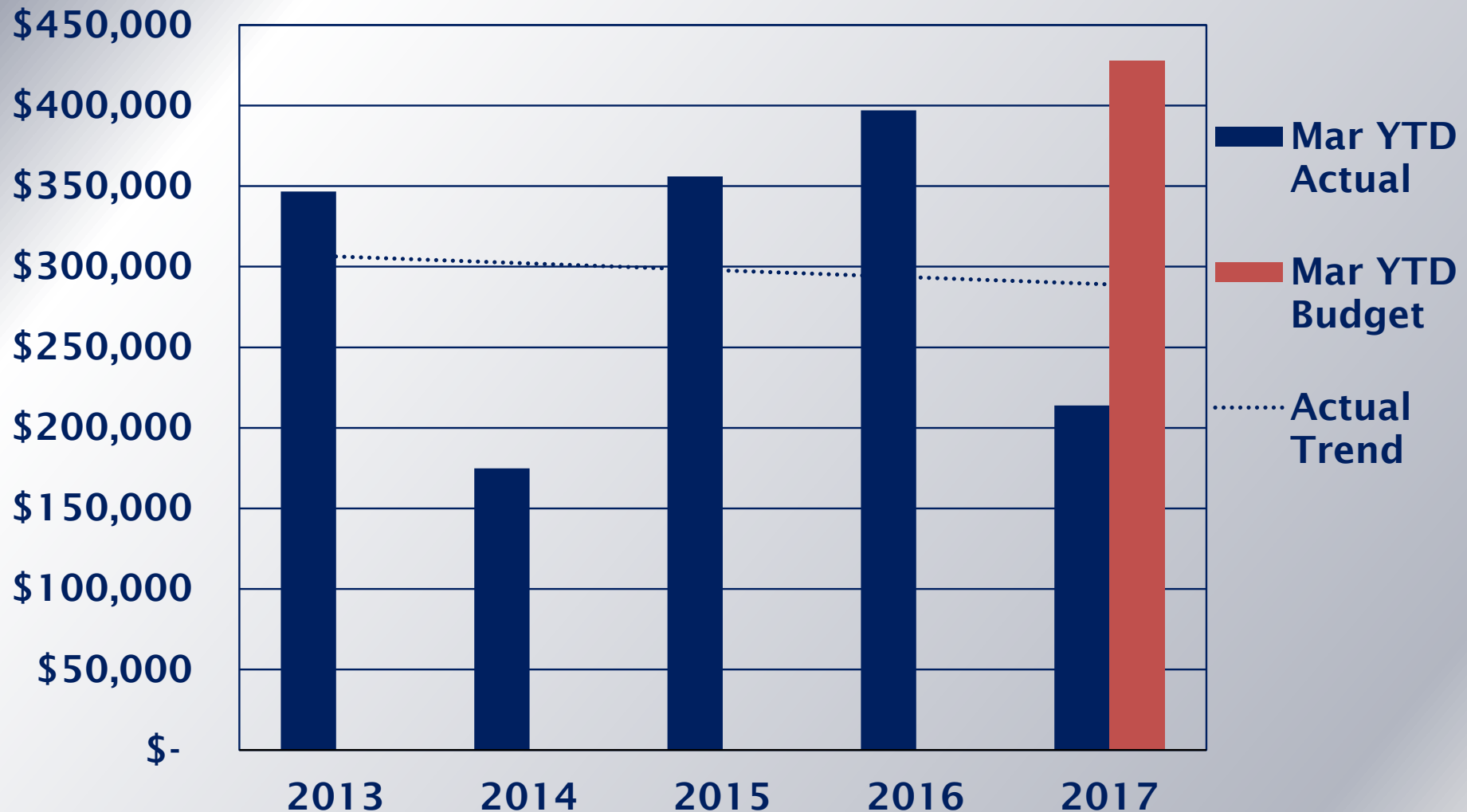
GOLF FUND – Revenues & Expenditures

As of March 2017	2017	YTD	YTD	% YTD
(in millions)	Budget	Budget	Actual	Budget
Golf Revenue	3.68	0.43	0.21	49.47%
Transfers In	0.00	0.00	0.00	0.00%
Funds Available	3.68	0.43	0.21	49.47%
Expenditures	-3.36	-0.41	-0.37	91.89%
Transfers Out	0.00	0.00	0.00	0.00%
Capital Outlay	-0.34	-0.04	0.00	0.00%
NET	- 0.01	- 0.01	- 0.16	
Beg. Noncommitted Bal*			- 0.09	
End Noncommitted Bal			- 0.25	

*For clarification purposes, the 7% Reserve is a reduction against the Beginning Balance.

Golf Fund Revenue

5 Year Trend & YTD Budget



City Clerk's No. _____



City of Spokane
Parks and Recreation Department

CONTRACT

Title: **ESMERALDA GOLF CART SHED**

THIS CONTRACT is between the **CITY OF SPOKANE PARKS AND RECREATION DEPARTMENT**, a Washington State municipal corporation, as ("City"), and **BUNKER STEEL BUILDINGS, INC.**, whose address is 5605 North Market Street, Spokane, Washington 99208, as ("Contractor"). Individually hereafter referenced as a "party", and together as the "parties".

*WHEREAS, the purpose of this Contract is to **Construct a Pole Barn at the Esmeralda Golf Course for use as Golf Cart Shed**; and*

WHEREAS, the Contractor was selected through a City of Spokane Parks and Recreation Department Request for Quotes dated April 5, 2017.

-- NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance of the Scope of Work contained herein, the City and Contractor mutually agree as follows:

1. TERM OF CONTRACT.

The term of this Contract begins on May 1, 2017, and will end on September 30, 2017, unless amended by written agreement or terminated earlier under the provisions.

2. LIQUIDATED DAMAGES. Liquidated damages will be in accord with the contract documents.

3 TIME OF BEGINNING AND COMPLETION.

The Contractor shall begin the work outlined in the "Scope of Work" ("Work") on the beginning date, above. The City will acknowledge in writing when the Work is complete. Time limits established under this Contract shall not be extended because of delays for which the Contractor is responsible, but may be extended by the City, in writing, for the City's convenience or conditions beyond the Contractor's control.

4. SCOPE OF WORK.

The Contractor's General Scope of Work for this Contract is described in Exhibit A, which is attached to and made a part of this Contract. In the event of a conflict or discrepancy in the Contract documents, this City Public Works Contract controls. The Contractor will do all work, furnish all labor, materials, tools, construction equipment, transportation, supplies, supervision, organization and other items of work and costs necessary for the proper execution and completion of the work described in the specifications and RFB entitled **ESMERALDA GOLF CART SHED**.

The Work is subject to City review and approval. The Contractor shall confer with the City periodically, and prepare and present information and materials (e.g. detailed outline of completed Work) requested by the City to determine the adequacy of the Work or Contractor's progress.

5. COMPENSATION / PAYMENT.

Total compensation for Contractor's services under this Contract shall be a maximum amount not to exceed **SIXTY FOUR THOUSAND EIGHT HUNDRED TWENTY AND 00/100 DOLLARS, (\$64,820.00)** plus tax, unless modified by a written amendment to this Contract. This is the maximum amount to be paid under this Contract for the work described in Section 3 above, and shall not be exceeded without the prior written authorization of the City in the form of an executed amendment to this Contract.

6. PAYMENT. The Contractor shall submit its applications for payment to Parks & Recreation, Administration Office, 5th Floor - City Hall, 808 West Spokane Falls Boulevard, Spokane, Washington 99201. **Payment will be made via direct deposit/ACH** within thirty (30) days after receipt of the Contractor's application except as provided in RCW 39.76. Five percent (5%) of the Contract price may be retained by the City, in accord with RCW 60.28 for a minimum of forty five (45) days after final acceptance, 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 the Contractor. If the City objects to all or any portion of the invoice, it shall notify the Company and reserves the right to only pay that portion of the invoice not in dispute. In that event, the parties shall immediately make every effort to settle the disputed amount.

7. CONTRACT DOCUMENTS.

The contract documents are this Contract, the Contractor's completed bid proposal form, contract provisions, contract plans, standard specifications, standard plans, addenda, various certifications and affidavits, supplemental agreements, change orders, and subsurface boring logs (if any). Federal and state requirements and the terms of this Contract, respectively, supersede other inconsistent provisions. These contract documents are on file in the Spokane Police Department, and are incorporated into this Contract by reference, as if they were set forth at length.

8. BONDS.

The Contractor may not commence work until it obtains all insurance, permits and bonds required by the contract documents and applicable law. This includes the execution of a payment and performance bond on the forms attached, equal to one hundred percent (100%) of the contract price, and written by a corporate surety company licensed to do business in Washington State.

9. STATEMENT OF INTENT TO PAY PREVAILING WAGES TO BE POSTED. The Contractor and each subcontractor required to pay the prevailing rate of wages shall post in a location readily visible at the job site: (1) a copy of a "Statement of Intent to Pay Prevailing Wages" approved by the industrial statistician of the Washington State Department of Labor and Industries (L & I); and (2) the address and telephone number of the industrial statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.

10. FEES.

Reimbursement for the fees paid by the Contractor for the approval of "Statements of Intent to Pay Prevailing Wages" and certification of "Affidavits of Wages Paid" by the industrial statistician

of the State Department of Labor and Industries will be added to the amounts due the Contractor. The Contractor will remain responsible for the actual submittal of the documents to the industrial statistician. In order to receive this reimbursement the Contractor will be required to submit to the City, prior to final acceptance of the work, a list of its subcontractors at all tiers and have their "Statements of Intent to Pay Prevailing Wages" on file with the City.

11. STATE PREVAILING WAGES.

The Contractor and all subcontractors will submit a "Statement of Intent to Pay Prevailing Wages" certified by the industrial statistician of the Department of Labor and Industries, prior to any payments. The "Statement of Intent to Pay Prevailing Wages" shall include: (1) the Contractor's registration number; and (2) the prevailing wages under RCW 39.12.020 and the number of workers in each classification. Each voucher claim submitted by the Contractor for payment on a project estimate shall state that the prevailing wages have been paid in accordance with the "Statement(s) of Intent to Pay Prevailing Wages" on file with the City. Prior to the payment of funds held under RCW 60.28, the Contractor and subcontractors must submit an "Affidavit of Wages Paid" certified by the industrial statistician.

12. TAXES, FEES AND LICENSES.

- A. Contractor shall pay and maintain in current status, all necessary licenses, fees, assessments, permit charges, etc. necessary to conduct the work included under this Contract. It is the Contractor's sole responsibility to monitor and determine changes or the enactment of any subsequent requirements for said fees, assessments, or changes and to immediately comply.
- B. The cost of any permits, licenses, fees, etc. arising as a result of the projects included in this Contract shall be included in the project budgets.

13. CITY OF SPOKANE BUSINESS LICENSE.

Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained a valid annual business registration. The Contractor shall be responsible for contacting the State of Washington Business License Services at <http://bls.dor.wa.gov> or 1-800-451-7985 to obtain a business registration. If the Contractor does not believe it is required to obtain a business registration, it may contact the City's Taxes and Licenses Division at (509) 625-6070 to request an exemption status determination.

14. SOCIAL EQUITY REQUIREMENTS / NON-DISCRIMINATION.

No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this Contract because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation including gender expression or gender identity, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities. The Contractor agrees to comply with, and to require that all subcontractors comply with, federal, state and local nondiscrimination laws, including but not limited to: the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Age Discrimination in Employment Act, and the American's With Disabilities Act, to the extent those laws are applicable.

15. INDEMNIFICATION.

The Contractor agrees to defend, indemnify and hold the City harmless from any and all claims, demands, losses and liabilities to or by third parties arising from, resulting from or connected with Work performed or to be performed under this Contract by Contractor, its agents or employees to the fullest extent permitted by law. Contractor's duty to indemnify the City shall not apply to liability for damages arising out of bodily injury to persons or damage to property

caused by or resulting from the sole negligence of the City, its agents or employees. Contractor's duty to indemnify the City for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) the City or its agents or employees, and (b) Contractor or agents or employees, shall apply only to the extent of negligence of the Contractor or its agents or employees. Contractor's duty to defend, indemnify and hold the City harmless shall include, as to all claims, demands, losses and liability to which it applies, the City's personnel related costs, reasonable attorneys' fees, court costs and all other claim related expenses. The Contractor specifically assumes potential liability for actions brought by the Contractor's own employees against the City and, solely for the purpose of this indemnification and defense, the Contractor specifically waives any immunity under the state industrial insurance law, or Title 51 RCW. The Contractor recognizes that this waiver was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. The indemnification provided for in this section shall survive any termination or expiration of this Contract.

Contractor's indemnification shall specifically include all claims for loss or liability because of wrongful payment under Uniform Commercial Code, Section 9-318, or other statutory or contractual liens or rights of third parties, including taxes, accrued or accruing as a result of this Contract or work performed or materials furnished directly or indirectly because of this Contract.

16. INSURANCE.

The Contractor represents that it and its employees, agents and subcontractors, in connection with the Contract, are protected against the risk of loss by the insurance coverages required in the contract documents. The policies shall be issued by companies that meet with the approval of the City Risk Manager. The policies shall not be canceled without at least minimum required written notice to the City as Additional Insured.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without sixty (60) days written notice from the Consultant or its insurer(s) to the City. As evidence of the insurance coverage(s) required by this Agreement, the Consultant shall furnish acceptable Certificates Of Insurance (COI) to the City at the time it returns this signed Agreement. The certificate shall specify the City of Spokane as "Additional Insured" specifically for Consultant's services under this Agreement, as well as all of the parties who are additional insureds, and include applicable policy endorsements, the sixty (60) day cancellation clause, and the deduction or retention level. The Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

17. SUBCONTRACTOR RESPONSIBILITY.

- A. The Contractor must verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in RCW 39.04.350. The responsibility criteria are listed in the request for bids document. The Contractor shall include the language of this section in each of its first tier subcontracts, and shall require each of its subcontractors to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. Upon request of the City, the Contractor shall promptly provide documentation to the City demonstrating that the subcontractor meets the subcontractor responsibility criteria below. The requirements of this section apply to all subcontractors regardless of tier.
- B. At the time of subcontract execution, the Contractor shall verify that each of its first tier subcontractors meets the following bidder responsibility criteria:

1. Have a current certificate of registration in compliance with chapter 18.27 RCW, which must have been in effect at the time of subcontract bid submittal;
2. Have a current Washington Unified Business Identifier (UBI) number;
3. If applicable, have:
 - a. Have Industrial Insurance (workers' compensation) coverage for the subcontractor's employees working in Washington, as required in Title 51 RCW;
 - b. A Washington Employment Security Department number, as required in Title 50 RCW;
 - c. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
 - d. An electrical contractor license, if required by Chapter 19.28 RCW;
 - e. An elevator contractor license, if required by Chapter 70.87 RCW.
4. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).

18. INDEPENDENT CONTRACTOR.

The Contractor is an independent Contractor. This Contract does not intend the Contractor to act as a City employee. The City has neither direct nor immediate control over the Contractor nor the right to control the manner or means by which the Contractor works. Neither the Contractor nor any Contractor employee shall be an employee of the City. This Contract prohibits the Contractor to act as an agent or legal representative of the City. The Contractor is not granted express or implied rights or authority to assume or create any obligation or responsibility for or in the name of the City, or to bind the City. The City is not liable for or obligated to pay sick leave, vacation pay, or any other benefit of employment, nor to pay social security or other tax that may arise from employment. The Contractor shall pay all income and other taxes as due.

19. ASSIGNMENT AND SUBCONTRACTING.

The Contractor shall not assign or subcontract its obligations under this Contract without the City's written consent, which may be granted or withheld in the City's sole discretion. Any subcontract made by the Contractor shall incorporate by reference this Contract, except as otherwise provided. The Contractor shall ensure that all subcontractors comply with the obligations and requirements of the subcontract. The City's consent to any assignment or subcontract does not release the Contractor from liability or any obligation within this Contract, whether before or after City consent, assignment or subcontract.

20. TERMINATION.

Either party may terminate this Contract, with or without cause, by ten (10) days written notice to the other party. In the event of such termination, the City shall pay the Contractor for all work previously authorized and performed prior to the termination date.

21. STANDARD OF PERFORMANCE.

The standard of performance applicable to Contractor's services will be the degree of skill and diligence normally employed by professional contractors in the region performing the same or similar Contracting services at the time the work under this Contract are performed.

22. ANTI KICK-BACK.

No officer or employee of the City of Spokane, having the power or duty to perform an official act or action related to this Contract shall have or acquire any interest in the Contract, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in this Contract.

23. CONSTRUUAL.

The Contractor acknowledges receipt of a copy of the Contract documents and agrees to comply with them. The silence or omission in the Contract documents concerning any detail required for the proper execution and completion of the work means that only the best general practice is to prevail and that only material and workmanship of the best quality are to be used. This Contract shall be construed neither in favor of nor against either party.

24. CONTRACTOR'S ACKNOWLEDGEMENT AND WARRANTY.

The Contractor acknowledges that it has visited the site of the work, has examined it, and is qualified to perform the work required by this Contract.

The Contractor guarantees and warranties all work, labor and materials under this Contract for two (2) years following final acceptance. If any unsatisfactory condition or defect develops within that time, the Contractor will immediately place the work in a condition satisfactory to the City and repair all damage caused by the condition or defect. The Contractor will repair or restore to the City's satisfaction, in accordance with the contract documents and at its expense, all property damaged by his performance under this Contract. This warranty is in addition to any manufacturers' or other warranty in the Contract documents.

25. MISCELLANEOUS PROVISIONS.

- A. **Amendments/Modifications:** The City may modify this Contract and order changes in the work whenever necessary or advisable. The Contractor will accept modifications when ordered in writing by the City, and the Contract time and compensation will be adjusted accordingly.
- B. The Contractor, at no expense to the City, shall comply with all laws of the United States and Washington, the Charter and ordinances of the City of Spokane; and rules, regulations, orders and directives of their administrative agencies and officers.
- C. This Contract shall be construed and interpreted under the laws of Washington. The venue of any action brought shall be in a court of competent jurisdiction, located in Spokane County, Washington.
- D. **Captions:** The titles of sections or subsections are for convenience only and do not define or limit the contents.
- E. **Severability:** If any term or provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.
- F. **Waiver:** No covenant, term or condition or the breach shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed a waiver of any preceding or succeeding breach of the same or any other covenant, term of condition. Neither the acceptance by the City of any performance by the Contractor after the time

the same shall have become due nor payment to the Contractor for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City in writing.

- G. **Entire Agreement:** This document along with any exhibits and all attachments, and subsequently issued addenda, comprises the entire agreement between the City and the Contractor. If conflict occurs between Contract documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this Contract to afford the City the maximum benefits.
- H. **No personal liability:** No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Contract, whether expressed or implied, nor for any statement or representation made or in any connection with this Contract.
- I. Under Washington State Law (reference RCW Chapter 42.56, the *Public Records Act* [PRA]) all materials received or created by the City of Spokane are **public records** and are available to the public for viewing via the City Clerk's Records (online) or a valid Public Records Request (PRR).

IN WITNESS WHEREOF, in consideration of the terms, conditions and covenants contained, or attached and incorporated and made a part, the parties have executed this Contract by having legally-binding representatives affix their signatures below.

Dated: _____

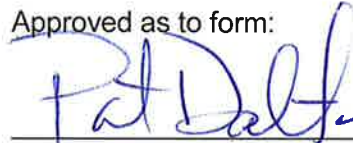
CITY OF SPOKANE

By: _____

Title: _____

Attest:

Approved as to form:



City Clerk

Assistant City Attorney

Dated: _____

BUNKER STEEL BUILDINGS, INC.

By: _____

Title: _____

Email Address: _____

Attachments that are a part of this Contract:

Payment and Performance Bond
Exhibit A – Contractor's Scope of Work

PAYMENT / PERFORMANCE BOND

We **BUNKER STEEL BUILDINGS, INC.**, as principal, and _____, as Surety, are held and firmly bound to the City of Spokane, Washington, in the sum of **SEVENTY THOUSAND FIVE HUNDRED TWENTY FOUR AND 16/100 DOLLARS, (\$70,524.16)**, for the payment of which, we bind ourselves and our legal representatives and successors, jointly and severally by this document.

The principal has entered into a contract with the City of Spokane, Washington, to do all work and furnish all materials to ***Construct a Pole Barn at the Esmeralda Golf Course for use as Golf Cart Shed.*** If the principal shall:

- A. promptly and faithfully perform the Contract and any contractual guaranty, and indemnify and hold harmless the City from all loss, damage, or claim which may result from any act or omission of the principal, its agents, employees, or subcontractors; and
- B. comply with all federal, state and local laws and regulations; and
- C. pay all laborers, mechanics, subcontractors, material suppliers and all person(s) who shall supply such person or subcontractors, and pay all taxes and contributions, increases and penalties as authorized by law; then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, except as provided herein, and waives notice of any change, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increased obligation. Any judgment obtained against the City, which relates to or is covered by the contract or this bond, shall be conclusive against the principal and the Surety, as to the amount of damages, and liability, if reasonable notice of the suit has been given.

SIGNED AND SEALED on _____.

BUNKER STEEL BUILDINGS, INC.

By: _____
Title: _____

A valid POWER OF ATTORNEY
for the Surety's agent must
accompany this bond.

AS SURETY

By: _____
Its Attorney in Fact

STATE OF WASHINGTON)
) ss.
County of _____)

I certify that I know or have satisfactory evidence that _____
_____ signed this document; on oath stated that he/she was authorized to
sign the document and acknowledged it as the agent or representative of the named surety
company which is authorized to do business in the State of Washington, for the uses and purposes
therein mentioned.

DATED: _____

Signature of Notary Public

My appointment expires _____

Approved as to form:

Assistant City Attorney



R-311 Proposal

City of Spokane
2305 E. Mallon Ave
Spokane, WA 99202
(509) 363-5468
Attn. Larry Marsh

February 27, 2017

Larry;

Thank you for the opportunity to serve you! Below is the proposal for the Jacobsen R-311 unit that you had requested.

<u>QTY</u>	<u>Model</u>	<u>Description</u>	<u>WA State Contract Price</u>
1	R-311	R-311 Kubota Turbocharged Diesel Engine 134-width-of-cut 4WD Traction Individual Hydraulic deck motors Canopy/Sun shade Care Free tire kit	\$53,133.40

❖ *The above pricing includes freight, set-up, and delivery.*

Signing and returning this proposal constitutes a firm commitment to the specified equipment and secures equipment and pricing for you. Delivery can be scheduled at your request. Customer assumes any costs associated with the cancelation of this order.

Authorized Signature

Date

Karl Hile
RMT Equipment
Territory Sales Manager
801-633-2599

JACOBSEN R311T™

Large Area Rotary Mower



The R311T™ rotary mower has the powerful cutting performance, simplified maintenance and operator comfort you need to get the job done. Ideal for golf roughs, sports fields, parks and roadside areas.

- **Proven and powerful** 59 hp (44 kW) or 65.2 hp (48.6 kW) turbocharged Kubota® diesel delivers exceptional mowing power to effortlessly slice through the tallest, thickest grass.
- **Independent deck control** allows mowing with 1, 2 or all 3 decks to trim around obstacles, varying terrain and wide spans of turf.
- **Individual hydraulic deck motors** with self-lubricating integral bearings deliver reliable cutting power to each blade and require no tensioning or greasing maintenance of belts and pulleys.
- **Maintenance free, wet parking brakes** deliver safe braking on even the steepest of slopes and reduce total cost of ownership with no linkages or pads to service or adjust.
- **Air-ride suspension seat, ergonomic cockpit** cruise control and an optional climate controlled cab provide a comfortable, productive ride for long hours of operation.

QUICK SPECS

Engine: Kubota® turbocharged diesel

Cutting Deck:

Front Deck: 64 in. (1.62 m), full-floating

Wing Decks: 42 in. (1.07 m), full-floating

Height-of-Cut: 1 - 5.5 in. (2.54 - 14 cm) in 0.5 in. (1.27 cm) increments

Width-of-Cut: 134 in. (3.4 m)

Dimensions:

Weight: 4080 lbs. (1851 kg); 4150 lbs. (1882 kg)

Length: 144 in. (3.66 m)

Height:

ROPS Up: 84 in. (2.13 m)

ROPS Down: 63.5 in. (1.61 m)

Width:

Mow: 139 in. (3.53 m)

Transport: 93.5 in. (2.38 m)

R311T™

SPECIFICATIONS

Engine	069177	069178
Type	Kubota® V2403-M-T 4-cyl, turbocharged, liquid-cooled diesel	Kubota® V2403-CR-T-E4B 4-cyl, turbocharged, liquid-cooled diesel
Rated Horsepower*	59.0 hp (44.0 kW)	65.2 hp (48.6 kW)
Emission Level	EPA Tier 4 Interim (EU Stage IIIA)	EPA Tier 4 Final (EU Stage IIIB); Ultra low sulfur diesel fuel required
Peak Torque	120.7 lbs.-ft (163.6 NM) @ 1800 rpm	146.4 lbs.-ft (198.5 NM) @ 1600 rpm
Displacement	148 cu in. (2.434 L)	
Air Cleaner	Dry type Cyclopac air cleaner with service indicator light	
Cooling System	Side-by-side radiator/hydraulic oil cooler; pressurized; 8 qt. (7.6 L) capacity	
Lubrication	Fully pressurized with remote engine oil cooler	
Fuel Capacity	20 gal. (75.7 L)	
Oil Filter Type	Full-flow, replaceable spin-on remote type	
Electrical System	12V battery with 750 cold cranking amps; 45-amp alternator. Overload protection with circuit breakers and fuses.	12V AGM battery with 560 cold cranking amps; 45-amp alternator. Overload protection with circuit breakers and fuses.
Speed (Maximum)		
Mowing	7.7 mph (12.4 km/h)	
Transport	2WD: 14.9 mph (24 km/h) 4WD: 7.8 mph (12.6 km/h)	
Reverse	2WD: 6 mph (9.6 km/h) 4WD: locked out	
Traction and Drive		
Traction System	Hydrostatic, closed loop parallel system; (servo-controlled*) variable displacement piston pump; high-torque fixed displacement piston wheel motors; automatic flow divider for anti-stall and limited slip; motors on rear wheels electro-hydraulically engage/disengage for selectable 2WD or 4WD in transport; full-time 4WD in mow.	
Deck Drive	3-section pump and direct-cooled deck motors	
Hydraulic System	17 gal. (64.3 L) or 16 gal (60.6 L)* reservoir capacity; o-ring face seal fittings; charge and return filters; suction screen at tank; oil cooler; diagnostic test ports	
Tires, Brakes and Steering		
Front Tires	Two, 26 x 12-12 tubeless, 6-ply rated	
Rear Tires	Two, 23 x 10.5-12 tubeless, 4-ply rated	
Brakes	Dynamic braking through traction system	
Parking Brake	Wet parking brakes integrated in front wheel motors; engage switch on control console	
Steering	Rear wheel, hydrostatic power steering with tilt adjustable steering wheel	
Decks and Cutting Units		
Number and Size	One, 64 in. (1.62 m) full-floating front deck; Two, 42 in. (1.07 m) full-floating wing decks	
Deck Construction	10-gauge heavy-duty steel with reinforcing plates, ribs, bumpers	
Caster Wheels	Eight, 4 x 11 in. (10.16 x 27.94 cm) smooth, pneumatic tires with greaseable ball bearings	
Deck Lift/Lower	Hand operated, individual lever controlled hydraulic lift system	
Weight Transfer	Adjustable at operator controls, hydraulic weight transfer	
Blades	Seven, 23 in. (58 cm) low noise, low lift	
Motor/Spindle	Seven individual hydraulic motors with integral bearings; self lubricating	
Height-of-Cut	1 - 5.5 in. (2.54 - 14 cm) in 0.5 in. (1.27 cm) increments	
Overall Cutting Width	134 in. (3.4 m)	
Cutting Capacity	Up to 10.3 acres/hour at 7.7 mph (4.20 ha/hr at 12.4 km/h) (no overlaps or stops)	
Fuel Economy and Runtime (dependent on operator and turf conditions)	1.47 gal/hr fuel (5.56 L/hr) consumption at 40% load; Up to 13.6 hours on single tank of fuel	1.42 gal/hr (5.4 L/hr) fuel consumption at 40% load; Up to 14.1 hours on single tank of fuel
Weight and Dimensions		
Weight (full fluids, less operator)	4080 lbs. (1851 kg); Cab Installed: 4606 lbs. (2089 kg)	4150 lbs. (1882 kg)
Length	144 in. (3.66 m)	
Height	ROPS Up: 84 in. (2.13 m); ROPS Down: 63.5 in. (1.61 m); Cab Installed: 102 in. (2.59 m)	
Wheelbase	67.8 in. (1.72 m)	
Width	Mow: 139 in. (3.53 m); Transport: 93.5 in. (2.38 m)	

Large Area Rotary Mower

PRODUCT CONFIGURATION

EQUIPPED STANDARD

- ✓ 4WD
- ✓ Foldable ROPS with seat belt
- ✓ Air-ride suspension seat with armrests
- ✓ Cruise control

ACCESSORIES

- ☐ Mulching kit
- ☐ Road light kit
- ☐ Work light kit
- ☐ Carefree caster wheel kit
- ☐ Canopy/sunshade
- ☐ Climate controlled cab – ROPS glass cab, A/C & heater, fan, mirrors, front & rear wipers, front washer, work lights, 4-way flashers/signals
- ☐ Cab Accessories – Radio/CD, speaker & antenna system, Roof mounted rotating amber beacon

GENUINE SERVICE PARTS

- ☐ Standard blade, LH: counterclockwise rotation; RH: clockwise rotation
- ☐ 10W-30 hydraulic fluid (standard)
- ☐ GreensCare 68 and GreensCare Plus 68 biodegradable fluid (optional)

THIRD-PARTY ACCESSORIES

- ☐ Snow Blower
- ☐ Brush/Sweeper
- ☐ Front Blade

*Engine horsepower is provided by engine manufacturer. Actual operating power output may vary due to conditions of specific use.

Due to emission regulations and fuel compatibility, model availability may vary by country. Please contact your nearest distributor for full details.

NOTE: Specifications, while correct at time of printing, may change without notice.

*Specifications for model 069178, Tier 4 Final



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1023B/Rev3/P3M/May 2014



City Clerk's No. _____

MEMORANDUM OF UNDERSTANDING RE: CONTRIBUTION AGREEMENT

**PARKS DEPARTMENT & THE FRIENDS OF THE CENTENNIAL TRAIL FUNDING UP TO \$75,000
FOR 30% DESIGN WORK FOR THE DON KARDONG BRIDGE ON THE CENTENNIAL TRAIL**

THIS CONTRIBUTION AGREEMENT ("Agreement") is between the **CITY OF SPOKANE PARKS AND RECREATION DEPARTMENT**, as ("City"), and **THE FRIENDS OF THE CENTENNIAL TRAIL**, a 501(c)(3) corporation organized under the laws of the State of Washington, as ("FRIENDS"). Hereinafter referenced together as the "parties", and individually a "party."

WHEREAS, the City of Spokane Parks and Recreation Department is in charge of maintaining the Centennial Trail ("Trail"), as it courses along the Spokane River and through the City of Spokane; and

WHEREAS, FRIENDS is engaged in raising funds to contribute to various agencies to assist them with the maintenance of the Trail. FRIENDS is desirous of contributing funding to assist the City with the costs of the initial Architectural & Engineering ("Initial A&E") associated with the redesign and refurbishment of the Don Kardong Bridge ("Bridge") on the Trail.

-- NOW THEREFORE, the parties hereto agree as follows:

AGREEMENTS:

1. PREMISES.

A. The City maintains portions of the Trail, which includes: the asphalt trail, bridges and related improvements located along the Spokane River, from the Idaho State Line through downtown Spokane as depicted in the attached Exhibit A.

B. FRIENDS is willing to contribute (subject to the terms of this Agreement) funds to assist the City with the necessary Initial A&E costs associated with the redesign and refurbishment of the Bridge.

C. **Condition.** As a condition precedent to the effectiveness of this Agreement, the City shall (i) cause this Agreement to be approved by the Park Board and (ii) provide to FRIENDS a legal memorandum reasonably acceptable to FRIENDS, that this Agreement shall, upon said Park Board approval, be fully in effect and enforceable according to its opinion.

2. CONTRIBUTION. Pursuant to and subject to the terms and conditions of this Agreement, and after the conditions precedent in Section 1.C are satisfied, FRIENDS shall contribute up to **SEVENTY FIVE THOUSAND AND NO/100 (\$75,000.00)** to the City to assist the City with its Initial A&E costs associated with the redesign and refurbishment of the Bridge. Contributions up to the maximum **SEVENTY FIVE THOUSAND AND NO/100 (\$75,000.00)** amount by the FRIENDS to the City shall occur within fifteen (15) business days of the City providing to the FRIENDS copies of invoices from the engineering firm for the Initial A&E costs incurred for the redesign and refurbishment of the Bridge; provided, however, that no further contributions shall be made by the FRIENDS from and after the earlier of (i) the FRIENDS contributing a total of **SEVENTY FIVE THOUSAND AND NO/100 (\$75,000.00)** under the terms above or (ii) by December 31, 2017.

3. REFUND BY CITY TO FRIENDS OF CONTRIBUTION. In the event the renovation and refurbishment of the Bridge is not under contract for construction completed in accordance with the final A&E design specifications by December 31, 2019, the City shall, no later than January 31, 2020 pay to FRIENDS an amount equal to the total amount contributed by the FRIENDS to the City under Section 2 (above), plus interest at FIVE PERCENT (5%), compounded annually from the date(s) of the contribution(s) made by FRIENDS under Section 2, above. ~~In order for said completion of the Bridge to be deemed to have occurred, the firm which provided the final A&E specifications must certify on or by December 31, 2019, that (i) the renovation and refurbishment of the Bridge is substantially complete (ninety percent 90%), and in accordance with said final A&E design specifications therefore and (ii) said renovation and refurbishment is substantially in accordance with the Initial A&E design specifications.~~

4. RELATIONSHIP OF THE PARTIES. The relationship of the parties hereto is simply that of a “grantor” of contributions (FRIENDS) and a “grantee” of contributions (City) pursuant to the foregoing provisions of this Agreement. Nothing shall be construed herein to create a partnership, joint venture or other employment relationship between the parties hereto. Moreover, nothing hereunder shall be constructed to create any form of ownership interest in FRIENDS to the Trail or any asset of the City, including, but not limited to: the A&E designs and specifications described in this Agreement. The parties acknowledge and agree that FRIENDS has no authority or control whatsoever over the selection of the architectural and engineering firm to provide the design described above; the actual redesign and specifications for construction and refurbishment of the Bridge or the operation and/or maintenance of the Bridge. The City hereby agrees to indemnify and hold harmless the FRIENDS from any claim, damage, loss (including, but not limited to attorney’s fees), or other costs incurred by FRIENDS as a result of this Agreement and the FRIENDS contribution above. The foregoing indemnity obligation shall be construed as broadly as possible under Washington State law.

5. TAXES. Any and all taxes imposed on the contributions by FRIENDS under this Agreement shall be borne by the City.

6. NOTICES. Any and all notices required or permitted to be given under this Agreement shall be sufficient if furnished in writing and delivered in person or sent by

certified mail (to be effective upon mailing) to the other party, at the addresses prescribed in this Agreement.

Friends of the Centennial Trail:
P.O. Box 351
Spokane, WA 99210

City of Spokane Parks and Recreation Department
808 West Spokane Falls Boulevard
Spokane, WA 99201

7. GOVERNING LAW. This Agreement shall be interpreted, construed and governed according to the laws of the State of Washington.

8. DISPUTES. In the event of a dispute relating to or arising from this Agreement which cannot be settled by the parties within thirty (30) days of the written demand of either party to the other for commencement of negotiations concerning the same, the arbitration provisions of this Section 8 shall apply. Either party ("Demanding Party") may, after said thirty (30) day period, give written notice to the other party ("Recipient Party") demanding arbitration hereunder and designating an arbitrator ("Arbitration Notice"). The arbitrator selected by the Demanding Party shall arbitrate the dispute unless, within twenty (20) days of the Arbitration Notice, the Recipient Party gives the Demanding Party written notice of the Recipient Party's rejection of said arbitrator and designates an arbitrator of the Recipient Party's choice. If, within ten (10) days of the Recipient Party's rejection, the parties do not agree in writing to an arbitrator, the dispute shall be submitted to Judicial Dispute Resolution of Seattle, Washington ("JDR") to select a single arbitrator designated by JDR, who JDR, in its discretion, believes is appropriate for the subject dispute. The arbitrator selected by JDR may or may not be a JDR arbitrator. The arbitration shall take place in Spokane, Washington, in accordance with RCW 7.04A. The arbitrator selected in accordance with the foregoing shall make all decisions regarding discovery procedure, fact and law, and such decisions shall be final and binding on all parties. Prior to the final decision of the arbitrator, each party shall be responsible for payment of one-half (1/2) of the associated fees of the arbitrator. However, the party designated by the arbitrator as the substantially prevailing party in the arbitration shall be awarded all the costs of arbitration, including reasonable attorneys' fees incurred and the fees incurred for arbitrator. Any judgment upon an award may be entered in the Superior Court of Spokane County, in the State of Washington,.

9. MISCELLANEOUS.

A. Entire Agreement. This Agreement shall constitute the entire agreement between the parties hereto pertaining to the contributions by FRIENDS described herein and may not be modified or amended, except by a written instrument signed by each of the parties hereto expressing such modification or amendment. A failure on the part of either party to exercise or a delay in exercising any right, power or remedy hereunder shall not operate as a waiver, or future waiver thereof, except where a time limit is expressly specified herein. No single or partial exercise of any right, power or remedy hereunder shall preclude any other further exercise of any right, power or remedy. This

Agreement contains all covenants, representations and warranties made between the parties hereto.

B. Prior Agreements or Writings. This Agreement completely supersedes any other agreement (oral or written) or writings between the parties hereto.

10. INTERPRETATION AND SIGNATURES. This Agreement was the product of negotiation between the parties so that neither party shall be considered the drafter of this Agreement. This Agreement may be signed in counterparts.

11. City of Spokane Parks and Recreation will own all plans and specifications funded and associated with this agreement.

Dated: _____ CITY OF SPOKANE PARKS AND
RECREATION DEPARTMENT

By: _____

Title: _____

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

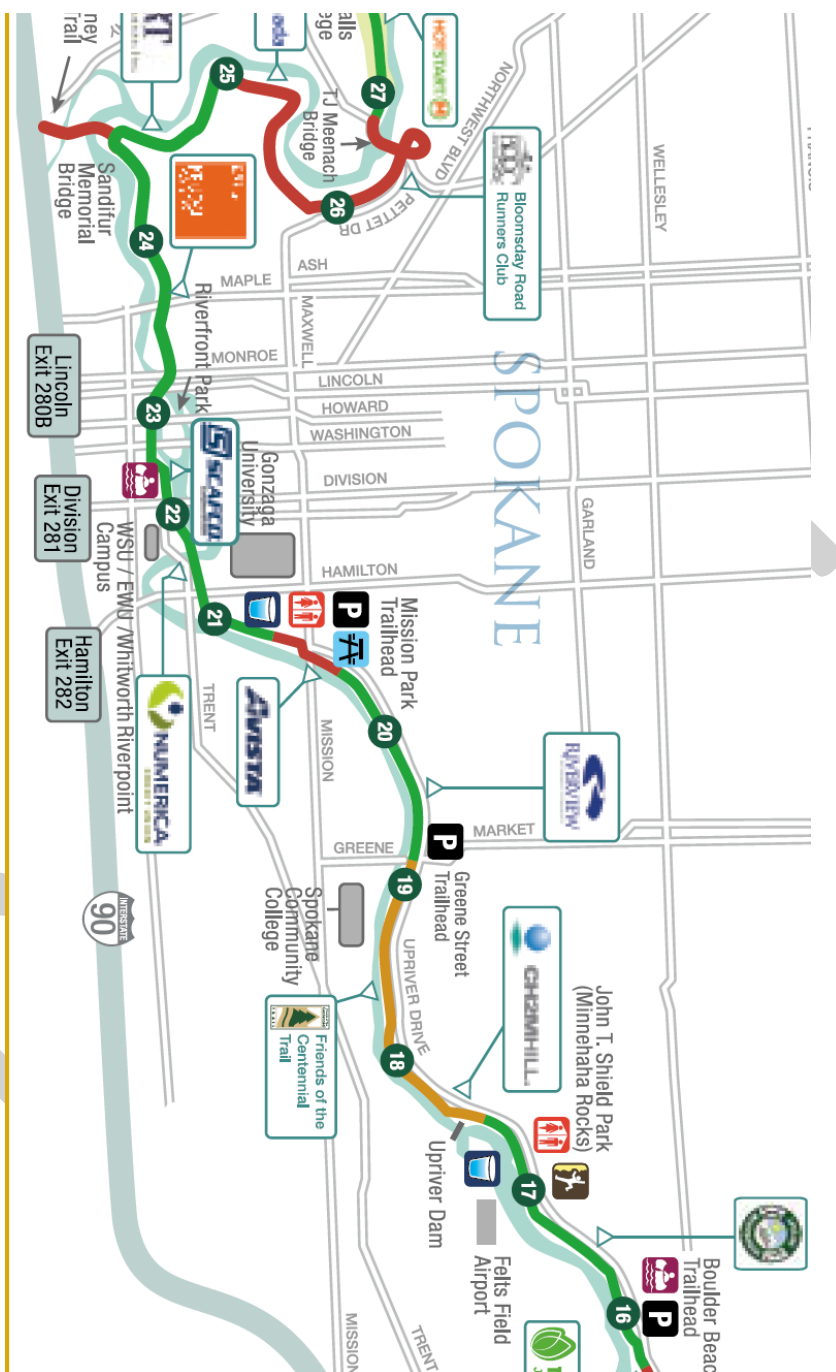
Dated: _____ FRIENDS OF THE CENTENNIAL TRAIL

By: _____

Title: _____

Email Address:

Exhibit 1



DRAFT BOSCH LOT LETTER OF INTENT

The purpose of this letter (the “Letter of Intent”) is to set forth the preliminary interest and understanding of the City of Spokane Public Works Division (Public Works), the City of Spokane Finance Division (Finance), and the City of Spokane Parks and Recreation Division (Parks), together defined as (the “Parties), with respect to the development of properties and projects described in the attached Resolution #2017-0019 (Attachment A), adopted by the Spokane City Park Board on March 9, 2017 and by the Spokane City Council on March 27, 2017.

This Letter of Intent is not intended to create a binding legal obligation on the Parties, or on the part of any other person or entity, until such time as definitive agreements providing for all of the terms, covenants, conditions and understandings of the above Parties are executed and binding. The Parties further represent to each other that upon the execution of this Letter of Intent they will individually and collectively exercise good faith and best efforts to take all actions reasonably necessary to fulfill the terms and intent set forth herein, subject to necessary approvals of the above-referenced definitive agreements.

This Letter of Intent hereby establishes the following key terms of the proposed future agreement(s) between the Parties:

Key Terms:

New Riverfront Park Entries - West

- City Finance and Public Works to exchange City-owned property on south side of Spokane River, and current Bridge Avenue ROW with Parks for Bosch Lot property on North side of Spokane River – see attached map/parcels (Attachment B);
- City Finance and Public Works to close/vacate Bridge Avenue ROW and dedicate to Park purposes (gateway, trailhead) with appropriate utilities easements maintained within the vacated right of way;
- The Parties understand and agree that all property identified above is already held in title by the City of Spokane, or is Right of Way under the jurisdiction of the City of Spokane, and that said property exchange will occur by inter-division agreement;
- After acquisition of the Bosch Lot, the voters in 1987 amended the Spokane City Charter, Section 48, to provide that that no existing park may be sold or exchanged without the prior approval of the city electorate.
- Since its acquisition Bosch Lot has not been landscaped, constructed or otherwise developed as a recreational area or park, but has instead operated as a parking lot with significant portions devoted to parking City vehicles.
- ~~The parties understand that the portion of the property north of the river is under the control and jurisdiction of the Spokane Park Board and may be subject to City Charter provisions restricting the sale or exchange of park land.~~

- This property exchange will be used to remove RCO restrictions on Bosch Lot and ultimately transfer those restrictions to south plaza/trailhead and new north gateway/trailhead;
- City Finance and Public Works will negotiate and enter into development or purchase/sale agreement for sale/lease of Bosch property to allow for a recreational facility and public parking structure as described in attached Resolution (Attachment A) and subject to City Council approval;
- City Finance and Public Works will utilize proceeds from Bosch sale/lease for gateway and trailhead improvements in the closed/vacated right of way, which property will be transferred to the control of and management of Parks;
- City Finance and Public Works will work with Park Board to define/design agreeable gateway and trailhead improvements adjacent to Veteran's Park to be agreed upon and funded by City Finance and Public Works through proceeds from the Bosch sale/lease ;
- City Public Works will work with Parks to compensate Parks for lost parking revenue from Bosch and for ongoing maintenance on south side plaza space;
- Parks will control and manage new south plaza/south gateway/trailhead (over CSO 26) and new trailhead and north gateway (over closed Bridge Avenue);
- Riverfront Park will then be formally extended to include the new south plaza/gateway/trailhead on the south bank and the new north Trailhead/Gateway on the north bank, wrapping around the spectacular lower falls and Huntington Park.
- City Public Works and City Finance agree to indemnify Parks in the event that Parks incurs any liability as a result of any transactions contemplated by this Agreement.

This Letter of Intent is executed this day of _____

City of Spokane Finance Division

City of Spokane Public Works Division

City of Spokane Parks Division



Agenda Sheet for City Council Meeting of:
03/27/2017

Date Rec'd	3/8/2017
Clerk's File #	RES 2017-0019
Renews #	
Cross Ref #	
Project #	
Bid #	
Requisition #	

Submitting Dept	FINANCE & ADMIN
Contact Name/Phone	GAVIN COOLEY EXT 6586
Contact E-Mail	GCOOLEY@SPOKANECITY.ORG
Agenda Item Type	Resolutions
Agenda Item Name	#0410 JOINT CITY COUNCIL / PARK BOARD SUPPORT FOR INTEGRATED PROJECTS

Agenda Wording

A joint resolution stating the City Council's and Park Board's support for the continued integrated planning and work to utilize City Parks and other City properties to meet a range of mutually identified strategic goals and objectives

Summary (Background)

Continued work between the City and Parks Department to provide integrated planning, work and potential redevelopment involving the Bosch Lot, certain City rights-of-way and other properties in and around the City's Riverfront Park

<u>Fiscal Impact</u>		<u>Budget Account</u>	
Neutral	\$		#
Select	\$		#
Select	\$		#
Select	\$		#
<u>Approvals</u>		<u>Council Notifications</u>	
<u>Dept Head</u>	DUNIVANT, TIMOTHY	<u>Study Session</u>	
<u>Division Director</u>	DUNIVANT, TIMOTHY	<u>Other</u>	
<u>Finance</u>	DOVAL, MATTHEW	<u>Distribution List</u>	
<u>Legal</u>	DALTON, PAT	leadie@spokanecity.org	
<u>For the Mayor</u>	SANDERS, THERESA	gjones@spokanecity.org	
<u>Additional Approvals</u>		rromero@spokanecity.org	
<u>Purchasing</u>			

JOINT RESOLUTION NO. 2017-0019

A joint resolution stating the City Council's and Park Board's support for the continued integrated planning and work to utilize Parks and other City properties to meet a range of mutually identified strategic goals and objectives.

WHEREAS, the 100-acre Riverfront Park situated along the Spokane River, is the City's central downtown feature and, together with the central city Spokane River Falls, is the community's ascendant public and cultural asset; and

WHEREAS, City of Spokane Parks acquired a lot northwest and non-contiguous to central Riverfront Park, commonly identified as the "Bosch Lot", on July 3, 1975; and

WHEREAS, Bosch Lot was acquired with funds from the Department of Housing and Urban Development and the Washington State Recreation and Conservation Office (RCO) with the intent of its development for recreational purposes; and

WHEREAS, after acquisition of the Bosch Lot, the voters in 1987 amended the Spokane City Charter, Section 48, to provide that that no existing park may be sold or exchanged without the prior approval of the city electorate; and

WHEREAS, since its acquisition Bosch Lot has not been landscaped, constructed or otherwise developed as a recreational area or park, but has instead operated as a parking lot with significant portions devoted to parking City vehicles; and

WHEREAS, the City and Parks are exploring a transaction that may include selling, leasing and/or surplus the Bosch Lot or portions thereof as part of a continuing integrated strategy for accomplishing the objectives identified herein; and

WHEREAS, with RCO approval, the City and Parks previously reached agreement for placement of a CSO tank on Bosch Lot which tank is now nearing completion; and

WHEREAS, in keeping with the primary goal and vision of the Integrated Clean Water Plan to achieve multiple public benefits on CSO sites; and

WHEREAS, in further keeping also with the Park Board's desire to fulfill the recreational goals that prompted the acquisition of the Bosch Lot by providing for more useful recreational parcels within the urban core and near Riverfront Park; and

WHEREAS, The Riverfront Park Master Plan 2014, at Section 8.2, specifically identifies "Public-Private Development Opportunities" for Park-owned property as "Climbing Gym" on the north bank of Riverfront Park near Bosch Lot; and

WHEREAS, the City and Parks have worked closely to identify key community benefits and strategic outcomes which can be accomplished through a broadly integrated plan

for repurposing the Bosch Lot in conjunction with planning and redevelopment of other City properties, including the following:

1. A public trail-head for the Downtown Centennial Trail and Gorge Loop Trail; and
2. An enhanced and contiguously designed scenic overlook for the Falls through Veteran's Park; and
3. Design and redevelopment of City properties to seamlessly integrate Riverfront Park with the City's central falls and river gorge environments, including new northwest and southwest public gateways and central falls overlooks into Riverfront Park and which will simultaneously serve to complete the approximate 3 ½ mile Gorge Loop Trail thereby fulfilling key elements of the City's Gorge Park, the longstanding and central recommendation of the 1913 Olmsted Brothers Report to City Parks; and
4. A privately operated recreation facility (e.g. climbing gym/facility) as supported by the Riverfront Master Plan' and
5. Collaborative consideration and development of other cultural amenities in the surrounding areas that build on the environmental active-engagement and stewardship themes of Expo 74 together with fulfilling the long standing vision to commemorate the depth of our region's connection with the Spokane Tribe of Indians - past, present and future - through creation of a sweeping three-part art installation incorporating the newly established North and South Riverfront Park Gateways geographically across the Spokane River Gorge; and
6. Additional public and private parking to support items 1-5; and

WHEREAS, a local design consultant has previously worked with Spokane Parks to perform site and other planning on the Bosch Lot and surrounding areas during the design of the CSO tank to maximize future uses; and

WHEREAS, the City and Parks have commissioned a local design consultant to collaboratively develop an initial site plan and pre-design study to identify creative ways to achieve these six objectives while promoting an overall scope and design that will at once inspire, energize and promote a diversity of broader community benefits in the forms of recreational, cultural, economic development and other activities in the surrounding areas; and

WHEREAS, the City and Parks have been working with a private developer and operator, who has independently partnered with key members of Spokane's renowned climbing community and who has expressed a willingness to finance key elements of the Downtown Centennial Trail and Gorge Loop trailheads and contiguous scenic falls overlook; and

WHEREAS, the local design consultant is working with the private developer and operator to envision and propose a plan for how all these elements could be blended to spur an integrated public-private project; and

WHEREAS, to facilitate and promote expeditiously meeting the foregoing goals and objectives, the City of Spokane anticipates the need to address a variety of key issues, including, but not limited to:

- A. The closure of Bridge Street between Post and Monroe to allow for natural and seamless integration with the Centennial Trail, Veterans Park, and Spokane River environment; and
- B. The exchange of the approximate 20,000 square foot Bridge Street right-of-way between Public Works and Parks, effectively providing Parks the 20,000 square feet where Bridge currently sits and providing Public Works the 20,000 square feet directly to the south of Bridge. This new 20,000 square foot Parks property will then be adjacent to Veteran's Park and will effectively create a seamless overlook to the falls and to provide a Northwest gateway to Riverfront Park, the Centennial Trail and Gorge Loop trailheads; and
- C. Lifting of existing RCO restrictions on the Bosch Lot in exchange for the development of the trailheads and related parking, expansion of Riverfront Park through Northwest and Southwest gateways and numerous other public outdoor recreational activities; and
- D. The exchange of the remainder of Bosch Lot between Parks and the City to provide the necessary contiguous property for development of a privately-operated recreation facility, parking requirements and derivative financial resources needed for the enhanced gateways, trails and other improvements to Riverfront Park; and
- E. The sale or lease of the Bosch Lot for the construction of a privately operated recreation facility (e.g. climbing gym/facility) and structured parking over and adjoining the newly constructed CSO tank. This additional parking is a critical element of this integrated project and will need to be developed as part of the total plan; and
- F. Developing a financial plan to apply the sale proceeds from the Bosch Lot for a privately-operated recreation facility and adjacent parking, to be used to build out the public park enhancements identified herein; and
- G. Developing detailed plans between the City and Parks to assure that current and future-year Parks budgets will not be adversely affected by the integrated plans envisioned herein (including replacement of parking revenues previously earned by Parks from operation of the Bosch Lot and a provision that the current and continuing costs of meeting the foregoing goals and

objectives, excluding maintenance costs of the Northwest trailhead adjoining the current Bosch Lot, will not be passed onto Parks);
and

WHEREAS, the Spokane City Council and Spokane Parks Board are committed, in these and other public improvement and economic development actions related to the Bosch Lot, to a transparent public process allowing for public comment and discussion.

NOW, THEREFORE, BE IT JOINTLY RESOLVED that the Spokane City Council and City Park Board states their strong support for the development of a proposal for the redevelopment of the former Bosch Lot and surrounding public properties to meet the foregoing public goals and objectives.

Passed by the City Council this 13th day of March, 2017 and Parks Board on the 9th day of March, 2017

City Clerk

City Council President

Park Board President

Approved as to form:

Assistant City Attorney



Bosch Lot park property:
+/- 49,350 square feet (1.13ac)

Summit Parkway ROW &
Future South Plaza:
+/- 73,800 square feet (1.70ac)

City Clerk's No. _____

AGREEMENT BETWEEN

CITY OF SPOKANE AND COFFMAN ENGINEERS, INC. IN CONJUNCTION WITH PROGRAM YEAR 2016
COMMUNITY DEVELOPMENT BLOCK GRANT

1. Grantee Coffman Engineers, Inc. 10 North Post Street, Suite 500 Spokane, Washington 99201		2. Contract Amount \$61,889.00		3. Tax ID# 91-1053429	
				4. DUNS# 007453298	
5. Grantee's Representative Tom Arnold, Principal Coffman Engineers, Inc. 10 N Post St, Ste 500 Spokane, WA 99201 (509) 328-2994 arnold@coffman.com			6. City's Program Representative Nick Hamad, Parks and Recreation Department 2304 E. Mallon Ave Spokane, WA 99202 (509) 363-5452 nhamad@spokanecity.org		
			7. City's Contract Representative Nikki Graham-Brown, CDBG Program Specialist 808 W. Spokane Falls Blvd., 6 th Floor Spokane, WA 99201 (509) 625-6346 ngrahambrown@spokanecity.org		
8. Grantor Award # B-14-MC-53-0006		9. Start Date 04/01/2017		10. End Date 04/01/2018	
11. Federal Funds CDBG	CFDA # 14.218	Federal Agency U.S. Department of Housing & Urban Development			
12. Total Federal Award \$3,017,768.00	13. Federal Award Date 07/01/2014		14. Research & Development? No		15. Indirect Cost Rate N/A
16. Grantee Selection Process: (check all that apply or qualify) <input type="checkbox"/> Sole Source <input checked="" type="checkbox"/> A/E Services <input type="checkbox"/> Competitive Bidding/RFP <input type="checkbox"/> Pre-approved by Funder			17. Grantee Type: (check all that apply) <input type="checkbox"/> Private Organization/Individual <input type="checkbox"/> Public Organization/Jurisdiction <input checked="" type="checkbox"/> VENDOR <input type="checkbox"/> SUBRECIPIENT <input type="checkbox"/> Non-Profit <input type="checkbox"/> For-Profit		
18. Grant Purpose: To support community-based activities directed toward neighborhood revitalization, economic development, and community services facilities, and improvements pursuant to the Housing and Community Development Act of 1974, Title I, Part 24, Section 570, Public Law 93-383, 88 Stat. 633, 42 U.S.C. 5301-5321. This Agreement is subject to applicable uniform administrative requirements, as described in 24 CFR Part 570 and 2 CFR 200, as applicable.					
19. CITY and the GRANTEE , as identified above, acknowledge and accept the terms of this Agreement and attachments and have executed this Agreement on the date signed to start as of the date and year referenced above. The rights and obligations of both parties to this Agreement are governed by this Agreement and the following other documents incorporated by reference: (1) Terms and Conditions, (2) Attachment "A" Certification Regarding Debarment, and (3) Attachment "B" Contractor's quote.					

(FACE SHEET)

CONTRACT

THIS CONTRACT is between the CITY OF SPOKANE, a Washington State municipal corporation, as "City", and COFFMAN ENGINEERS, INC., whose address is, 10 North Post Street, Suite 500, Spokane, Washington, 99201, as "Contractor".

The parties agree as follows:

1. PERFORMANCE. The Contractor will do all work, furnish all labor, materials, tools, construction equipment, transportation, supplies, supervision, organization and other items of work and costs necessary for the proper execution and completion of the engineering design services and construction management services for the Mission Park Ability Ball Field Phase II Project, in accordance with the Contractor's quote, attached hereto as Attachment B.
2. CONTRACT DOCUMENTS. This Contract and the Contractor's quote constitute the contract documents and are complementary. Federal and state requirements and the terms of this Contract, respectively, supersede other inconsistent provisions. These contract documents are on file with the Department of Community, Housing and Human Services, Sixth Floor, City Hall, 808 West Spokane Falls Boulevard, Spokane, Washington, and are incorporated into this Contract by reference as if they were set forth at length.
3. TIME OF PERFORMANCE. The Contract shall commence as of the date on the FACE SHEET and shall terminate on the date on the FACE SHEET, unless terminated earlier.
4. TERMINATION. The City may, without cause, terminate this Contract at any time. In the event of such termination, the Contractor shall be entitled to receive payment for work performed and costs incurred up to the date of termination.
5. STANDARD OF PERFORMANCE. The standard of performance applicable to Consultant's services will be the degree of skill and diligence normally employed by professional consultants performing the same or similar services at the time the services under this Contract are performed.
6. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS. Original documents, drawings, designs, reports, or any other records developed or created under this Contract shall belong to and become the property of the City. All records submitted by the City to the Consultant shall be safeguarded by the Consultant. The Consultant shall make such data, documents and files available to the City upon the City's request. If the City's use of the Consultant's records or data is not related to this project, it shall be without liability or legal exposure to the Consultant.

7. COMPENSATION. The City will pay a total of SIXTY ONE THOUSAND EIGHT HUNDRED EIGHTY NINE AND NO/100 DOLLARS (\$61,889.00), subject to allowable additions and deductions as provided.

8. TAXES. Retail sales tax where applicable shall be added to the amounts due and the Contractor shall be responsible for making payment of the tax to Washington State. The City reserves the right to claim any exemption authorized by law.

9. INDEMNIFICATION. The Contractor agrees to defend, indemnify and hold the City harmless from any and all claims, demands, losses and liabilities to or by third parties arising from, resulting from or connected with services performed or to be performed under this Contract by the Contractor, its agents or employees to the fullest extent permitted by law. The Contractor's duty to indemnify the City shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the City, its agent or employees. The Contractor's

duty to indemnify the City for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) the City or its agents or employees, and (b) the Contractor or its agents or employees, shall apply only to the extent of negligence of the Contractor or its agents or employees. The Contractor's duty to defend, indemnify and hold the City harmless shall include, as to all claims, demands, losses and liability to which it applies, the City's personnel-related costs, reasonable attorneys' fees, court costs and all other claim-related expenses. **The Contractor waives immunity under Title 51 RCW to the extent necessary to protect the City's interests under this indemnification. This provision has been specifically negotiated.**

10. PAYMENT. The Contractor will send its applications for payment to Community, Housing and Human Services Department, Sixth Floor, City Hall, 808 West Spokane Falls Boulevard, Spokane, Washington 99201. Payment will be made within thirty (30) days after receipt of the Contractor's application except as provided by state law. If the City objects to all or any portion of the invoice, it shall notify the Consultant and reserves the right to only pay that portion of the invoice not in dispute. In that event, the parties shall immediately make every effort to settle the disputed amount.

11. INSURANCE. During the term of the Contract, the Contractor shall maintain in force at its own expense, the following insurance coverages:

- A. Worker's Compensation Insurance in compliance with RCW 51.12.020, which requires subject employers to provide workers' compensation coverage for all their subject workers;
- B. General Liability Insurance on an occurrence basis, with a combined single limit of not less than \$1,500,000 each occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under this Contract. It shall provide that the City, its officers and employees are additional insureds but only with respect to the Contractor's services to be provided under this Contract;

- C. Property insurance if materials and supplies are furnished by the contractor. The amount of the insurance coverage shall be the value of the materials and supplies of the completed value of improvement. Hazard or XCU (explosion, collapse, underground) insurance should be provided if any hazard exists; and
- D. Automobile Liability Insurance with a combined single limit, or the equivalent of not less than \$1,000,000 each accident for bodily injury and property damage, including coverage for owned, hired and non-owned vehicles.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to the City.

As evidence of the insurance coverages required by this Contract, the Contractor shall furnish an acceptable insurance certificate to the City at the time it returns the signed Contract. The certificate shall specify all of the parties who are additional insured, and include applicable policy endorsements and the deductible or retention level, as well as policy limits. Insuring companies or entities are subject to City acceptance and must have a rating of A- or higher by Best. Copies of all applicable endorsements shall be provided. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

12. CONTRACTOR'S WARRANTY. The Contractor guarantees all work, labor and materials under this Contract for one (1) year following final acceptance. If any unsatisfactory condition or defect develops within that time, the Contractor will immediately place the work in a condition satisfactory to the City and repair all damage caused by the condition or defect. The Contractor will repair or restore to the City's satisfaction, in accordance with the contract documents and at its expense, all property damaged by its performance under this Contract. This warranty is in addition to any manufacturer's or other warranty in the contract documents.

13. SUBCONTRACTOR RESPONSIBILITY.

- A. The Contractor shall include the language of this section in each of its first tier subcontracts, and shall require each of its subcontractors to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. Upon request of the City, the Contractor shall promptly provide documentation to the City demonstrating that the subcontractor meets the subcontractor responsibility criteria below. The requirements of this section apply to all subcontractors regardless of tier.
- B. At the time of subcontract execution, the Contractor shall verify that each of its first tier subcontractors meets the following bidder responsibility criteria:
 - 1. Have a current certificate of registration in compliance with chapter 18.27 RCW, which must have been in effect at the time of subcontract bid submittal;
 - 2. Have a current Washington Unified Business Identifier (UBI) number;

3. If applicable, have:
 - a. Have Industrial Insurance (workers' compensation) coverage for the subcontractor's employees working in Washington, as required in Title 51 RCW;
 - b. A Washington Employment Security Department number, as required in Title 50 RCW;
 - c. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
 - d. An electrical contractor license, if required by Chapter 19.28 RCW;
 - e. An elevator contractor license, if required by Chapter 70.87 RCW.
4. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).

14. NONDISCRIMINATION. No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this Contract because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation including gender expression or gender identity, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities. The Contractor agrees to comply with, and to require that all subcontractors comply with, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, as applicable to the Contractor.

15. EXECUTIVE ORDER 11246.

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include but not be limited to the following: employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- C. The Contractor will send each labor union, or representative of workers with which it has a collective bargaining contract or other contract or understanding, a notice,

to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- D. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- F. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations or orders, this Contract may be canceled, terminated or suspended in whole or in part, and the Contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. The Contractor will include the provisions of paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, HOWEVER, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as the result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

16. DEBARMENT AND SUSPENSION. The Contractor has provided its certification that it is in compliance with and shall not contract with individuals or organizations which are debarred, suspended, or otherwise excluded from or ineligible from participation in Federal Assistance Programs under Executive Order No. 12549 and "Debarment and Suspension", codified at 29 CFR part 98.

17. ACCESS TO RECORDS. The Contractor shall permit the City, the Department of Housing and Urban Development, the Comptroller General of the United States, or their authorized representatives, access to all books, records, and papers of the Contractor pertinent to this Contract.

18. ASSIGNMENTS. The Contractor may not assign, transfer or sublet any part of the

work under this Contract, or assign any monies due, without the written approval of the City, except as may be required by law. In the event of assignment of accounts or monies due under this Contract, the Contractor specifically agrees to give immediate written notice to the City Administrator, no later than five (5) business days after the assignment.

19. ANTI-KICKBACK. No officer, employee, member of the City Council or other official of the City of Spokane or its designees or agents who exercises any function or responsibility with respect to this Contract during his/her tenure or for one (1) year thereafter, may have any interest, direct or indirect, in any contract, subcontract or their proceeds for work to be performed in connection with this Contract. The Contractor will incorporate a provision prohibiting such an interest in all subcontracts.

20. COMPLIANCE WITH LAWS. Each party shall comply with all applicable federal, state, and local laws and regulations that are incorporated herein by reference.

21. DISPUTES. This Contract shall be performed under the laws of the State of Washington. Any litigation to enforce this Contract or any of its provisions shall be brought in Spokane County, Washington.

22. SEVERABILITY. In the event any provision of this Contract should become invalid, the rest of the Contract shall remain in full force and effect.

23. AUDIT / RECORDS. The Contractor and its subcontractors shall maintain for a minimum of three (3) years following final payment all records related to its performance of the Contract. The Contractor and its subcontractors shall provide access to authorized City representatives, at reasonable times and in a reasonable manner to inspect and copy any such record. In the event of conflict between this provision and related auditing provisions required under federal law applicable to the Contract, the federal law shall prevail.

24. BUSINESS REGISTRATION REQUIREMENT. Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained a valid annual business registration. The Contractor shall be responsible for contacting the State of Washington Business License Services at <http://bls.dor.wa.gov> or 1-800-451-7985 to obtain a business registration. If the Contractor does not believe it is required to obtain a business registration, it may contact the City's Taxes and Licenses Division at (509) 625-6070 to request an exemption status determination.

25. CONSTRUAL. The Contractor acknowledges receipt of a copy of the contract documents and agrees to comply with them. The silence or omission in the contract documents concerning any detail required for the proper execution and completion of the work means that only the best general practice is to prevail and that only material and workmanship of the best quality are to be used. This Contract shall be construed neither in favor of nor against either party.

26. CONTRACTOR'S ACKNOWLEDGEMENT. The Contractor acknowledges that it

has visited the site of the work, has examined it, and is qualified to perform the work required by this Contract.

27. MODIFICATIONS. The City may modify this Contract and order changes in the work whenever necessary or advisable. The Contractor will accept modifications when ordered in writing by the Community, Housing and Human Services, and the Contract time and compensation will be adjusted accordingly.

28. INTEGRATION. This Contract, including any and all exhibits and schedules referred to herein or therein set forth the entire Agreement and understanding between the parties pertaining to the subject matter and merges all prior agreements, negotiations and discussions between them on the same subject matter.

29. FORCE MAJEURE. Neither party shall be liable to the other for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, due to: (1) acts of God or public enemy, acts of government, riots, terrorism, fires, floods, strikes, lock outs, epidemics, act or failure to act by the other party, or unusually severe weather affecting City, Contractor or its subcontractors, or (2) causes beyond their reasonable control and which are not foreseeable (each a "Force Majeure Event"). In the event of any such Force Majeure Event, the date of delivery or performance shall be extended for a period equal to the time lost by reason of the delay.

30. CONFLICT OF INTEREST. Pursuant to 24 CFR 57.611, the Contractor certifies that no person (1) who is an employee, agent, consultant, officer or elected or appointed official of the Contractor, or any designated public agencies, or any subrecipient which is receiving HUD funds and (2) who exercises or has exercised any functions or responsibilities with respect to HUD assisted activities or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure and for one (1) year thereafter.

Dated: _____

CITY OF SPOKANE

By: _____

Title: _____

Dated: _____

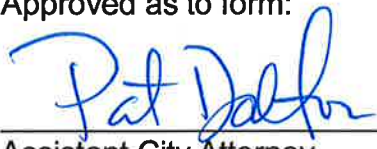
COFFMAN ENGINEERS, INC.

By:  _____

Title: 3/29/17 _____

E-Mail address: _____

Attest: _____
City Clerk

Approved as to form:


Assistant City Attorney

ATTACHMENT A

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. The undersigned (i.e., signatory for the Subrecipient / Contractor / Consultant) certifies, to the best of its knowledge and belief, that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - b. Have not within a three-year period preceding this contract been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
 - c. Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and,
 - d. Have not within a three-year period preceding this contract had one or more public transactions (federal, state, or local) terminated for cause or default.

Where the undersigned is unable to certify to any of the statements in this contract, it shall attach an explanation to this contract.

2. The undersigned agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the City.
3. The undersigned further agrees by signing this contract that it will include the following clause, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

1. The lower tier contractor certifies, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
2. Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded, as used in this exhibit, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. The undersigned may contact the City for assistance in obtaining a copy of these regulations.
5. I understand that a false statement of this certification may be grounds for termination of the contract.

COFFMAN ENGINEERS, INC. <hr/> Name of Subrecipient / Contractor / Consultant (Type or Print)	MISSION PARK ABILITY BALL FIELD PHASE II <hr/> Program Title (Type or Print)
 <hr/> Name of Certifying Official (Type or Print)	<hr/> Signature
PRINCIPAL <hr/> Title of Certifying Official (Type or Print)	<hr/> Date (Type or Print)

Attachment B

March 21, 2017 (*Revision #3*)

Mr. Albert Vorderbrueggen
Director of Recreation and Acting Director of Park Operations
City of Spokane Parks & Recreation
2304 E. Mallon Ave
Spokane, WA 99202

Project: Mission Park Ability Ball Field – Phase II
1208 E. Mission Ave
Spokane, Washington

Subject: Proposal for Professional Engineering Services

Dear Al:

Coffman Engineers, Inc. is pleased to submit this proposal for civil and electrical engineering services for the Mission Park Ability Ball Field – Phase II project located on Mission Avenue in northeast Spokane. We have also included the services of Bernardo Wills Architects to assist with landscaping and irrigation design services and GeoEngineers to assist with geotechnical design recommendations and testing during construction. Both firms, Bernardo Wills and GeoEngineers, will be sub-consultants to Coffman as necessary. We appreciate the opportunity to work with you on this project.

The attached terms and conditions (Coffman Engineers Agreement for Professional Services) will serve as our contract for services, in conjunction with this proposal. Specific terms and details of this proposal will govern where there is a conflict between the two. Please let us know if you have any concerns or questions regarding the Agreement for Professional Services. If you find this proposal acceptable, please sign in the space provided at the end of this proposal and return to us as written authorization to proceed.

PROJECT DESCRIPTION

We understand the improvements consist of installing a pre-fabricated restroom building, installing a new ADA drop off area off the end of the existing parking lot, providing drainage for the new drop off area, installing new ADA parking spaces, installing new concrete ADA walkways from the playground to the tennis courts, from the new restroom building to the baseball field, from the new ADA drop off area to the playground, from the new restroom to the playground and from the basketball court to the Centennial Trail, installing a new ADA drinking fountain, making repairs to the disturbed landscaping and making adjustments to the irrigation system to accommodate the new improvements. These improvements are shown on the attached sketch.

- g. Utility Plan: The Utility Plan will indicate connections to the existing City water and sewer mains as needed for providing service to the new restroom building.
- h. Detail Sheet: A detail sheet will be prepared to include necessary details as referenced on the civil plans.
- i. Drywell Registration: Registration of drywells is required by the Washington State Department of Ecology. We will complete the documents for drywell registration as required.
- j. Specifications: Specifications for civil design elements will be included directly on the plans. We will provide review of the technical specifications (civil items) prepared by the City of Spokane.
- k. Quantities for Cost Estimate: Prepare quantities to be used in the engineer's cost estimate. The bid quantity sheet (bid items and unit costs) will be prepared by the City with assistance from Coffman Engineers.
- l. Permitting Assistance: Complete the permit application and schedule the permit intake meeting on behalf of the Parks & Recreation department.
- m. Meetings: Attend coordination meetings with the City and/or sub-consultant. Anticipate three (3) meetings.
- n. Address Regulatory Agency Comments: Coordinate review comments with the design team and submit 100% drawings, reports, calculations, etc. for permit approval.

2. ELECTRICAL ENGINEERING DESIGN SERVICES:

Electrical engineering plans will be prepared showing 240/120V, 1-phase power to a load center provided with the new restroom building. The load center will be pre-wired to lights, receptacles, and fans from the factory.

3. LANDSCAPE ARCHITECTURE SERVICES (sub-consultant):

As a sub-consultant, Bernardo Wills Architects (BWA) will provide the landscape repair and irrigation adjustment services required for this project. BWA's scope and fee are provided in an *attached* proposal dated July 22, 2016.

4. GEOTECHNICAL SERVICES (sub-consultant):

As a sub-consultant, GeoEngineers will provide recommendations for the pavement section in the turnaround area. GeoEngineers' scope and fee are provided in an *attached* proposal dated March 20, 2017.

Mr. Albert Vorderbrueggen
City of Spokane Parks & Recreation
Mission Park Ability Ball Field – Phase II
March 21, 2017 (*Revision #3*)
Page 5

5. Assembly of the final bid package (drawings and specifications).
6. Advertising, reproduction and distribution of bid set documents.
7. All administrative duties regarding official notices to the contractor (i.e. contract approval, notice to proceed, substantial completion, etc.) will be handled by the City.

ASSUMPTIONS/CLARIFICATIONS

Our proposal assumes the following assumptions and clarifications:

1. Special studies including traffic, SEPA, environmental impact statements, air quality, seismic, etc. are not included.
2. Preparation of easements, legal descriptions, exhibits, or dedications are not included.
3. Utility company, agency, material testing and processing fees are not included.
4. Power for the restroom building is readily available nearby from existing electrical services in the Park. A separate utility service is not required.
5. Power service for the Phase I Adaptive Filed is not included.
6. Site pole lighting is not included.

SCHEDULE

We understand the design efforts will proceed at an organized and consistent pace with the goal of receiving notice to proceed in April 2017. An estimated schedule is as follows:

30% design (initial layout):	May 19, 2017
60% PS&E (include ROM cost):	June 16, 2017
90% PS&E:	July 14, 2017
Bid Documents complete:	July 31, 2017
Advertise to construction:	August 14, 2017
Approximate construction start:	October 1, 2017
Substantial Completion:	November 30, 2017

ENGINEERING FEES

Basic services for engineering will be performed on a lump sum basis for the work described above as follows:

Civil Engineering Design Services:	\$ 20,800
Electrical Engineering Design Services:	\$ 3,200
Landscape Architecture Services – incl. 10% mark up	\$ 8,360
<u>Geotechnical Services – incl. 10% mark up</u>	<u>\$ 1,980</u>

BASIC SERVICES TOTAL: **\$ 34,340**

Construction services are estimated and will be performed on an hourly basis for the work described above as follows:

Construction Management Services (Coffman):	\$ 12,200
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AGREEMENT FOR PROFESSIONAL SERVICES
Attachment to and part of Proposal
Dated: March 21, 2017
To: Mr. Albert Borderbrueggen
Project: Mission Park Ability Ball Field – Phase II

10 North Post Street, Suite 500
Spokane, Washington 99201
(509) 328-2994
FAX (509) 328-2999

1. **PROFESSIONAL SERVICES BY STAFF AND OFFICERS**

Unless otherwise noted in the agreement, fees for services are based on the time expended on the project, including travel time, by professional, technical, and clerical personnel, and will be computed using our standard billing rate schedule.

2. **REIMBURSABLE EXPENSES**

Expenses other than salary costs that are directly attributable to our professional services are invoiced as described on our reimbursable schedule, or if not listed, at our cost plus 10%. Examples of these expenses include but are not limited to out of town travel expenses, long distance telephone charges, postal and shipping charges, use of personal and rental cars, job related supplies, and blue printing and reproduction costs.

3. **SERVICES BY OTHERS**

When considered necessary, other firms or consultants may be utilized with your approval. The cost of services of other consultants or firms will be marked up 10% (or as otherwise agreed in writing) to cover taxes and other overhead-type expenses, and will be included in our invoice.

4. **PAYMENTS**

Invoices will be submitted monthly for prior services. Payment will be due upon receipt of invoice. An account will become delinquent thirty days after date of billing. It is agreed that a late charge will be added to delinquent accounts at the rate of one percent (1%) for each thirty days delinquent (provided the rate of such late charge shall not exceed the maximum allowable by the laws of the state in which our office submitting the invoice is located). If you fail to make payments to us within 30 days of receipt of invoice, we may, after giving seven days written notice to you, suspend services.

5. **OTHER PROVISIONS**

Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the reasonable control of the other or the other's employees and agents.

It is understood and agreed that we have not been retained or compensated to provide design and construction review services relating to the safety precautions of any contractor or subcontractor who may work on the project and that we will not be providing such services. An opinion of construction cost prepared by us represents our judgment as a design professional and is supplied for your general guidance. Since we have no control over the cost of labor and material, or over competitive bidding or market conditions, we do not guarantee the accuracy of our opinion as compared to contractor bids of actual cost to the project.

6. **OWNERSHIP OF DOCUMENTS**

All reports, field data, field notes, test data, calculations, drawings and specifications, estimates, CAD drawing files, and other documents prepared by us, as instruments of service, shall remain our property.

It is understood by you that any design produced as a result of these professional services is for a specific project and unique set of design criteria, and you agree and understand that any such design will not be used as a prototype in the future without a new engineering evaluation.

7. **GENERAL LIABILITY AND LIMITATION THEREOF**

We agree to hold you harmless and to indemnify and defend you on account of any liability due to bodily injury or property damage arising directly out of our negligent operational acts, but such hold harmless and indemnity will be limited to that covered by our comprehensive or professional office package general liability insurance and not otherwise. We carry comprehensive or professional office package general liability insurance, which, subject to its limits, terms and conditions, provides protection against liability arising out of bodily injury and property damage that is the direct result of our operational negligence. At your request, we will provide certificates evidencing such coverage and will purchase additional limits of liability that you may require as a separate cost item to be borne by you.

8. **PROFESSIONAL LIABILITY AND LIMITATION THEREOF**

This paragraph relates only to Professional Liability and not to General Liability. Should we or any of our agents or employees be found to have been negligent in the performance of professional services from which you sustain damages, you will agree to limit your recoverable damages from such liability, plus any claims for cost of defense or other incurred costs to an aggregate amount not to exceed \$100,000 dollars or our fee, whichever amount is greater. In the event that you are unwilling or unable to limit our professional liability to these sums, we will waive this limitation upon written request, provided that you agree to pay for this waiver. If you do not exercise your written option as set forth above at the time you accept this agreement for professional services, it is agreed that you accept the \$100,000 dollars limitation set forth in this paragraph.

9. **STANDARD OF CARE**

Services performed by us under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. No other warranty, express or implied is made.

10. **HAZARDOUS SUBSTANCES (ASBESTOS & TOXIC CHEMICALS)**

It is understood and agreed that, in seeking the professional services of COFFMAN ENGINEERS under this agreement, you may be requesting COFFMAN ENGINEERS to undertake obligations for the client's benefit involving the presence or potential presence of hazardous substances. Therefore, you agree to hold harmless, indemnify, and defend COFFMAN ENGINEERS from and against any and all claims, losses, damages, liability, and costs, including but not limited to costs of defense, arising out of or in any way connected with the presence, discharge, release, or escape of contaminants of any kind, excepting only such liability as may arise out of the sole negligence of COFFMAN ENGINEERS in the performance of services under this agreement.

11. **TERMINATION**

This agreement may be terminated by either party by seven days written notice in event of substantial failure to perform in accordance with the terms of the agreement by the other party through no fault of the terminating party. If this agreement is terminated, it is agreed that we shall be paid for services performed to the termination notice date, including reimbursable expenses due, plus termination expenses.

12. **MEDIATION**

In an effort to resolve any conflicts that arise during or following the completion of the project, you and COFFMAN ENGINEERS agree that all disputes between them arising out of or relating to this agreement shall be submitted to nonbinding mediation unless the parties mutually agree otherwise, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

July 22, 2016

Sandra Anthony
Coffman Engineers
10 N. Post Street, Suite 500
Spokane, WA 99201

RE: Professional Landscape Architecture Services Proposal for Mission Park, Phase II, Spokane Washington.

Dear Sandra:

Bernardo|Wills Architects P.C. (BWA) is pleased to submit this proposal for landscape architectural services for Mission Park, Phase II. This proposal includes our Project Understanding, Scope of Services, and a Summary of Professional Services.

Project Understanding

The project consists of a new drop off, parking improvements, a new restroom and new ADA routes to access the new Phase I Adaptive Ball Field and its associated improvements. BWA will assist Coffman Engineers with tree protection, planting restoration, mainly replacement of sod, irrigation restoration and associated details required for the construction bid package. Notice to proceed is anticipated to be July 22, 2016 with completion of bid documents scheduled for September 2, 2016 and completion of construction Fall 2016.

Basic Scope of Services

Task 1. Research & Validation, and Meetings \$1,000

This task includes, project kick-off meeting with the project team. It will begin with validation of the previous Phase 1 work developed for the Adaptive Ballfield project and to receive As-Built data for the Park irrigation system as well as to review project goals and objectives. We will also meet separately with Parks and Recreation staff to inventory, audit and review existing irrigation coverage and systems. This task is limited to (2) meetings listed.

Task 2. Construction Documents \$6,400

This task includes phone conference review meetings with the project team at 30% and 60% PS&E to incorporate review comments into the plans, make final revisions in preparation for construction drawing phase, coordinate between other consultants work. These meetings will be used to further develop detailed design criteria for site plans, notes and details during development of the construction drawings. Technical specifications and Bid Item List with quantities and estimate of unit cost items will accompany the package. We will also attend one (1) final 90% PS&E design team coordination review meeting prior to submission of the drawings for bidding. This task is limited to the (3) meetings listed. Anticipated drawings are anticipated to be drawn at 20 scale on 24" x 36" sheets and include:

- a) Tree Protection Sheet
- b) Planting/Sod Restoration
- c) Irrigation Plan
- d) Planting and Irrigation Details



523 East Second Avenue
Spokane, Washington 99202
509.363.3125

March 20, 2017

Coffman Engineers
10 North Post Street
Spokane, Washington 99201

Attention: Tom Arnold, PE
Principal

Subject: Revised Proposal
Special Inspection and Testing
Proposed Mission Park Adaptive Ball Field
Associated Improvements
Spokane, Washington
File No. 0110-158-01

INTRODUCTION

GeoEngineers, Inc. is pleased to present this revised proposal for special inspection and testing services during construction of parking lot and sidewalk improvements associate with the proposed Mission Park Adaptive Ball Field. The project site is located at Mission Park in Spokane, Washington.

Based on discussions with Sandra Anthony of Coffman Engineers, we understand that the proposed improvements will include:

- Installation of pre-fabricated, four-unit restroom building (sitting on a concrete pad)
- Installation of utilities to the new restroom building
- Installing a new paved ADA drop-off area
- Providing drainage for the new drop off area
- Installing new ADA parking spaces
- Installing new concrete ADA walkways from:
 - The playground to the tennis courts;
 - The new restroom building to the baseball field;
 - The new ADA drop-off area to the playground;
 - The new restroom to the playground; and

7. Final report – At the conclusion of our services, we will provide a final letter report that summarizes results of our observations and testing, and opinions regarding the contractor's compliance with the project plans and specifications.

TERMS, CONDITIONS AND FEE ESTIMATE

Our services will be completed in accordance with the terms described in the Mutual Services Agreement between Coffman Engineers and GeoEngineers dated June 5, 2014. The fee for the services described above will be determined on a time-and-expense basis using the rates indicated on the attached Schedule of Charges. We estimate that our fee for the services outlined above will be:

■ Task 1 – Supplemental Geotechnical Engineering	\$1,800
■ Task 2 – Earthwork Observation during Construction	\$3,200
▪ Assumes a contractor schedule of 12, 2-hour site visits	
■ Task 3 – Concrete Inspection	\$1,850
▪ Assumes a contractor schedule of 4 concrete pours	

This proposal is valid for a period of 60 days commencing from the first date listed above and subject to renegotiation by GeoEngineers, Inc., after the expiration date.

AUTHORIZATION

To confirm this proposal meets with your approval, please sign in the space provided below and return one copy to our office. This will serve as your authorization for our services. If you issue a purchase order or a contract for services, please make this proposal part of that document.

Schedule of Charges – 2017

COMPENSATION

Our compensation will be determined on the basis of time and expenses in accordance with the following schedule unless a lump sum amount is so indicated in the proposal or services agreement. Current rates are:

Professional Staff

Staff 1 Engineer/Scientist/Analyst	\$	95/hour
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Engineer/Scientist/Analyst 1	\$	124/hour
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Engineer/Scientist/Analyst 2	\$	128/hour
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Associate	\$	175/hour
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Technical Support Staff

Administrator 1	\$	65/hour
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CAD Technician	\$	80/hour
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CAD Designer	\$	88/hour
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Senior Technician	\$	62/hour
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Contracted professional and technical services will be charged at the applicable hourly rates listed above. Staff time spent in depositions, trial preparation and court or hearing testimony will be billed at one and one-half times the above rates. Time spent in either local or inter-city travel, when travel is in the interest of this contract, will be charged in accordance with the foregoing schedule. Rates for data storage and web-based access will be provided on a project-specific basis.

Laboratory Schedule of Charges

Type of Test

Molsture Content / Oven (ASTM D2216)	\$	18.00
Sample Preparation		
Extrusion - Extrude and log (visual classification) Shelby tube sample, per hour	\$	48.00
Trimming - Trim a soil sample to 2.41-inch dia. for consolidation testing, per hour	\$	48.00
Remolding - Remold a soil sample to desired molsture and density, per hour		
Rings	\$	25.00
Shelby Tubes, waxed chunk	\$	40.00
Particle Size Analysis		
Sieve (ASTM C136) max size < 3/4-inch (includes -200 Wash, Dry Sieve)	\$	88.00
Sieve (ASTM C136) max size > 3/4-inch (includes -200 Wash, Dry Sieve)	\$	90.00
Percent Passing No. 200 (ASTM C117-87/D1140)	\$	48.00
Combined Sieve and Hydrometer (ASTM D422)	\$	150.00
Compaction (ASTM D1557/D698, Methods A, B and C, AASHTO T-180)		
Consolidation (ASTM D2435)		
Constant or falling head in rigid wall permeameter (ASTM D 2434, D 5856)**	\$	190.00
Method A**	\$	360.00
Method B**	\$	360.00
Triaxial Compression		
Unconfined Comp. - UC (ASTM D2166)	\$	93.00
Unconsolidated Undrained - UU (ASTM D2850)**	\$	180.00
Triaxial Unconsolidated Undrained (back pressure saturation)**	\$	360.00
Consolidated Undrained (ASTM D4767) with pore press. meas. - CU/S/P**	\$	520.00
Consolidated Drained - CD**	\$	520.00

Other tests charged at negotiated rates

*Increase unit prices by 20 percent -- 50 percent for contaminated samples.

** Conducted in our Redmond Laboratory, additional shipping charges may apply.

All rates are subject to change upon notification.



STANDARD FORM OF PROGRESSIVE DESIGN-BUILD AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER - COST PLUS FEE WITH A GUARANTEED MAXIMUM PRICE

Document No. 530

Second Edition 2010

□ Design-Build Institute of America
Washington, DC

TABLE OF CONTENTS

Article	Name	Page
Article 1	Scope of Work.....	2
Article 3	Interpretation and Intent	2
Article 4	Ownership of Work Product.....	3
Article 5	Contract Time.....	4
Article 6	Contract Price.....	5
Article 7	Procedure for Payment.....	15
Article 8	Termination for Convenience	16
Article 9	Representatives of the Parties	16
Article 10	Bonds and Insurance	17
Article 11	Other Provisions.....	18



Standard Form of Progressive Design-Build Agreement Between Owner and Design-Builder – with Cost Plus Fee and a Guaranteed Maximum Price

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

This **AGREEMENT** is made as of the 13 day of April
in the year of 2017, by and between the following parties, for services in connection with the Project
identified below:

OWNER:

(Name and address)

City of Spokane, Washington
808 W. Spokane Falls Blvd
Spokane, WA 99201-3316

DESIGN-BUILDER:

(Name and address)

Garco Construction Inc.
4114 E. Broadway
Spokane, WA 99202

PROJECT:

(Include Project name and location as it will appear in the Contract Documents)

Pavilion Design-Build Project

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

Article 1

Scope of Work

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

Article 2

Contract Documents

2.1 The Contract Documents are comprised of the following:

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

2.1.2 The GMP Amendment in accordance with Section 6.6.1 herein, provided such Amendment is executed between the parties.

2.1.3 This Agreement, including all exhibits but excluding the GMP Amendment:

- .1 Exhibit A: Insurance Requirements
- .2 Exhibit B: Form of Performance and Payment Bond and
- .3 Exhibit C: Validation Period Scope of Work and Owner's Project Criteria

2.1.4 The General Conditions of Contract and

2.1.5 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract.

Article 3

Interpretation and Intent

3.1 Design-Builder and Owner, prior to execution of the Agreement, shall carefully review all the Contract Documents, including the various documents Owner's Project Criteria set forth in Exhibit C, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

3.2 The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement or after the parties' execution of the GMP Amendment, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof. (Note, the parties are strongly encouraged to establish in the GMP Exhibit or GMP Proposal (as applicable) the priority of the various documents comprising such exhibit or proposal.)

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

3.4 If the Owner's Project Criteria contain design or prescriptive specifications the Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design or prescriptive specifications and their compatibility with other information set forth in Owner's Project Criteria, including any performance specifications for the purposes of developing the Scope of Services for the Validation Period, the Validation Period Not to Exceed Amount and the Design-Builder's Fee. However, Design-Builder is required to perform an independent evaluation of such design or prescriptive specifications to verify the information provided by the Owner during the Validation Period. Further, regardless of the inclusion of design or prescriptive specifications or criteria, Design-Builder shall remain responsible for meeting the performance requirements of the Project, including but not limited to the requirements that the Project meet the Owner's Project Criteria and the Basis of Design Documents as well as all applicable Legal Requirements. Provided Design-Builder complies with other requirements set forth in this Agreement such as those regarding notice of claims to Owner and identification of differing site conditions, Design-Builder shall be entitled to an adjustment in the Scope of Services for the Validation Period, the Validation Period Not to Exceed Amount, the Design-Builder's Lump Sum Fee and/or the Design-Builder's Lump Sum General Conditions, but only to the extent Design-Builder's cost and/or time or performance have been adversely impacted by such inaccurate design or prescriptive specifications that are inconsistent with meeting the performance requirements.

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

Article 4

Ownership of Work Product

4.1 Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement (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 4.2 through 4.5 below.

4.2 Owner's Limited License upon Project Completion and Payment in Full to Design-Builder. Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project, conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner'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 on the Owner's obligation to provide the indemnity set forth in Section 4.5 below.

4.3 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate. If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:

4.3.1 Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party, and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below, and

4.3.2 Owner shall not be required to pay Design-Builder additional compensation for the right to use the Work Product to complete the Project and subsequently use the Work Product in accordance with Section 4.2 if Owner resumes the Project through its employees, agents, or third parties.

4.4 Owner's Limited License upon Design-Builder's Default. If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.

4.5 Owner's Indemnification for Use of Work Product. If Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify and hold harmless such Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product.

Article 5

Contract Time

5.1 Date of Commencement. The Work shall commence within the (5) days of Design-Builder's receipt of Owner's Notice to Proceed (the Date of Commencement) unless the parties mutually agree otherwise in writing.

5.2 Substantial Completion and Final Completion.

5.2.1 The Validation Period shall be completed no later than ~~one hundred~~ twenty days after the Date of Commencement ("Validation Period Completion Date"). The parties will establish a date for Substantial Completion of the entire Work (the Scheduled Substantial Completion Date) in the GMP Amendment.

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work (the Scheduled Interim Milestone Dates) shall be determined during the Validation Period: *(Insert any interim milestones for portions of the Work with different scheduled dates for Substantial Completion)*

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

5.2.4 All of the dates set forth in this Article 5 (collectively the Contract Time(s)) shall be subject to adjustment in accordance with the General Conditions of Contract.

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

5.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder and Owner will include liquidated damages for delay in the GMP Amendment.

5.5 Any liquidated damages assessed pursuant to this Agreement for delay damages shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatever nature, incurred by Owner which are occasioned by any delay in achieving the Contract Time(s).

Article 6

Contract Price

6.1 Contract Price.

6.1.1 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price (Contract Price) as set forth herein.

.1 The total Compensation to Design-Builder shall not exceed the Guaranteed Maximum Price (GMP) of fourteen million, one hundred thousand dollars (\$14,500,000.00).

.2 The parties acknowledge that the scope of work for this Project is not fully developed. The Design-Builder shall develop the Basis of Design Documents such that the total Compensation to the Design-Builder shall not exceed the GMP set forth herein, unless the parties agree in writing to increase the GMP or the Design-Builder is otherwise entitled to an increase to the GMP pursuant to the terms of the Contract Documents.

6.2 Design-Builder's Fee and General Conditions Costs.

6.2.1 Lump Sum Fee. The Design-Builder's Lump Sum Fee shall be ~~One Hundred Fifty Five Thousand~~ dollars (~~One Hundred Fifty Five Thousand~~), (\$655,000.00).

The Lump Sum Fee shall include the following items, which shall not be charged as a Cost of the Work:

- .1 All profit of the Design-Builder for this Project and
- .2 All regional and home office overhead expenses, including labor and materials, phone, facsimile, postage, internet service, and other incidental office expenses attributed to work on this Project that is not specifically identified in the Fixed Amount or Specified General Conditions Work.

6.2.2 Prior to the execution of the GMP Amendment, Design-Builder's Fee will only be adjusted pursuant to Section 3.4 of this Agreement.

6.2.3 Lump Sum General Conditions Costs. The Design-Builder's Lump Sum General Conditions Costs shall be ~~One Hundred Twenty One thousand~~ dollars

~~(_____)~~ ~~-(625,000.00).~~ The Lump Sum General Conditions Costs include the items set forth in Section 6.4.5.

6.2.4 The Lump Sum Fee and the Lump Sum General Conditions Costs shall be paid pursuant to Section 6.4.3.

6.3 Cost of the Work. The term Cost of the Work shall mean costs reasonably and actually incurred by Design-Builder in the proper performance of the Work. The Cost of the Work shall include only the following and shall not include any costs that are included in the Lump Sum Fee or the Lump Sum General Conditions Costs:

6.3.1 Unless included in Lump Sum General Conditions, direct labor costs of employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site provided, however, that the costs for those employees of Design-Builder performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, those rates set forth in an exhibit to this Agreement. Wages for those employees performing construction services shall be paid as follows: Basic wages and fringe benefits: The hourly wage (without markup or labor burden) and fringe benefits paid by the Design-Builder as established by the Washington Department of Labor and Industries or contributed to labor trust funds as itemized fringe benefits. Whichever is applicable, not to exceed that specified in the applicable "Intent to Pay Prevailing Wage" for the laborers, apprentices, journeymen, and foremen performing and/or directly supervising the Change in the Work on the site. The premium portion of overtime wages is not included unless pre-approved in writing by the Owner. The Design-Builder shall provide to the Owner copies of payroll records, including certified payroll statements for itself and Subcontractors of any tier for the period upon the Owner's request. Direct labor costs also include direct contributions to the State of Washington as industrial insurance, medical aid, and supplemental pension by class and rates established by the Washington Department of Labor and Industries and contributions required by the Federal Insurance Compensation Act (FICA), the Federal Unemployment Tax Act (FUTA) and the State Unemployment Compensation Act (SUCA).

6.3.4 Unless included in Lump Sum General Conditions, costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 6.3.1 through 6.3.3 hereof.

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

6.3.7 Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work. The material costs shall be based upon the net cost after all discounts or rebates, freight costs, express charges, or special delivery costs, when applicable. No lump sum costs will be allowed except when approved in writing in advance by the Owner. Discounts and rebates based on prompt payment need not be included, however, if the Design-Builder offered but the Owner declined the opportunity to take advantage of such discount or rebate.

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

6.3.9 Costs of removal of debris and waste from the Site.

6.3.11 Unless included in Lump Sum General Conditions, rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work. The rental charge the applicable rental cost as established by the lower of the local prevailing rate published in the Rental Rate Blue Book by Dataquest, San Jose, California, as modified by the AGC/WSDOT agreement or the actual rate paid to an unrelated third party as evidenced by rental receipts. Rates and quantities of equipment rented that exceed the local fair market rental costs shall be subject to the Owner's prior written approval. Total rental charges for equipment or tools shall not exceed 75% of the fair market purchase value of the equipment or the tool. Actual, reasonable mobilization costs are permitted if the equipment is brought to the site solely for the change in the Work. The rental rates are the maximum rates allowable for equipment of modern design and in good working condition and include full compensation for furnishing all fuel, oil, lubrication, repairs, maintenance, and insurance. When rental rates payable do not include fuel, lubrication, maintenance, and servicing, as defined as operating costs in the Blue Book, such operating costs shall be reimbursed based on actual costs. Equipment not of modern design and/or not in good working condition will have lower rates. Hourly, weekly, and/or monthly rates, as appropriate, will be applied to yield the lowest total cost. The rate for equipment necessarily standing by for future use (and standing by for no longer than two (2) weeks) on the changed Work shall be 50% of the rate established above. The total cost of rental allowed shall not exceed the cost of purchasing the equipment outright. If equipment is required for which a rental rate is not established by The Rental Rate Blue Book, an agreed rental rate shall be established for the equipment, which rate and use must be approved by the Owner prior to performing the Work.

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

6.3.14 Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work, with the exception of Washington State Sales Tax, which shall be paid outside the Validation NTE or GMP.

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

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

6.3.21 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner and not included in the Design-Builder's Contingency, Design Builder's Fee or the Lump Sum General Conditions.

6.4 Other Methods of Compensation

Within the Validation NTE or the GMP, the parties may agree to the following methods of pricing Design-Builder's Compensation

6.4.1 Allowance Items and Allowance Values.

.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in Exhibit C or the GMP Amendment and are included within any established NTE and the GMP, as applicable.

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

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

.4 The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Build's overall project management and general conditions costs, overhead and fee, are deemed to be included in the original Contract Price, and are not subject to adjustment, regardless of the actual amount of the Allowance Item.

.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.4.4; however, Design-Build must provide written notice of the difference between the actual cost and the Allowance Value pursuant to the Changes provisions in the General Conditions. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Build for the particular Allowance Item and the Allowance Value.

6.4.2 Not To Exceed Sums

.1 The Owner and Design Build may establish Not to Exceed (NTE) Sums for specific scopes of the Work. Any such NTE Sum will be negotiated between the Owner and Design-Build. The NTE Sum agreed upon by the Parties shall be incorporated into the GMP Amendment or a Change Order, and the parties shall include the following information:

- a. A specific description of the Scope of the Work that is subject to the NTE Sum
- b. An updated Schedule of Values that incorporates the NTE Sum and
- c. Any milestone dates associated with the scope of the Work associated with the NTE Sum.

.2 For each scope of work for which a NTE Sum has been established, the Design-Build shall be reimbursed for the scope of the Work as a Cost of the Work; however, Design-Build's compensation shall not exceed the NTE Sum without a written Change Order.

.3 Design-Build shall not request reimbursement for costs subject to the NTE Sum, unless those costs are identified in the Payment Application as subject to the NTE Sum.

.4 NTE Sums may only be modified by Change Order pursuant to the General Conditions.

6.4.3 Lump Sums

- .1 The Owner and Design-Builder may establish a Lump Sum for specific scopes of the Work. Any such Lump Sum will be negotiated between the Owner and Design-Builder. The Lump Sum agreed upon by the Parties shall be incorporated into the GMP Amendment or a Change Order, and the parties shall include the following information:
 - a. A specific description of the Scope of the Work that is subject to the Lump Sum.
 - b. An updated Schedule of Values that incorporates the Lump Sum and
 - c. Any milestone dates associated with the scope of the Work associated with the Lump Sum.
- .2 For each scope of work for which a Lump Sum has been established, the Design-Builder shall be compensated pursuant to the Schedule of Values set forth above based on the percentage of the Scope of the Work subject to the Lump Sum that has been completed.
- .3 Design-Builder shall not request reimbursement for costs subject to the Lump Sum, unless those costs are identified in the Payment Application as subject to the Lump Sum.
- .4 Lump Sums may only be modified via Change Order pursuant to the General Conditions

6.4.4 Design-Builder's Contingency

- .1 The parties shall establish, as part of any NTE and the GMP, a Design-Builder's Contingency which is available for Design-Builder's exclusive use for unanticipated costs it has incurred that are not a Cost of the Work and not the basis for a Change Order under the Contract Documents (collectively "Contingency Items"). By way of example, and not as a limitation, such costs may include the following:
 - (a) trade buy-out differentials
 - (b) overtime or acceleration
 - (c) escalation of materials
 - (d) Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (excluding any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise its best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained.

(e) Legal costs, court costs and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work, provided such costs do not arise from disputes between Owner and Design-Builder or

(f) Subcontractor defaults.

- .2 The Design-Builder shall be reimbursed for items that are included in the Design-Builder's Contingency in the same manner as set forth in Section 6.3, a Cost of the Work; however, Design-Builder's compensation for Contingency items shall not exceed the amount set forth as the Design-Builder's Contingency in the applicable NTE or GMP without a written Change Order, and Design-Builder shall not be entitled to any Fee for items reimbursed under this Section. If the Fee is fixed, the amounts included in the Design-Builder's Contingency shall be excluded from the calculation set forth in Section 6.1.2 to determine whether the GMP has changed.
- .3 The Contingency is not available to Owner for any reason, including, but not limited to changes in scope or any other item which would enable Design-Builder to increase an NTE or GMP under the Contract Documents.
- .4 Design-Builder shall provide Owner notice of all anticipated charges against the Contingency, and shall provide Owner as part of the monthly status report required by Section 2.1.2 of the General Conditions of Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. Design-Builder 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.

6.4.5 Lump Sum General Conditions Costs

- .1 The Lump Sum General Conditions Costs includes, but is not limited to the following items:
 - a. Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work. Specifically, the following personnel are included in the Lump Sum General Conditions Costs:
 - Project Executive
 - Senior Project Manager
 - Project Manager
 - Superintendent
 - Quality Control Manager
 - Project Engineer
 - Jobsite Office Manager
 - b. Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, including the Project Executive.
 - c. The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work. Such costs must be approved in writing by Owner in advance.

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

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

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

g. Accounting and data processing costs related to the Work.

h. Fees paid by the Design-Builder for the approval of Statements of Intent to Pay Prevailing Wages and certification of Affidavits of Wages Paid by the industrial statistician of the State Department of Labor and Industries. The Design-Builder will remain responsible for the actual submittal of the documents to the industrial statistician. In order to receive this reimbursement the Design-Builder will be required to submit to Owner, a list of its subcontractors at all tiers and have their Statements of Intent to Pay Prevailing Wages on file with the Owner.

i. The following costs are specifically included in the Lump Sum General Conditions Costs:

1. Shop Drawing Reproduction
2. Construction Schedule & Updates
3. Safety/Security
4. Field Office Set-up (mobilization/demobilization)
5. Office Supplies
6. Telephone System
7. Telephone Service Charge
8. Computer Network/System Set-up
9. Courier Service
10. Postage (Fed-X, USPS)
11. Furniture/Equipment
12. Office Cleaning
13. Project Manager Vehicle
14. Project Superintendent Vehicle
15. Personal Computers
16. Copy Machine
17. Temporary Electric Hook-up/Removal
18. Temporary Electric Material
19. Project Sign
20. Directional Signs & Barricades
21. Temporary Water Hook-up/Removal
22. Drinking Water & Supplies
23. Chemical Toilets
24. Start-up & Commissioning
25. O&M Manuals
26. Project Record Documents
27. Field Engineering/Building Layout Survey

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- .2 For the Costs of the Work that are included in the Lump Sum General Conditions Costs, the Design-Builder shall not be reimbursed for such costs as part of the Cost of the Work. The Lump Sum General Conditions Costs shall not be modified unless the GMP varies, either upward or downward, by more than fifteen percent (15%) from the original GMP established in this Agreement.

6.5 Non-Reimbursable Costs.

6.5.1 The following shall not be deemed as costs of the Work:

- .1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 6.3.1, 6.3.2 and 6.3.3 hereof.
- .2 Overhead and general expenses, except as provided for in Section 6.3 hereof.
- .3 The cost of Design-Builder's capital used in the performance of the Work.
- .4 Costs that would cause the GMP, the Design Builder's Contingency, or any NTE or Lump Sum Amount, as adjusted in accordance with the Contract Documents, to be exceeded.

6.6 Compensation During Project Phases.

6.6.1 Validation Period

.1 **Compensation.** During the Validation Period, the Design Builder shall be compensated for the following:

- a. The Cost of the Work set forth in Section 6.3.
- b. That portion of the Lump Sum Fee and Lump Sum General Conditions Costs pursuant to the Schedule of Values provided by the Design-Builder and based on the percentage of the Scope of the Work that has been completed.
- c. Any Lump Sums established pursuant to Section 6.4.3 and
- d. Contingency Items charged under Section 6.4.4.

.2 **Validation Period Not to Exceed Amount.** Design-Builder guarantees that its Compensation during the Validation Period shall not exceed the Validation Period Not to Exceed Amount (Validation NTE) of Two Hundred Fifty Thousand Dollars (250,000). Documents used as a basis for the Validation NTE shall be identified in Exhibit C to this Agreement. Design-Builder agrees that it will be responsible for paying all costs of completing the Work which exceed the Validation NTE, as adjusted in accordance with the Contract Documents.

.3 The Validation NTE includes the Design-Builder's Contingency in the amount of Zero Dollars (0).

.4 **GMP Proposal.** At the conclusion of the Validation Period, Design-Builder shall submit a GMP Proposal to Owner which shall include the following, unless the parties mutually agree otherwise:

a. A proposed GMP which shall not exceed the GMP set forth in Section 6.1.1, unless the Owner agrees in writing. The proposed GMP which shall be the sum of

i. Design-Builder's Lump Sum Fee as defined in Section 6.2.1

ii. The estimated Cost of the Work as defined in Section 6.3 hereof

iii. Contingency Items charged under Section 6.4.4

iv. The Lump Sum General Conditions Costs as defined in Section 6.2.3 and

v. If applicable, any Lump Sum established by the Parties pursuant to Section 6.4.3.

b. The Basis of Design Documents

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

d. The Scheduled Substantial Completion Date and Milestone Dates upon which the proposed GMP is based and a schedule upon which the Scheduled Substantial Completion Date and Milestones Dates is based

e. If applicable, a list of Allowance Items, Allowance Values, and a statement of their basis

f. If applicable, a list of NTES and the information required pursuant to Section 6.4.2 above

g. If applicable, a list of Lump Sums and the information required pursuant to Section 6.4.5 above

h. If applicable, a schedule of unit prices

i. A Schedule of Values for the Project and

j. The time limit for acceptance of the GMP Proposal.

.5 Submission of the GMP Proposal. Submission of the GMP Proposal constitutes Design-Builder's representation and agreement that the Project is adequately defined, that the Basis of Design Documents are sufficiently defined to provide an accurate Contract Price, and that the Project is sufficiently clear and understandable for the Design-Builder to perform the Work in accordance with the Contract Documents for an amount that will not exceed the GMP.

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

.7 Acceptance of GMP Proposal. If Owner accepts the GMP Proposal, as may be amended by Design-Builder, the GMP and its basis shall be set forth in the GMP Amendment. Execution of the GMP Amendment constitutes Design-Builder's representation and agreement that the Project is adequately defined, that the Final Basis of Design Documents are sufficiently defined to provide an accurate Guaranteed Maximum Price, and that the Project is sufficiently clear and understandable for the Design-Builder to perform the Work in accordance with the Contract Documents for an amount that will not exceed the GMP.

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

- a. Owner may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 6.6.1.3 above.
- b. Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 6.1 hereof without a GMP, in which case all references in this Agreement to the GMP shall not be applicable; however, Design-Builder may not exceed any NTE or Lump Sum that may be established between the Parties.
- c. Owner may terminate this Agreement for convenience in accordance with Article 8 hereof; provided, however, in this event, Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof.

.7 Performance of Work After Submission of GMP Proposal. The Design-Builder shall not perform any Work after the submission of the GMP Proposal until the Owner has approved and signed the GMP Proposal unless the Design-Builder obtains the Owner's prior, written consent to perform such Work and only to the extent that such Work is expressly described in writing in such written consent.

6.6.2 Post GMP Period.

.1 Compensation. During the Post GMP Period, the Design Builder shall be compensated for the following, all subject to the GMP:

- a. The Cost of the Work set forth in Section 6.3.
- b. Design-Builder's Lump Sum Fee established pursuant to Section 6.2.1.
- c. Any Lump Sums established pursuant to Section 6.4.3.
- d. Contingency Items charged under Section 6.4.4 and
- e. Design-Builder's Lump Sum General Conditions Costs established pursuant to Section 6.2.3.

.2 GMP The total compensation paid to Design-Builder for this Project shall not exceed the GMP, as amended pursuant to this Contract. By agreeing to the GMP Amendment, the Design-Builder understands that if the Work cannot be completed for the agreed GMP, any additional costs shall be the responsibility of the Design-Builder,

and Design-Builder hereby assumes liability for such costs without reimbursement by the Owner.

6.6.4 Savings.

.1 If the sum of the actual Cost of the Work and Design-Builder's Fee (and, if applicable, any prices established under Section 6.1.2 hereof) is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall go to 100% to the Owner.

Article 7

Procedure for Payment

7.1 Progress Payments.

7.1.1 Design-Builder shall submit to Owner on the twenty fifth (25th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.1.2 Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.1.3 If Design-Builder's Fee under Section 6.2.1 hereof is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

7.2 Retainage on Progress Payments.

7.2.1 The Owner will withhold retainage pursuant to RCW Chapter 60.28, and Owner shall release such retainage pursuant to state law. Pursuant to RCW Chapter 60.28, the Design-Builder may submit a bond in lieu of the retainage that the Owner would otherwise keep under the terms of this Contract and pursuant to applicable law. Any such bond submitted in lieu of retainage must be on the form approved by the Owner. In the event the Design-Builder fails at any time to pay persons protected under RCW Chapter 60.28 or the Owner has reason to believe that the Owner or other obligee under the bond has a claim against the retainage or for other good cause, the Owner may, at its option, resume retaining from monies earned by the Design-Builder in such amount as it would otherwise be entitled to retain had the bond not been accepted. Notwithstanding the Owner's resuming such retainage, said bond shall remain in full force and effect to the extent of its penal sum, limited to the amount of retainage released to the Design-Builder. After the Design-Builder has paid protected persons or otherwise cured any default, the Owner may, at its option, again release retainage pursuant to the terms of the bond.

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment pursuant and subject to RCW Chapter 60.28 and RCW Chapter 39.08 and all applicable laws and regulations, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.4 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the rate of twelve percent (12%) per year until paid.

7.5 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an open book arrangement relative to Costs 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, Owner, Owner's accountants, the Washington State Department of Commerce and the Washington State Auditor 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 Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

Article 8

Termination for Convenience

8.1 Upon ten (10) days written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate all or a portion of this Agreement. In such event, Owner shall pay Design-Builder for the following:

8.1.1 All Work executed and for proven loss, cost or expense in connection with the Work

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

8.1.3 That portion of the Design-Builder's Lump Sum Fee and Lump Sum General Conditions Costs that corresponds with the percentage of Work complete.

8.2 If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 hereof. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4.

Article 9

Representatives of the Parties

9.1 Owner's Representatives.

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

Leroy Eadie
Director of the City of Spokane Parks and Recreation Division
5th Floor City Hall
808 W. Spokane Falls Blvd
Spokane, WA 99201

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

Matthew Walzer
Hill International
818 W. Riverside Ave., Suite 530
Spokane, WA
509-747-8031
matthewwalzer@hillintl.com

9.2 Design-Builder's Representatives.

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

Clancy Welsh
Garco Construction Inc.
4114 E. Broadway
Spokane, WA 99202
509-535-1384
Clancy@garco.com

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9.2.2 Design-Builder designates the individual listed 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 of Contract: *(Identify individual's name, title, address and telephone numbers)*

Clancy Welsh
Garco Construction Inc.
4114 E. Broadway
Spokane, WA 99202
509-535-1384
Clancy@garco.com

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Article 10

Bonds and Insurance

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

10.2 Bonds and Other Performance Security. Upon execution of this Agreement, Design-Builder shall provide a performance and a labor and material bond, pursuant to RCW Chapter 39.08, equal to one hundred percent (100%) of the Validation NTE in the form set forth as Exhibit B. Upon execution of the GMP Amendment, Design-Builder shall provide a performance and labor and material bond, pursuant to RCW Chapter 39.08, equal to one hundred percent (100%) of the GMP in the form set forth as Exhibit B.

Article 11

Other Provisions

11.1 Other provisions, if any, are as follows: *(Insert any additional provisions)*

11.2 Wages.

11.2.1 The Design-Builder and its Subcontractors, Consultants and Sub-Consultants shall pay all laborers, workmen, or mechanics employed by it or them in the performance of this Contract the applicable state prevailing wage rate required by (RCW Chapter 39.12). The schedule of prevailing wage rates for the locality or localities of the Work is determined by the Industrial Statistician of the Department of Labor and Industries. It is the Design-Builder's responsibility to verify the applicable prevailing wage rate.

11.2.2 Before payment is made by the Owner to the Design-Builder for any Work performed by Design-Builder or any Subcontractor, Consultant or Sub-Consultant whose work is included in the application for payment, the Design-Builder shall submit, or shall have previously submitted, to the Owner a Statement of Intent to Pay Prevailing Wages, approved by the Department of Labor and Industries, certifying the rate of hourly wage paid and to be paid each classification of employees, laborers, workers, or mechanics employed for the Work by Design-Builder, Consultants, Subcontractors and Sub-Consultants. The "Statement of Intent to Pay Prevailing Wages" shall include: (1) the Design-Builder's registration number and (2) the prevailing wages under RCW 39.12.020 and the number of workers in each classification. Each voucher claim submitted by the Design-Builder for payment on a project estimate shall state that the prevailing wages have been paid in accordance with the previled statement or statements of intent to pay prevailing wages on file with the Owner.

11.2.3 Design-Builder and each Subcontractor required to pay the prevailing rate of wages shall post in a location readily visible at the job site: (1) a copy of a "Statement of Intent to Pay Prevailing Wages" approved by the industrial statistician of the Department of Labor and Industries and (2) the address and telephone number of the industrial statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.

11.2.4 Prior to release of the retainage, the Design-Builder shall submit to the Owner an Affidavit of Wages Paid, approved by the Department of Labor and Industries, for the Design-Builder and every Consultant, Sub-Consultant, and Subcontractor of any tier that performed work on the Project.

11.2.5 Disputes regarding prevailing wage rates shall be referred for arbitration to the Director of the Department of Labor and Industries. The arbitration decision shall be final and conclusive and binding on all parties involved in the dispute as provided for by RCW 39.12.060.

11.2.6 Each Application for Payment submitted by Design-Builder shall state that prevailing wages have been paid in accordance with the previled statement(s) of intent, as approved. Copied of the approved intent statements(s) shall be posted on the job site with the address and telephone number of the Industrial Statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.

11.2.7 In compliance with WAC Chapter 296-127, Design-Builder shall pay to the Department of Labor and Industries the currently established fee(s) for each statement of intent and/or affidavit of wages paid submitted to the Department of Labor and Industries for certification.

11.2.8 Consistent with WAC 296-127-320, the Design-Builder and all Consultants, Sub-Consultants and Subcontractors shall submit a certified copy of payroll records if requested.

11.3 Hours of Labor

11.3.1 Design-Builder shall comply with applicable provisions of RCW Chapter 49.28, and such provisions are incorporated herein by reference.

11.3.2 RCW 49.28 permits entities performing public works contracts to enter into an agreement where employees work up to ten hours in a calendar day, subject to the provisions of the statute. No such agreement may provide that employees work ten-hour days for more than four calendar days a week. Any such agreement is subject to approval by the employees.

11.4 Off Site Prefabricated Items.

11.4.1 In accordance with RCW 39.04.370, Design-Builder shall submit certain information about off-site, prefabricated, nonstandard, project specific items produced under the terms of the contract and produced outside Washington as a part of the Affidavit of Wages Paid form filed with the Washington State Department of Labor and Industries.

11.5 Nondiscrimination.

11.5.1 No individual shall be excluded from participation in, denied the benefit of, or subjected to discrimination under, or denied employment in the administration of or in connection with this contract because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities.

11.6 Business Registration Requirement.

11.6.1 Design-Builder represents and warrants that it and all of its subconsultants, subcontractors and suppliers are properly licensed to perform the work for which they are contracted and have all applicable business licenses, including but not limited to any licenses or registrations required by the State of Washington and Section 8.01.070 of the Spokane Municipal Code, as well as any other regulatory authority. Design-Builder shall be solely responsible for contacting the State of Washington Business License Services at <http://bls.dor.wa.gov> or 1-800-451-7985 to obtain a business registration.

11.7 Contractor's Registration Requirement.

11.7.1 Design-Builder represents and warrants that it and all of its subconsultants, subcontractors and suppliers performing construction work are properly licensed pursuant to RCW 39.06.010.

11.8 Apprenticeship Program

11.8.1 All Contractors and subcontractors are required to comply with the Spokane Municipal Code (SMC). In accordance with Article X, 7.06 SMC, Public Works Apprentice Program, for public works construction projects as defined in RCW 39.04.010 with an estimated cost of six hundred thousand dollars (\$600,000.00) or more, at least fifteen (15%) percent of the total contract labor project (all contractor and subcontractor hours) shall be performed by apprentices enrolled in a state-approved apprenticeship program.

1. The utilization percentage requirement of apprenticeship labor for public works construction contracts shall also apply to all subcontracts which value exceeds one hundred thousand dollars (\$100,000), provided there is a state-approved apprenticeship program for the trade for which a subcontract is issued (see, SMC 7.06.510).
2. Each subcontractor which this chapter applies is required to execute a form, provided by the city, acknowledging that the requirements of Article X 07.06 SMC are applicable to the labor hours for the project.
3. Each subcontractor is required to submit by the 15th of each month, a City of Spokane Statement of Apprentice/Journeyman Participation form for work performed the previous month.

~~Design-Builder shall comply with the apprenticeship program set forth in RCW 39.04.320, as applicable.~~

11.9 Anti-Kickback

11.9.1 No officer or employee of the City of Spokane, having the power or duty to perform an official act or action related to this contract shall have or acquire any interest in the contract, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in the contract.

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

OWNER:

(Name of Owner)

(Signature)

(Printed Name)

(Title)

Date: _____

DESIGN-BUILDER:

(Name of Design-Builder)

(Signature)

(Printed Name)

(Title)

Date: _____

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



STANDARD FORM OF GENERAL CONDITIONS OF PROGRESSIVE DESIGN-BUILD CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

Document No. 535

Second Edition, 2010

□ Design-Build Institute of America
Washington, DC

Article 1

General

1.1 Mutual Obligations

1.1.1 *Owner 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.

1.1.2 Integrated Delivery: The Parties wish to fully embrace the principles of collaboration and integrated delivery in the performance of the Work of this Project. Integrated delivery emphasizes a cooperative approach to problem solving involving all key parties to the Project: the Owner, Design-Builder, Designer and principal Subcontractors (electrical, mechanical and others as the Design-Builder and the Owner jointly agree are appropriate). Toward that end, the Parties agree to employ the following techniques to maximize efficiency and minimize waste:

- .1 Create a culture of open and honest communication throughout the course of the Project
- .2 Resolve disputes at the lowest possible level
- .3 Integrate the design and construction team (including key specialty contractors and trade partners) as early as possible into the design process
- .4 Utilize lean construction methods efficiently and effectively
- .5 Establish a collaborative environment where all parties have the opportunity to contribute their best efforts for the benefit of the Project as a whole rather than to the benefit of individual parties and
- .6 Establish business terms that allow for equitable shared risk and reward for the parties who are members of the Design-Build Team.

1.2 Basic Definitions

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder under DBIA Document No. 530, *Standard Form of Progressive Design-Build Agreement Between Owner and Design-Builder – with Cost Plus Fee and a Guaranteed Maximum Price* (2010 Edition).

1.2.2 *Basis of Design Documents* are those documents developed as a Validation Period deliverable that outline the scope of the Project and include the DBIA 530 Standard Form of Progressive Design-Build Agreement Between Owner and Design-Builder Cost plus Fee with a Guaranteed Maximum Price, the DBIA 535 Standard Form of General Conditions of Progressive Design-Build Contract, and the other documents required as a Validation Period deliverable. The Scope of Work set forth in the Basis of Design Documents shall be consistent with the Commercial Terms, including but not limited to the Guaranteed Maximum Price set forth in Section 6.1.1 of the Agreement.

1.2.3 *Commercial Terms* are any terms that establish a GMP, Not to Exceed, Lump Sum, or Contract Time.

1.2.4 *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by the Design-Builder consistent with the Owner's Project Criteria and the Basis of Design Documents unless a deviation from the Owner's Project Criteria or the Basis of Design Documents (as applicable) is specifically set forth in a Change Order executed by both the Owner and Design-Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

1.2.5 *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.6 *Design-Build Team* is comprised of the Design-Builder, the Design Consultant, and key Subcontractors identified by the Design-Builder.

1.2.7 *Design Consultant* is a qualified, design professional licensed in the State of Washington who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. 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.

1.2.8 *Design Log* is a log of Reliable Design Decisions agreed upon by the parties. The Design Log supplements the Owner's Project Criteria and the Basis of Design Documents, as applicable.

1.2.9 *Design Submission* is a drawing, mockup, or other representation of the design created by the Design-Builder and provided to the Owner as part of the Design Services of this Agreement.

1.2.10 *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.6.1 and the submission of all documents set forth in Section 6.7.2.

1.2.11 *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

1.2.12 *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition, as amended).

1.2.13 *GMP Amendment* means an amendment to the Agreement entered into by the parties at the conclusion of the GMP Development Period that establishes the Basis of Design Documents, the GMP, the Project Schedule and other terms agreed to by the parties.

1.2.14 *GMP Proposal* means that proposal developed by Design-Builder in accordance with Section 6.6 of DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee With a Guaranteed Maximum Price*.

1.2.15 *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.

1.2.16 *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 in place in the Project or Site, or any Work.

1.2.17 *Project Schedule* is the schedule provided by the Design-Builder pursuant to Section 2.1.3 of the General Conditions.

1.2.18 *Reliable Design Decision* is a decision, development, or election that refines the Owner's Project Criteria or Basis of Design Documents, that is approved by the Owner and that is set forth in the Design Log. A Reliable Design Decision cannot change the Owner's Project Criteria or Basis of Design Documents but shall instead constitute a further development or refinement of the design for the Project with which all subsequent design, development and Construction Documents shall be consistent.

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

1.2.20 *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include Design Consultants, materialmen, and suppliers.

1.2.21 *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 Design Sub-Consultants, materialmen, and suppliers.

1.2.22 *Substantial Completion* or *Substantially Complete* means the date on which the Work, or an Interim Milestone Date, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes without compromising the building operation (including materially increasing operating expenses) or the user's ability to reasonably use all parts of the Project.

1.2.23 *Trend* is an issue identified in the Trend Log.

1.2.24 *Trend Log* is a log of issues that have been identified by the Design-Builder or the Owner during the design process that may cause any Commercial Term to be modified or cause the Contract Time to be exceeded.

1.2.25 *Validation Period* is the second period in the Project. The purpose of the Validation Period is for the Design-Builder to conduct the Work described in Section 2.11.2.

1.2.26 *Work* shall mean the services, design and construction to be completed by the Design-Builder under the terms of this Contract. Work specifically includes the furnishing of all services, labor, materials, equipment, and all incidentals necessary to the successful completion of the services, design and construction, whether expressly required by or reasonably inferable from the Contract Documents, whether they are temporary or permanent, and whether they are incorporated into the finished Work or not. Work also includes all other obligations imposed on the Design-Builder by the Contract. The Work is sometimes generally referred to as the "Project."

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services.

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

2.1.2 Design-Builder shall provide Owner 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 the contingency account to the extent provided for in the Agreement, and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s). Status reports shall be submitted with the Design-Builder's draft Payment Applications as a pre-requisite to payment.

2.1.3 Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, the Project Schedule for the execution of the Validation Period for Owner's review and response. The Project Schedule shall indicate the dates for the

start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The 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. Owner's review of and response to, the 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 Agreement 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.

2.1.5 The Design-Build Team, which at a minimum shall consist of the Design-Builder's Representative and a representative from the lead designer and lead constructor, shall meet with the Owner at least on a weekly basis and shall provide to the Owner a written update regarding the status of the Project, including but not limited to the following information: any updates to the Project Schedule, status of any changes or potential changes to the Owner's Project Criteria, the Basis of Design Documents, the Project Schedule, the Commercial Terms, the progress of the design, and any issues that may have a material effect on the Project. The Design-Build Team shall issue meeting minutes within three days of meeting.

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 Owner and any Design Consultant. Design-Builder shall provide to Owner a list of all Design Consultants and Design Sub-Consultants who will perform material portions of the Work. Material portions of the Work shall, at a minimum, include the civil, landscape, architectural, structural, mechanical, electrical, and plumbing design. Design-Builder shall not substitute a listed Design Consultant or Sub-Consultant without obtaining Owner's prior written consent, such consent shall not be unreasonably withheld. The Contract Documents shall not be construed to create a contractual relationship of any kind between Owner and any Design Consultant or Subconsultant of any tier.

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 care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. The Design-Builder shall also perform the design and construction so that the Work meets or exceeds the performance requirements set forth in the Owner's Project Criteria and Basis of Design Documents.

2.4 Design Development Services.

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. At a minimum, Design-Builder shall provide the following design submissions to Owner for its review and approval pursuant to Section 2.4.3: one hundred percent (100%) schematic design; sixty-five percent (65%) design development; one hundred percent (100%) design development; fifty percent (50%) construction documents; one hundred

percent (100%) construction documents. Estimates shall be submitted with each submittal.

2.4.1.1 Interim and final design submissions shall be consistent with the Commercial Terms as well as the Owner's Project Criteria and the Basis of Design Documents, as these documents may have been changed through the design process set forth in this Section 2.4.1. By submitting a design submission, the Design-Builder represents to the Owner that the design submission may be constructed for the Owner's Project Criteria, the then current Basis of Design Documents (as applicable), and the Commercial Terms. Notwithstanding the above, Design-Builder may propose designs that may alter the Owner's Project Criteria, the Basis of Design Documents, and/or the Commercial Terms; however, Design-Builder must provide notice thereof in accordance with Article 9.

2.4.1.2 On or about the time of the scheduled submissions, Design-Builder and Owner 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 Owner's Project Criteria, the Basis of Design Documents, or, if applicable, previously submitted design submissions.

2.4.1.3 The Owner shall review and comment on such Design Submissions, providing any comments and/or concerns about such Design Submissions. The Owner shall provide all comments on the Design Submissions within the time provided by the Schedule. The Design-Builder shall revise the Design Submissions (and any other deliverables) in response to the Owner's comments, and incorporate said responses into the next Design Submission.

2.4.1.4 If incorporation of the Owner's comments result in a design that is inconsistent with or otherwise give rise to a change in the Owner's Project Criteria, the Basis of Design Documents, or the Commercial Terms, the Design-Builder shall provide notice thereof in accordance with Article 9. Changes to the Owner's Project Criteria or the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9.

2.4.1.5 The Design-Builder shall provide an updated cost model for the Project periodically as agreed by Owner throughout the Work. The cost model will be based on a detailed labor and material type cost estimate for the GMP and other Commercial Terms, consistent with Association for the Advancement of Cost Engineering (AACE) practices. The cost model shall be organized by CSI division listing all materials, equipment, and systems necessary to construct the facilities. The Design-Builder shall also schedule and facilitate a one-day review meeting with the Owner to present and summarize changes in the Design Submission, changes to the scheduled Milestone dates and present an overview of cost model.

2.4.1.6 Design Log. A Design Log, including a full listing of Reliable Design Decisions and all changes to the Owner's Project Criteria and the Basis of Design Documents, will be maintained by the Design-Builder and provided to all attendees for review.

- a. The Design Log shall be updated after every Design Review Meeting, and in any case, on a weekly basis.
- b. Once a Reliable Design Decision in the Design Log is approved in writing by the Owner, it shall be binding on the Design-Builder as set forth in the Owner's Project Criteria or Basis of Design Documents.
- c. The Design Log is for the sole purpose of tracking the development of the Design Submissions. If a Reliable Design Decision will cause a change in the Owner's Project Criteria or Basis of Design Documents, or any of the Commercial Terms, such changes must be processed pursuant to Article 9.

2.4.1.7 Trend Log. If the Design-Builder does not know the extent to which a Design Submission will alter a Commercial Term, the Design-Builder shall request in writing for the Owner to agree to identify the Trend in the Trend Log.

a. The request to include a Trend in the Trend Log must include the following information:

- i. Identification of the portion of the Design Submission for which the costs are uncertain and may cause any Commercial Term to be exceeded;
- ii. The estimated change in the applicable Commercial Term; and
- iii. Potential impacts or changes to the Owner's Project Criteria and/or the Basis of Design Documents as a result of the Trend.

b. The Design-Builder must obtain the Owner's consent to include the Trend in the Trend Log. The Design-Builder will track the Trend on the Trend Log, and the Trend Log shall be updated with the most recent information on a weekly basis.

c. The parties will work collaboratively to resolve Trends in the Trend Log as quickly as possible. When a Trend in the Log is resolved and the resolution changes the Owner's Project Criteria, the Basis of Design Documents and/or any Commercial Term, the resolution shall be memorialized in a Change Order.

2.4.2 Design-Builder shall submit to Owner 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 as set forth above. The parties shall have a design review meeting to discuss, and Owner 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 Owner prior to commencement of construction.

2.4.3 Owner's review and approval of interim design submissions, meeting minutes, the Design Log, the Trend Log, and the Construction Documents is for the purpose of mutually establishing a confirmed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions, meeting minutes, the Design Log, the Trend Log and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner. Design-Builder shall provide Owner with sufficient time in the Project Schedule to review and approve the design submissions, such time period shall not be less than two (2) weeks.

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.

2.5.2 The Commercial Terms shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date the parties agree upon the Commercial Term. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

2.6 Government Approvals and Permits.

2.6.1 Except as identified in an Owner's Permit List attached as an exhibit to the Agreement, 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.

2.6.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

2.7 Design-Builder's Construction Phase Services.

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner 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 at all times 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 and qualified to perform the Work consistent with the Contract Documents. Design-Builder shall, prior to the start of construction, provide Owner with a list of all Subcontractors performing at least fifteen percent (15%) of the construction work to Owner. To the extent that the Design-Builder has not selected a Subcontractor prior to performing the construction work, Design-Builder shall inform Owner in writing of the scope of work that has not been subcontracted and provide Owner a list of any subsequently added Subcontractors prior to the Subcontractor performing Work on the Project. Owner 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 Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder may not substitute listed Subcontractors without Owner's prior consent; such consent shall not be unreasonably withheld. The Contract Documents shall not be construed to create a contractual relationship of any kind between Owner and any Subcontractor of any tier.

2.7.4 Design-Builder assumes responsibility to Owner 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 Owner 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 Owner performs other work on the Project or at the Site with separate contractors under Owner'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 Owner to occupy the Project or a portion of the Project for its intended use.

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 Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-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 Owner'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.

2.9 Design-Builder's Warranty.

2.9.1 Design-Builder warrants to Owner 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. 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 Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner 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, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, 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 Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner

in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

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

2.11 Contract Phases

2.11.1 Validation Period. The Validation Period shall commence upon Notice to Proceed from the Owner and shall end on the Validation Period Completion Date as set forth in DBIA Document 530, Section 5.2. The services provided by the Design-Builder during the Validation Period shall be established in Exhibit C.

2.11.1.1 In the Validation Period, the Design-Builder shall carefully and thoroughly examine the information set forth in Exhibit C, the existing site conditions, and any other information provided by the Owner with respect to the Project. Such information includes, but is not limited to, as-built drawings of the existing facilities, necessary testing of existing facilities, geotechnical and other site conditions, and legal, permitting and regulatory requirements and restrictions.

2.11.1.2 The Design-Builder may not rely on information provided by the Owner and must validate all information provided by the Owner during the Validation Period as set forth in Exhibit C. Notwithstanding the above, the parties recognize that the Design-Builder relied on the information set forth in the Request for Proposals to establish the Validation Period NTE, and if the actual conditions differ materially from the information set forth in the RFP, then the Design-Builder shall provide Notice thereof and may be entitled to an equitable adjustment in the Validation Period NTE, provided that the Design-Builder meets the requirements in Section 4.2.1 of the General Conditions.

2.11.1.3 The Design-Builder shall, in collaboration with the Owner, develop the Basis of Design Documents, including but not limited to the plans and specifications for the Project, the Final GMP, and the Final Project Schedule.

2.11.1.4 The Design-Builder and the Owner shall, consistent with any applicable provision of the Contract Documents and during the Validation Period, agree upon the quantity and level of development for Design Submissions that the Owner may wish to review, which Design Submissions may include Milestone Design Submissions, design criteria, drawings, diagrams and specifications setting forth the Project requirements. At a minimum, Design-Builder shall provide the submissions set forth in Section 2.4.1. Design Submissions shall be consistent with the GMP and the information set forth in the RFP, as they may develop through the design process set forth in the Contract Documents.

2.11.1.5 Design-Builder must verify the information set forth in Exhibit C by the conclusion of the Validation Period. The extent to which such verification will occur in the Validation Period shall be set forth in Exhibit C. If the Design-Builder discovers or should have discovered with reasonable diligence material differences from the actual conditions and the information provided in Exhibit C, Design-Builder shall, at the conclusion of the Validation Period, provide Owner with written notice of any such material differences. A Material Difference is defined as one that would either a) impact the Basis of Design Documents, Design-Builder's Lump Sum Fee or Design-Builder's Lump Sum General Conditions Costs or b) be considered a Differing Site Condition pursuant to Section 4.2.1 of the General Conditions. Design-Builder shall not be entitled to a Change Order for Differing Site Conditions pursuant to Section 4.2.1(i) of the General Conditions if the Differing Site Condition could have been discovered, with reasonable diligence, during

the Validation Period.

2.11.1.6 At the conclusion of the Validation Period, the Design-Builder will submit a GMP Proposal pursuant to Section 6.6.1 of the Agreement. The parties will negotiate the Final terms of the GMP Proposal, and if the parties agree, they will enter into the GMP Amendment. Upon execution of the GMP Amendment, the Design-Builder shall provide a payment and performance bond for the amount of the GMP.

2.11.1.7 The Basis of Design Documents submitted with the GMP Proposal will be developed collaboratively with the Owner. Unless otherwise agreed to in writing by the Owner, the Basis of Design Documents shall include the following:

- a. Schematic drawings
- b. Concept floor plan and elevations
- c. Equipment cut sheets for major systems
- d. Site plan
- e. Design and construction phasing plan
- f. Subcontractor procurement plan and
- g. Stakeholder engagement plan

2.11.1.8 If the Design-Builder performs Work after the submission of the GMP Proposal but before the parties enter into the Validation Amendment pursuant to Section 6.6.2 of the Agreement, the Design-Builder shall be entitled to be paid in the same manner as it was paid during the Validation Period; however, in no case shall the Design-Builder be entitled to be paid in excess of the Validation NTE.

2.11.2 Post GMP Period. The Post GMP Period is the final phase of the Contract where the Design-Builder: (i) completes the design services and develops Construction Documents for the Project, (ii) performs the construction, start-up, testing and commissioning and closeout of the Project, and (iii) undertakes any necessary warranty services for the Project.

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate.

3.1.1 Owner 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 Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

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

3.2 Furnishing of Services and Information.

3.2.1 Not Used.

3.2.2 Owner 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. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

3.3 Financial Information.

3.3.1 If Design-Builder has reasonable belief that Owner will not have sufficient funds to complete the Project, at Design-Builder's written request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

3.3.2 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

3.4 Owner's Representative.

3.4.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner'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. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

3.5 Government Approvals and Permits.

3.5.1 Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in Section 2.6.1.

3.5.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

3.6 Owner's Separate Contractors.

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

3.7 Owner Inspectors and Commissioning

3.7.1 Owner may hire separate inspectors for the Work and/or a separate commissioning agent. Design-Builder shall provide Owner's inspectors and commissioning agents access to the Work and shall fully cooperate with any investigation or commissioning activity.

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions.

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site that could have been reasonably discovered during the Validation Period. Unless working with such Hazardous Condition is part of the scope of the Work, upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions that are not set forth as part of the Work or that could not have been reasonably discovered during the Validation Period, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

4.1.4 Unless expressly provided in the Contract Documents to be part of the Work, Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

4.1.5 To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site pursuant to this Section.

4.1.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.1.7 With respect to Hazardous Conditions that are part of the Work, Design-Builder agrees to comply with all applicable regulatory authorities, including but not limited to any statute, regulation or regulatory agency regarding such Hazardous Conditions. Design-Builder agrees to work cooperatively with Owner and regulatory agencies with jurisdiction over the Project to properly handle, dispose of and/or remediate any Hazardous Conditions.

4.2 Differing Site Conditions.

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in Exhibit C or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the applicable Commercial Term to the extent Design-Builder's cost and/or time performance are adversely impacted by the Differing Site Condition. Notwithstanding the above, provided the parties sign the GMP Amendment, Design-Builder shall not be entitled to a Change Order for Differing Site Conditions pursuant to Section 4.2.1(i) of the General Conditions if the Differing Site Condition could have been discovered, with reasonable diligence, during the Validation Period.

4.2.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered. Design-Builder and Owner shall work together cooperatively to determine the appropriate course of action regarding any Differing Site Condition.

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements.

5.1.1 Design-Builder is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in the Insurance Exhibit to the Agreement. Coverage shall be secured from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Agreement.

5.1.2 Design-Builder's insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

5.1.3 Upon signing and returning the signed Agreement to the Owner, and in any event, prior to performing any Work under this Agreement, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least sixty (60) days prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Design-Builder with reasonable promptness according to the Design-Builder's information and belief.

5.2 Owner's Liability Insurance.

5.2.1 Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance as set forth in the Insurance Exhibit to the Agreement to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

5.3 Builder's Risk Insurance.

5.3.1 Design-Builder shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located builder's risk insurance upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The builder's risk insurance obtained by Design-Builder shall be the broadest coverage commercially available, and shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants and Subcontractors of any tier. Such insurance shall include but not be limited to the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by Owner. The Design-Builder is responsible for the payment of any deductibles under the insurance required by this Section 5.3.1 to the extent that Design-Builder, or any subcontractor or subconsultant for which it is liable is responsible for the claim against the builder's risk insurance.

5.3.2 Any loss covered under Design-Builder's builder's risk insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.

5.3.4 Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.

Article 6

Payment

6.1 Schedule of Values.

6.1.1 Unless required by the Owner upon execution of this Agreement, within ninety (90) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a preliminary schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work. Design-Builder will furnish, as part of the Schedule of Values, adequate and reliable cost justification and documentation so as to provide both Owner and Design Builder a transparent understanding of the cost data estimates and bids that comprise the initial baseline Schedule of Values as well as any updates thereto. Design-Builder will provide a final Schedule of Values with the GMP Proposal.

6.1.2 The Owner 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 Owner 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 Monthly Progress Payments.

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.

6.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

6.2.3 All discounts offered by Subcontractor, Sub-Subcontractors and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

6.2.4 The Application for Payment shall constitute Design-Builder's representation that the Work described herein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

6.3 Withholding of Payments.

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result 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 Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner'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, including those under Article 10 hereof.

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

6.4 Right to Stop Work and Interest.

6.4.1 If Owner fails to pay timely Design-Builder any undisputed amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof, provided Design-Builder gives Owner five business days' written notice of its intent to stop work and an opportunity to cure the late payment. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

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 Owner 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 Owner 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 Owner 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 Owner's receipt of Design-Builder's notice, Owner 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, Owner 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 Owner'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.

6.6.2 Not Used

6.6.3 Owner, 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 Owner 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) Owner and Design-Builder agree that Owner'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, Owner shall make final payment by the time required in the Agreement, provided that 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 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 Owner'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 Owner 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 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 Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests, (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion and (iii) the terms of any special warranties required by the Contract Documents.

6.7.4 Deficiencies in the Work discovered after Substantial Completion, whether or not 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 Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

6.7.5 Owner shall release the Contract Retainage pursuant to RCW 60.28.011.

Article 7

Indemnification

7.1 Patent and Copyright Infringement.

7.1.1 Design-Builder shall defend any action or proceeding brought against Owner 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. Owner 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 Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

7.1.2 If Owner 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 so as 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 Owner and not ordered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner 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 or violation of any patent or copyright.

7.2 Tax Claim Indemnification.

7.2.1 If in accordance with Owner's direction, an exemption for all or part of the Work is claimed or takes, Owner 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 Owner's directive. Owner 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 Owner 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 Owner from any claims or liens brought against Owner 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) days of receiving written notice from Owner that such a claim or 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 lien bond. If Design-Builder fails to do so, Owner 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.

7.4.1 Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its Consultants, and their respective, its officers, directors, and employees (collectively "Indemnitees") from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable. Design-Builder's duty to indemnify shall not apply to liability for damages arising out of Design-Builder's services or out of bodily injury to persons or damage to property that are (a) caused by or resulting from the sole negligence of Indemnitee or (b) caused by or resulting from the concurrent negligence of (i) Indemnitee, its agents or employees and (ii) Design-Builder, its agents or employees, with such liability limited only to the extent of the negligence of Design-Builder, its agents or employees.

7.4.2 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligation set forth in Section 7.4.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts. Solely for the purposes of the indemnification obligations under this Agreement, Design Builder specifically and expressly waives any immunity that may be granted it under the workers' compensation laws under the Washington State Industrial Insurance Act, Title 51 RCW provided that such waiver shall be expressly limited to Design-Builder's indemnity obligations herein and shall not be intended as a benefit to any third party. Further, the indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefit acts. This waiver was mutually negotiated.

7.4.3 THE PARTIES ACKNOWLEDGE THAT THE INDEMNIFICATION OBLIGATIONS IN THIS AGREEMENT AND THE WAIVER OF IMMUNITY UNDER RCW TITLE 51 WERE MUTUALLY NEGOTIATED.

OWNER'S INITIALS: ()

DESIGN-BUILDER'S INITIALS: ()

7.4.5 The Owner shall not be responsible or be held liable for any damage to person or property consequent upon the use, misuse or failure of any crane, hoist, rigging, blocking, scaffolding or other equipment used by the Design-Builder or any of its Subcontractors, even though the said crane, hoist, rigging, blocking, scaffolding, or other equipment be furnished or loaned to the Design-Builder by the Owner. The acceptance and/or use of any such crane, hoist, rigging, blocking, scaffolding or other equipment by the Design-Builder or its Subcontractors shall be construed to mean that the Design-Builder accepts all responsibility for any claims for

damages whatsoever resulting from the use, misuse or failure of such apparatus whether such damages be by its own employees or property or to the employees or property of other contractors, the Owner, or otherwise.

7.5 Lower Tier Contractors Indemnification Obligations

7.5.1 Design-Builder shall include in its contracts with all lower tier contractors, including but not limited to its Design Consultant, Subconsultants, and Subcontractors, the indemnification obligations set forth in this Agreement and the General Conditions and shall include Owner as an Indemnitee for all such indemnification provisions.

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 5 of the Agreement and any Amendment to the Agreement.

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 by the process set forth in the Contract Documents. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.

8.2.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for Force Majeure Events unless otherwise provided in the Agreement.

Article 9

Changes to the Contract Price and Time

9.1 Change Orders.

9.1.1 A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

9.1.1.1 The scope of the change in the Work

9.1.1.2 The amount of the adjustment to the Contract Price or any Commercial Terms and

9.1.1.3 The extent of the adjustment to the Contract Time(s) or any Commercial Term.

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes. Unless expressly set forth in the Change Order, Change Orders shall include all costs, including but not limited to all incidental and indirect costs, and time extensions associated with the Change.

9.1.3 If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services included in the preparation of proposed revisions to the Contract Documents.

9.1.4 Owner may make changes in the Project, including but not limited to adding and/or removing Work from the Project. In such case, Design-Builder shall adjust the remaining Work to meet Owner's Project changes as reasonably possible within the applicable Commercial Term. At Owner's sole discretion, it may remove Work from the Project rather than increase the applicable Commercial Term to equitably adjust for claims by Design-Builder pursuant to Article 10 or Differing Site Conditions pursuant to Section 4.2.

9.2 Work Change Directives.

9.2.1 A Work Change Directive is a written order prepared and signed by Owner 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 Owner 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 include an adjustment in the Contract Price 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 Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments.

9.4.1 The increase or decrease in Contract Price 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 Agreement 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 Owner

9.4.1.3 Costs, fees and any other markups set forth in the Agreement 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 Owner 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 Agreement.

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 Owner 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.

9.4.3 Pricing Components For Changed Work

9.4.3.1 The total cost of any Change in Work or of any other increase or decrease in the Contract Sum, including a Claim, shall be limited to the following components.

9.4.3.2 Direct labor costs: These are the actual labor costs determined by the number of additional craft hours and the hourly costs necessary to perform the change in the Work.

9.4.3.3 Direct Material costs: This is an itemization, including material in place, of the quantity and cost of additional materials reasonable and necessary to perform the change in the Work. No lump sum costs will be allowed except when approved in advance by the Owner.

9.4.3.4 Construction equipment usage costs: This is an itemization of the actual length of time that construction equipment appropriate for Work will be used solely on the change in the Work at the site times the applicable rental cost as established by the Cost of the Work.

9.4.3.5 Subcontractor costs: These are payments the Design-Builder makes to Subcontractors for changed Work performed by such Subcontractors. The Subcontractor's cost of changes Work shall be determined in the same manner as prescribed in this Section 9.4.3 and, among other things, shall not include consultant costs, attorney's fees, or claim preparation expenses.

9.4.4 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

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 Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party on the basis of its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such written notice shall be separate from the Design Log or Trend Log maintained by the Design-Builder. The Design-Builder shall provide more complete information with respect to the claim within fourteen (14) days of the initial notice, the more complete information shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request. The failure to provide timely written notice of any claim shall operate as a waiver of such claim, but only to the extent that the failure to provide timely written notice prejudices the position of the non-claiming party.

10.2 Dispute Avoidance and Resolution.

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

10.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless the Owner and Design-Builder mutually agree otherwise.

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

10.2.4 If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association (AAA) pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by the Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation. Good faith mediation is a condition precedent to proceeding with arbitration or other

binding dispute resolution procedure. Representatives of the parties with authority to resolve the dispute shall be present at any mediation.

10.3 Arbitration.

10.3.1 Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof which have not been resolved in accordance with the procedures set forth in Section 10.2 above, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise.

10.3.2 The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.

10.3.3 Design-Builder and Owner expressly agree that any arbitration pursuant to this Section 10.3 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.

10.3.4 The prevailing party in any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party.

10.4 Duty to Continue Performance.

10.4.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

10.5 CONSEQUENTIAL DAMAGES.

10.5.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.5.2 AND 10.5.3 BELOW), NEITHER DESIGN-BUILDER NOR OWNER 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.

10.5.2 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages or lost early completion bonus, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner or reward Design-Builder for some damages that might otherwise be deemed to be consequential.

10.5.3 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the ability of any party to recover consequential damages that are covered by insurance.

Article 11

Stop Work and Termination for Cause

11.1 Owner's Right to Stop Work.

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

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

11.2 Owner'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 Owner, 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, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement 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 Owner 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 Owner may declare the Agreement terminated or default by providing written notice to Design-Builder of such declaration.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon 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 Owner 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. Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of any Commercial Term, then Design-Builder shall be obligated to pay the difference to Owner. 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 Owner in connection with the 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 Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

11.3 Design-Builder's Right to Stop Work.

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

11.3.1.1 Owner's failure to provide financial assurances as required under Section 3.3 hereof or

11.3.1.2 Owner's failure to pay amounts properly due under Design-Builder's

Application for Payment.

11.3.2 Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. Design-Builder may not stop work unless it provides such written notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

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 Agreement 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 Owner under Section 11.1.1 hereof provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

11.4.1.2 Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner'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 Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

11.4.1.3 Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated or default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

11.5 Bankruptcy of Owner or Design-Builder.

11.5.1 If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the Bankrupt Party), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

11.5.1.1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party 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 Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party 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 non-Bankrupt Party 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 or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

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 Owner, 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 Owner 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 Agreement, 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 4 of the Agreement. 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.

13.1.1 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 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.

13.2 Assignment.

13.2.1 Neither Design-Builder nor Owner 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.

13.3.1 Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

13.4 Governing Law.

13.4.1 The Agreement and all Contract Documents shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

13.5 Severability.

13.5.1 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.

13.6.1 The failure of either Design-Builder or Owner 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.

13.7.1 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.

13.8.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement, or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

13.9 Amendments.

13.9.1 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.



STANDARD FORM OF GENERAL CONDITIONS OF PROGRESSIVE DESIGN-BUILD CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

Document No. 535

Second Edition, 2010

□ Design-Build Institute of America
Washington, DC

Article 1

General

1.1 Mutual Obligations

1.1.1 *Owner 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.

1.1.2 Integrated Delivery: The Parties wish to fully embrace the principles of collaboration and integrated delivery in the performance of the Work of this Project. Integrated delivery emphasizes a cooperative approach to problem solving involving all key parties to the Project: the Owner, Design-Builder, Designer and principal Subcontractors (electrical, mechanical and others as the Design-Builder and the Owner jointly agree are appropriate). Toward that end, the Parties agree to employ the following techniques to maximize efficiency and minimize waste:

- .1 Create a culture of open and honest communication throughout the course of the Project
- .2 Resolve disputes at the lowest possible level
- .3 Integrate the design and construction team (including key specialty contractors and trade partners) as early as possible into the design process
- .4 Utilize lean construction methods efficiently and effectively
- .5 Establish a collaborative environment where all parties have the opportunity to contribute their best efforts for the benefit of the Project as a whole rather than to the benefit of individual parties and
- .6 Establish business terms that allow for equitable shared risk and reward for the parties who are members of the Design-Build Team.

1.2 Basic Definitions

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder under DBIA Document No. 530, *Standard Form of Progressive Design-Build Agreement Between Owner and Design-Builder – with Cost Plus Fee and a Guaranteed Maximum Price* (2010 Edition).

1.2.2 *Basis of Design Documents* are those documents developed as a Validation Period deliverable that outline the scope of the Project and include the DBIA 530 Standard Form of Progressive Design-Build Agreement Between Owner and Design-Builder Cost plus Fee with a Guaranteed Maximum Price, the DBIA 535 Standard Form of General Conditions of Progressive Design-Build Contract, and the other documents required as a Validation Period deliverable. The Scope of Work set forth in the Basis of Design Documents shall be consistent with the Commercial Terms, including but not limited to the Guaranteed Maximum Price set forth in Section 6.1.1 of the Agreement.

1.2.3 *Commercial Terms* are any terms that establish a GMP, Not to Exceed, Lump Sum, or Contract Time.

1.2.4 *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by the Design-Builder consistent with the Owner's Project Criteria and the Basis of Design Documents unless a deviation from the Owner's Project Criteria or the Basis of Design Documents (as applicable) is specifically set forth in a Change Order executed by both the Owner and Design-Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

1.2.5 *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.6 *Design-Build Team* is comprised of the Design-Builder, the Design Consultant, and key Subcontractors identified by the Design-Builder.

1.2.7 *Design Consultant* is a qualified, design professional licensed in the State of Washington who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. 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.

1.2.8 *Design Log* is a log of Reliable Design Decisions agreed upon by the parties. The Design Log supplements the Owner's Project Criteria and the Basis of Design Documents, as applicable.

1.2.9 *Design Submission* is a drawing, mockup, or other representation of the design created by the Design-Builder and provided to the Owner as part of the Design Services of this Agreement.

1.2.10 *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.6.1 and the submission of all documents set forth in Section 6.7.2.

1.2.11 *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

1.2.12 *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition, as amended).

1.2.13 *GMP Amendment* means an amendment to the Agreement entered into by the parties at the conclusion of the GMP Development Period that establishes the Basis of Design Documents, the GMP, the Project Schedule and other terms agreed to by the parties.

1.2.14 *GMP Proposal* means that proposal developed by Design-Builder in accordance with Section 6.6 of DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee With a Guaranteed Maximum Price*.

1.2.15 *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.

1.2.16 *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 in place in the Project or Site, or any Work.

1.2.17 *Project Schedule* is the schedule provided by the Design-Builder pursuant to Section 2.1.3 of the General Conditions.

1.2.18 *Reliable Design Decision* is a decision, development, or election that refines the Owner's Project Criteria or Basis of Design Documents, that is approved by the Owner and that is set forth in the Design Log. A Reliable Design Decision cannot change the Owner's Project Criteria or Basis of Design Documents but shall instead constitute a further development or refinement of the design for the Project with which all subsequent design, development and Construction Documents shall be consistent.

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

1.2.20 *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include Design Consultants, materialmen, and suppliers.

1.2.21 *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 Design Sub-Consultants, materialmen, and suppliers.

1.2.22 *Substantial Completion* or *Substantially Complete* means the date on which the Work, or an Interim Milestone Date, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes without compromising the building operation (including materially increasing operating expenses) or the user's ability to reasonably use all parts of the Project.

1.2.23 *Trend* is an issue identified in the Trend Log.

1.2.24 *Trend Log* is a log of issues that have been identified by the Design-Builder or the Owner during the design process that may cause any Commercial Term to be modified or cause the Contract Time to be exceeded.

1.2.25 *Validation Period* is the second period in the Project. The purpose of the Validation Period is for the Design-Builder to conduct the Work described in Section 2.11.2.

1.2.26 *Work* shall mean the services, design and construction to be completed by the Design-Builder under the terms of this Contract. Work specifically includes the furnishing of all services, labor, materials, equipment, and all incidentals necessary to the successful completion of the services, design and construction, whether expressly required by or reasonably inferable from the Contract Documents, whether they are temporary or permanent, and whether they are incorporated into the finished Work or not. Work also includes all other obligations imposed on the Design-Builder by the Contract. The Work is sometimes generally referred to as the "Project."

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services.

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

2.1.2 Design-Builder shall provide Owner 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 the contingency account to the extent provided for in the Agreement, and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s). Status reports shall be submitted with the Design-Builder's draft Payment Applications as a pre-requisite to payment.

2.1.3 Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, the Project Schedule for the execution of the Validation Period for Owner's review and response. The Project Schedule shall indicate the dates for the

start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The 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. Owner's review of and response to, the 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 Agreement 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.

2.1.5 The Design-Build Team, which at a minimum shall consist of the Design-Builder's Representative and a representative from the lead designer and lead constructor, shall meet with the Owner at least on a weekly basis and shall provide to the Owner a written update regarding the status of the Project, including but not limited to the following information: any updates to the Project Schedule, status of any changes or potential changes to the Owner's Project Criteria, the Basis of Design Documents, the Project Schedule, the Commercial Terms, the progress of the design, and any issues that may have a material effect on the Project. The Design-Build Team shall issue meeting minutes within three days of meeting.

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 Owner and any Design Consultant. Design-Builder shall provide to Owner a list of all Design Consultants and Design Sub-Consultants who will perform material portions of the Work. Material portions of the Work shall, at a minimum, include the civil, landscape, architectural, structural, mechanical, electrical, and plumbing design. Design-Builder shall not substitute a listed Design Consultant or Sub-Consultant without obtaining Owner's prior written consent, such consent shall not be unreasonably withheld. The Contract Documents shall not be construed to create a contractual relationship of any kind between Owner and any Design Consultant or Subconsultant of any tier.

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 care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. The Design-Builder shall also perform the design and construction so that the Work meets or exceeds the performance requirements set forth in the Owner's Project Criteria and Basis of Design Documents.

2.4 Design Development Services.

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. At a minimum, Design-Builder shall provide the following design submissions to Owner for its review and approval pursuant to Section 2.4.3: one hundred percent (100%) schematic design; sixty-five percent (65%) design development; one hundred percent (100%) design development; fifty percent (50%) construction documents; one hundred

percent (100%) construction documents. Estimates shall be submitted with each submittal.

2.4.1.1 Interim and final design submissions shall be consistent with the Commercial Terms as well as the Owner's Project Criteria and the Basis of Design Documents, as these documents may have been changed through the design process set forth in this Section 2.4.1. By submitting a design submission, the Design-Builder represents to the Owner that the design submission may be constructed for the Owner's Project Criteria, the then current Basis of Design Documents (as applicable), and the Commercial Terms. Notwithstanding the above, Design-Builder may propose designs that may alter the Owner's Project Criteria, the Basis of Design Documents, and/or the Commercial Terms; however, Design-Builder must provide notice thereof in accordance with Article 9.

2.4.1.2 On or about the time of the scheduled submissions, Design-Builder and Owner 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 Owner's Project Criteria, the Basis of Design Documents, or, if applicable, previously submitted design submissions.

2.4.1.3 The Owner shall review and comment on such Design Submissions, providing any comments and/or concerns about such Design Submissions. The Owner shall provide all comments on the Design Submissions within the time provided by the Schedule. The Design-Builder shall revise the Design Submissions (and any other deliverables) in response to the Owner's comments, and incorporate said responses into the next Design Submission.

2.4.1.4 If incorporation of the Owner's comments result in a design that is inconsistent with or otherwise give rise to a change in the Owner's Project Criteria, the Basis of Design Documents, or the Commercial Terms, the Design-Builder shall provide notice thereof in accordance with Article 9. Changes to the Owner's Project Criteria or the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9.

2.4.1.5 The Design-Builder shall provide an updated cost model for the Project periodically as agreed by Owner throughout the Work. The cost model will be based on a detailed labor and material type cost estimate for the GMP and other Commercial Terms, consistent with Association for the Advancement of Cost Engineering (AACE) practices. The cost model shall be organized by CSI division listing all materials, equipment, and systems necessary to construct the facilities. The Design-Builder shall also schedule and facilitate a one-day review meeting with the Owner to present and summarize changes in the Design Submission, changes to the scheduled Milestone dates and present an overview of cost model.

2.4.1.6 Design Log. A Design Log, including a full listing of Reliable Design Decisions and all changes to the Owner's Project Criteria and the Basis of Design Documents, will be maintained by the Design-Builder and provided to all attendees for review.

- a. The Design Log shall be updated after every Design Review Meeting, and in any case, on a weekly basis.
- b. Once a Reliable Design Decision in the Design Log is approved in writing by the Owner, it shall be binding on the Design-Builder as set forth in the Owner's Project Criteria or Basis of Design Documents.
- c. The Design Log is for the sole purpose of tracking the development of the Design Submissions. If a Reliable Design Decision will cause a change in the Owner's Project Criteria or Basis of Design Documents, or any of the Commercial Terms, such changes must be processed pursuant to Article 9.

2.4.1.7 Trend Log. If the Design-Builder does not know the extent to which a Design Submission will alter a Commercial Term, the Design-Builder shall request in writing for the Owner to agree to identify the Trend in the Trend Log.

a. The request to include a Trend in the Trend Log must include the following information:

- i. Identification of the portion of the Design Submission for which the costs are uncertain and may cause any Commercial Term to be exceeded;
- ii. The estimated change in the applicable Commercial Term; and
- iii. Potential impacts or changes to the Owner's Project Criteria and/or the Basis of Design Documents as a result of the Trend.

b. The Design-Builder must obtain the Owner's consent to include the Trend in the Trend Log. The Design-Builder will track the Trend on the Trend Log, and the Trend Log shall be updated with the most recent information on a weekly basis.

c. The parties will work collaboratively to resolve Trends in the Trend Log as quickly as possible. When a Trend in the Log is resolved and the resolution changes the Owner's Project Criteria, the Basis of Design Documents and/or any Commercial Term, the resolution shall be memorialized in a Change Order.

2.4.2 Design-Builder shall submit to Owner 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 as set forth above. The parties shall have a design review meeting to discuss, and Owner 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 Owner prior to commencement of construction.

2.4.3 Owner's review and approval of interim design submissions, meeting minutes, the Design Log, the Trend Log, and the Construction Documents is for the purpose of mutually establishing a confirmed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions, meeting minutes, the Design Log, the Trend Log and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner. Design-Builder shall provide Owner with sufficient time in the Project Schedule to review and approve the design submissions, such time period shall not be less than two (2) weeks.

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.

2.5.2 The Commercial Terms shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date the parties agree upon the Commercial Term. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

2.6 Government Approvals and Permits.

2.6.1 Except as identified in an Owner's Permit List attached as an exhibit to the Agreement, 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.

2.6.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

2.7 Design-Builder's Construction Phase Services.

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner 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 at all times 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 and qualified to perform the Work consistent with the Contract Documents. Design-Builder shall, prior to the start of construction, provide Owner with a list of all Subcontractors performing at least fifteen percent (15%) of the construction work to Owner. To the extent that the Design-Builder has not selected a Subcontractor prior to performing the construction work, Design-Builder shall inform Owner in writing of the scope of work that has not been subcontracted and provide Owner a list of any subsequently added Subcontractors prior to the Subcontractor performing Work on the Project. Owner 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 Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder may not substitute listed Subcontractors without Owner's prior consent; such consent shall not be unreasonably withheld. The Contract Documents shall not be construed to create a contractual relationship of any kind between Owner and any Subcontractor of any tier.

2.7.4 Design-Builder assumes responsibility to Owner 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 Owner 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 Owner performs other work on the Project or at the Site with separate contractors under Owner'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 Owner to occupy the Project or a portion of the Project for its intended use.

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 Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-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 Owner'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.

2.9 Design-Builder's Warranty.

2.9.1 Design-Builder warrants to Owner 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. 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 Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner 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, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, 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 Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner.

in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

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

2.11 Contract Phases

2.11.1 Validation Period. The Validation Period shall commence upon Notice to Proceed from the Owner and shall end on the Validation Period Completion Date as set forth in DBIA Document 530, Section 5.2. The services provided by the Design-Builder during the Validation Period shall be established in Exhibit C.

2.11.1.1 In the Validation Period, the Design-Builder shall carefully and thoroughly examine the information set forth in Exhibit C, the existing site conditions, and any other information provided by the Owner with respect to the Project. Such information includes, but is not limited to, as-built drawings of the existing facilities, necessary testing of existing facilities, geotechnical and other site conditions, and legal, permitting and regulatory requirements and restrictions.

2.11.1.2 The Design-Builder may not rely on information provided by the Owner and must validate all information provided by the Owner during the Validation Period as set forth in Exhibit C. Notwithstanding the above, the parties recognize that the Design-Builder relied on the information set forth in the Request for Proposals to establish the Validation Period NTE, and if the actual conditions differ materially from the information set forth in the RFP, then the Design-Builder shall provide Notice thereof and may be entitled to an equitable adjustment in the Validation Period NTE, provided that the Design-Builder meets the requirements in Section 4.2.1 of the General Conditions.

2.11.1.3 The Design-Builder shall, in collaboration with the Owner, develop the Basis of Design Documents, including but not limited to the plans and specifications for the Project, the Final GMP, and the Final Project Schedule.

2.11.1.4 The Design-Builder and the Owner shall, consistent with any applicable provision of the Contract Documents and during the Validation Period, agree upon the quantity and level of development for Design Submissions that the Owner may wish to review, which Design Submissions may include Milestone Design Submissions, design criteria, drawings, diagrams and specifications setting forth the Project requirements. At a minimum, Design-Builder shall provide the submissions set forth in Section 2.4.1. Design Submissions shall be consistent with the GMP and the information set forth in the RFP, as they may develop through the design process set forth in the Contract Documents.

2.11.1.5 Design-Builder must verify the information set forth in Exhibit C by the conclusion of the Validation Period. The extent to which such verification will occur in the Validation Period shall be set forth in Exhibit C. If the Design-Builder discovers or should have discovered with reasonable diligence material differences from the actual conditions and the information provided in Exhibit C, Design-Builder shall, at the conclusion of the Validation Period, provide Owner with written notice of any such material differences. A Material Difference is defined as one that would either a) impact the Basis of Design Documents, Design-Builder's Lump Sum Fee or Design-Builder's Lump Sum General Conditions Costs or b) be considered a Differing Site Condition pursuant to Section 4.2.1 of the General Conditions. Design-Builder shall not be entitled to a Change Order for Differing Site Conditions pursuant to Section 4.2.1(i) of the General Conditions if the Differing Site Condition could have been discovered, with reasonable diligence, during

the Validation Period.

2.11.1.6 At the conclusion of the Validation Period, the Design-Builder will submit a GMP Proposal pursuant to Section 6.6.1 of the Agreement. The parties will negotiate the Final terms of the GMP Proposal, and if the parties agree, they will enter into the GMP Amendment. Upon execution of the GMP Amendment, the Design-Builder shall provide a payment and performance bond for the amount of the GMP.

2.11.1.7 The Basis of Design Documents submitted with the GMP Proposal will be developed collaboratively with the Owner. Unless otherwise agreed to in writing by the Owner, the Basis of Design Documents shall include the following:

- a. Schematic drawings
- b. Concept floor plan and elevations
- c. Equipment cut sheets for major systems
- d. Site plan
- e. Design and construction phasing plan
- f. Subcontractor procurement plan and
- g. Stakeholder engagement plan

2.11.1.8 If the Design-Builder performs Work after the submission of the GMP Proposal but before the parties enter into the Validation Amendment pursuant to Section 6.6.2 of the Agreement, the Design-Builder shall be entitled to be paid in the same manner as it was paid during the Validation Period; however, in no case shall the Design-Builder be entitled to be paid in excess of the Validation NTE.

2.11.2 Post GMP Period. The Post GMP Period is the final phase of the Contract where the Design-Builder: (i) completes the design services and develops Construction Documents for the Project, (ii) performs the construction, start-up, testing and commissioning and closeout of the Project, and (iii) undertakes any necessary warranty services for the Project.

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate.

3.1.1 Owner 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 Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

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

3.2 Furnishing of Services and Information.

3.2.1 Not Used.

3.2.2 Owner 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. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

3.3 Financial Information.

3.3.1 If Design-Builder has reasonable belief that Owner will not have sufficient funds to complete the Project, at Design-Builder's written request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

3.3.2 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

3.4 Owner's Representative.

3.4.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner'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. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

3.5 Government Approvals and Permits.

3.5.1 Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in Section 2.6.1.

3.5.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

3.6 Owner's Separate Contractors.

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

3.7 Owner Inspectors and Commissioning

3.7.1 Owner may hire separate inspectors for the Work and/or a separate commissioning agent. Design-Builder shall provide Owner's inspectors and commissioning agents access to the Work and shall fully cooperate with any investigation or commissioning activity.

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions.

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site that could have been reasonably discovered during the Validation Period. Unless working with such Hazardous Condition is part of the scope of the Work, upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions that are not set forth as part of the Work or that could not have been reasonably discovered during the Validation Period, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

4.1.4 Unless expressly provided in the Contract Documents to be part of the Work, Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

4.1.5 To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site pursuant to this Section.

4.1.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.1.7 With respect to Hazardous Conditions that are part of the Work, Design-Builder agrees to comply with all applicable regulatory authorities, including but not limited to any statute, regulation or regulatory agency regarding such Hazardous Conditions. Design-Builder agrees to work cooperatively with Owner and regulatory agencies with jurisdiction over the Project to properly handle, dispose of and/or remediate any Hazardous Conditions.

4.2 Differing Site Conditions.

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in Exhibit C or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the applicable Commercial Term to the extent Design-Builder's cost and/or time performance are adversely impacted by the Differing Site Condition. Notwithstanding the above, provided the parties sign the GMP Amendment, Design-Builder shall not be entitled to a Change Order for Differing Site Conditions pursuant to Section 4.2.1(i) of the General Conditions if the Differing Site Condition could have been discovered, with reasonable diligence, during the Validation Period.

4.2.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered. Design-Builder and Owner shall work together cooperatively to determine the appropriate course of action regarding any Differing Site Condition.

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements.

5.1.1 Design-Builder is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in the Insurance Exhibit to the Agreement. Coverage shall be secured from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Agreement.

5.1.2 Design-Builder's insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

5.1.3 Upon signing and returning the signed Agreement to the Owner, and in any event, prior to performing any Work under this Agreement, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least sixty (60) days prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Design-Builder with reasonable promptness according to the Design-Builder's information and belief.

5.2 Owner's Liability Insurance.

5.2.1 Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance as set forth in the Insurance Exhibit to the Agreement to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

5.3 Builder's Risk Insurance.

5.3.1 Design-Builder shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located builder's risk insurance upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The builder's risk insurance obtained by Design-Builder shall be the broadest coverage commercially available, and shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants and Subcontractors of any tier. Such insurance shall include but not be limited to the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by Owner. The Design-Builder is responsible for the payment of any deductibles under the insurance required by this Section 5.3.1 to the extent that Design-Builder, or any subcontractor or subconsultant for which it is liable is responsible for the claim against the builder's risk insurance.

5.3.2 Any loss covered under Design-Builder's builder's risk insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.

5.3.4 Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.

Article 6

Payment

6.1 Schedule of Values.

6.1.1 Unless required by the Owner upon execution of this Agreement, within ninety (90) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a preliminary schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work. Design-Builder will furnish, as part of the Schedule of Values, adequate and reliable cost justification and documentation so as to provide both Owner and Design Builder a transparent understanding of the cost data estimates and bids that comprise the initial baseline Schedule of Values as well as any updates thereto. Design-Builder will provide a final Schedule of Values with the GMP Proposal.

6.1.2 The Owner 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 Owner 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 Monthly Progress Payments.

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.

6.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

6.2.3 All discounts offered by Subcontractor, Sub-Subcontractors and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

6.2.4 The Application for Payment shall constitute Design-Builder's representation that the Work described herein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

6.3 Withholding of Payments.

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result 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 Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner'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, including those under Article 10 hereof.

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

6.4 Right to Stop Work and Interest.

6.4.1 If Owner fails to pay timely Design-Builder any undisputed amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof, provided Design-Builder gives Owner five business days' written notice of its intent to stop work and an opportunity to cure the late payment. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

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 Owner 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 Owner 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 Owner 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 Owner's receipt of Design-Builder's notice, Owner 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, Owner 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 Owner'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.

6.6.2 Not Used

6.6.3 Owner, 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 Owner 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) Owner and Design-Builder agree that Owner'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, Owner shall make final payment by the time required in the Agreement, provided that 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 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 Owner'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 Owner 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 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 Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests, (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion and (iii) the terms of any special warranties required by the Contract Documents.

6.7.4 Deficiencies in the Work discovered after Substantial Completion, whether or not 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 Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

6.7.5 Owner shall release the Contract Retainage pursuant to RCW 60.28.011.

Article 7

Indemnification

7.1 Patent and Copyright Infringement.

7.1.1 Design-Builder shall defend any action or proceeding brought against Owner 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. Owner 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 Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

7.1.2 If Owner 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 so as 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 Owner and not ordered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner 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 or violation of any patent or copyright.

7.2 Tax Claim Indemnification.

7.2.1 If in accordance with Owner's direction, an exemption for all or part of the Work is claimed or takes, Owner 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 Owner's directive. Owner 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 Owner 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 Owner from any claims or liens brought against Owner 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) days of receiving written notice from Owner that such a claim or 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 lien bond. If Design-Builder fails to do so, Owner 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.

7.4.1 Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its Consultants, and their respective, its officers, directors, and employees (collectively "Indemnitees") from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable. Design-Builder's duty to indemnify shall not apply to liability for damages arising out of Design-Builder's services or out of bodily injury to persons or damage to property that are (a) caused by or resulting from the sole negligence of Indemnitee or (b) caused by or resulting from the concurrent negligence of (i) Indemnitee, its agents or employees and (ii) Design-Builder, its agents or employees, with such liability limited only to the extent of the negligence of Design-Builder, its agents or employees.

7.4.2 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligation set forth in Section 7.4.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts. Solely for the purposes of the indemnification obligations under this Agreement, Design Builder specifically and expressly waives any immunity that may be granted it under the workers' compensation laws under the Washington State Industrial Insurance Act, Title 51 RCW provided that such waiver shall be expressly limited to Design-Builder's indemnity obligations herein and shall not be intended as a benefit to any third party. Further, the indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers' compensation acts, disability benefits acts, or other employee benefits acts. This waiver was mutually negotiated.

7.4.3 THE PARTIES ACKNOWLEDGE THAT THE INDEMNIFICATION OBLIGATIONS IN THIS AGREEMENT AND THE WAIVER OF IMMUNITY UNDER RCW TITLE 51 WERE MUTUALLY NEGOTIATED.

OWNER'S INITIALS: ()

DESIGN-BUILDER'S INITIALS: ()

7.4.5 The Owner shall not be responsible or be held liable for any damage to person or property consequent upon the use, misuse or failure of any crane, hoist, rigging, blocking, scaffolding or other equipment used by the Design-Builder or any of its Subcontractors, even though the said crane, hoist, rigging, blocking, scaffolding, or other equipment be furnished or loaned to the Design-Builder by the Owner. The acceptance and/or use of any such crane, hoist, rigging, blocking, scaffolding or other equipment by the Design-Builder or its Subcontractors shall be construed to mean that the Design-Builder accepts all responsibility for any claims for

damages whatsoever resulting from the use, misuse or failure of such apparatus whether such damages by its own employees or property or to the employees or property of other contractors, the Owner, or otherwise.

7.5 Lower Tier Contractors Indemnification Obligations

7.5.1 Design-Builder shall include in its contracts with all lower tier contractors, including but not limited to its Design Consultant, Subconsultants, and Subcontractors, the indemnification obligations set forth in this Agreement and the General Conditions and shall include Owner as an Indemnitee for all such indemnification provisions.

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 5 of the Agreement and any Amendment to the Agreement.

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 by the process set forth in the Contract Documents. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.

8.2.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for Force Majeure Events unless otherwise provided in the Agreement.

Article 9

Changes to the Contract Price and Time

9.1 Change Orders.

9.1.1 A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

9.1.1.1 The scope of the change in the Work

9.1.1.2 The amount of the adjustment to the Contract Price or any Commercial Terms and

9.1.1.3 The extent of the adjustment to the Contract Time(s) or any Commercial Term.

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes. Unless expressly set forth in the Change Order, Change Orders shall include all costs, including but not limited to all incidental and indirect costs, and time extensions associated with the Change.

9.1.3 If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services included in the preparation of proposed revisions to the Contract Documents.

9.1.4 Owner may make changes in the Project, including but not limited to adding and/or removing Work from the Project. In such case, Design-Builder shall adjust the remaining Work to meet Owner's Project changes as reasonably possible within the applicable Commercial Term. At Owner's sole discretion, it may remove Work from the Project rather than increase the applicable Commercial Term to equitably adjust for claims by Design-Builder pursuant to Article 10 or Differing Site Conditions pursuant to Section 4.2.

9.2 Work Change Directives.

9.2.1 A Work Change Directive is a written order prepared and signed by Owner 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 Owner 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 include an adjustment in the Contract Price 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 Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments.

9.4.1 The increase or decrease in Contract Price 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 Agreement 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 Owner

9.4.1.3 Costs, fees and any other markups set forth in the Agreement 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 Owner 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 Agreement.

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 Owner 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.

9.4.3 Pricing Components For Changed Work

9.4.3.1 The total cost of any Change in Work or of any other increase or decrease in the Contract Sum, including a Claim, shall be limited to the following components.

9.4.3.2 Direct labor costs: These are the actual labor costs determined by the number of additional craft hours and the hourly costs necessary to perform the change in the Work.

9.4.3.3 Direct Material costs: This is an itemization, including material in place, of the quantity and cost of additional materials reasonable and necessary to perform the change in the Work. No lump sum costs will be allowed except when approved in advance by the Owner.

9.4.3.4 Construction equipment usage costs: This is an itemization of the actual length of time that construction equipment appropriate for Work will be used solely on the change in the Work at the site times the applicable rental cost as established by the Cost of the Work.

9.4.3.5 Subcontractor costs: These are payments the Design-Builder makes to Subcontractors for changed Work performed by such Subcontractors. The Subcontractor's cost of changes Work shall be determined in the same manner as prescribed in this Section 9.4.3 and, among other things, shall not include consultant costs, attorney's fees, or claim preparation expenses.

9.4.4 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

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 Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party on the basis of its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such written notice shall be separate from the Design Log or Trend Log maintained by the Design-Builder. The Design-Builder shall provide more complete information with respect to the claim within fourteen (14) days of the initial notice, the more complete information shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request. The failure to provide timely written notice of any claim shall operate as a waiver of such claim, but only to the extent that the failure to provide timely written notice prejudices the position of the non-claiming party.

10.2 Dispute Avoidance and Resolution.

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

10.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless the Owner and Design-Builder mutually agree otherwise.

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

10.2.4 If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association (AAA) pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by the Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation. Good faith mediation is a condition precedent to proceeding with arbitration or other

binding dispute resolution procedure. Representatives of the parties with authority to resolve the dispute shall be present at any mediation.

10.3 Arbitration.

10.3.1 Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof which have not been resolved in accordance with the procedures set forth in Section 10.2 above, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise.

10.3.2 The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.

10.3.3 Design-Builder and Owner expressly agree that any arbitration pursuant to this Section 10.3 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.

10.3.4 The prevailing party in any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party.

10.4 Duty to Continue Performance.

10.4.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

10.5 CONSEQUENTIAL DAMAGES.

10.5.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.5.2 AND 10.5.3 BELOW), NEITHER DESIGN-BUILDER NOR OWNER 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.

10.5.2 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages or lost early completion bonus, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner or reward Design-Builder for some damages that might otherwise be deemed to be consequential.

10.5.3 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the ability of any party to recover consequential damages that are covered by insurance.

Article 11

Stop Work and Termination for Cause

11.1 Owner's Right to Stop Work.

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

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

11.2 Owner'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 Owner, 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, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement 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 Owner 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 Owner may declare the Agreement terminated or default by providing written notice to Design-Builder of such declaration.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon 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 Owner 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. Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of any Commercial Term, then Design-Builder shall be obligated to pay the difference to Owner. 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 Owner in connection with the 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 Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

11.3 Design-Builder's Right to Stop Work.

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

11.3.1.1 Owner's failure to provide financial assurances as required under Section 3.3 hereof or

11.3.1.2 Owner's failure to pay amounts properly due under Design-Builder's

Application for Payment.

11.3.2 Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. Design-Builder may not stop work unless it provides such written notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

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 Agreement 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 Owner under Section 11.1.1 hereof provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

11.4.1.2 Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner'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 Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

11.4.1.3 Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated or default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

11.5 Bankruptcy of Owner or Design-Builder.

11.5.1 If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the Bankrupt Party), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

11.5.1.1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party 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 Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party 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 non-Bankrupt Party 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 or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

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 Owner, 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 Owner 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 Agreement, 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 4 of the Agreement. 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.

13.1.1 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 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.

13.2 Assignment.

13.2.1 Neither Design-Builder nor Owner 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.

13.3.1 Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

13.4 Governing Law.

13.4.1 The Agreement and all Contract Documents shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

13.5 Severability.

13.5.1 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.

13.6.1 The failure of either Design-Builder or Owner 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.

13.7.1 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.

13.8.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement, or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

13.9 Amendments.

13.9.1 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.

**RIVERFRONT PARK MODERNIZATION
SPOKANE PARKS AND RECREATION DIVISION
PAVILION PROJECT DB PROCUREMENT SCORES
3/30/2017**

Statement of Qualificaitons	Possible Points	Garco/NAC/ Berger	Graham/Womer/ Berger	Lydig/GGLO
DB Team Organization & Responsibilities	35	32	20	28
Demonstrated History of Successful Projects of Similar Complexity	35	32	20	30
Design & Permitting	15	10	8	12
Construction Management Experience	15	13	10	13
Proposal				
Overall mgmt approach	60	50	30	52
Design Dev	20	20	15	18
Project Controls, Cost Tracking & GMP Dev	40	32	26	32
Scheduling, Sequencing & CM	40	28	24	32
Proprietary Meeting	25	22	16	24
Price Proposal	25	25	17	19
Interview	20	20	14	18
DSC	5	5	3	1
Total	235	289	203	279

RIVERFRONT PARK REDEVELOPMENT - SUMMARY ESTIMATE ANALYSIS

PROJECT DESCRIPTION	DEC 2016 BUDGET	CURRENT / PROPOSED BUDGET	VARIANCE to DEC-16 BUDGET	COST TO DATE
1 RFP - SOUTH BANK WEST (REC RINK, GONDOLA MEADOW)	\$ 9,225,768	\$ 9,434,916	\$ 209,148	\$ 1,536,901
2 RFP - SOUTH BANK CENTRAL (LOOFF CAROUSEL)	\$ 9,978,980	\$ 10,195,833	\$ 216,852	\$ 911,810
3 RFP - HOWARD STREET SOUTH CHANNEL BRIDGE (HSBS)	\$ 7,044,142	\$ 7,216,139	\$ 171,997	\$ 3,753,235
4A RFP - NORTH PROMENADE	\$ 2,602,537	\$ 2,655,763	\$ 53,227	
4B RFP - WEST HAVERMALE	\$ 4,731,793	\$ 4,650,113	\$ (81,680)	\$ 80,882
5 RFP - US PAVILION	\$ 19,480,832	\$ 19,662,236	\$ 181,405	\$ 135,460
6 RFP - snx [™] mene [®]	\$ 10,268	\$ 10,268	\$ -	\$ 1,741
7 RFP - NORTH BANK	\$ 5,683,861	\$ 5,629,772	\$ (54,089)	\$ 120,982
8 RFP - SOUTH BANK EAST	\$ 49,982	\$ 158,782	\$ 108,800	\$ 51,349
SUB-TOTAL	\$ 58,808,163	\$ 59,613,822	\$ 805,659	
9 RFP - PROGRAM LEVEL OWNER COSTS	\$ 7,116,837	\$ 6,311,178	\$ (805,659)	\$ 3,049,884
TOTAL	\$ 65,925,000	\$ 65,925,000	(0)	9,642,242
Additional Budget Information				
<div>OPEN ITEMS:</div> <div>- HSB - Mid Channel</div>				

2015 Bond Amount	\$ 64,300,000
Initial Anticipated Bond Interest	\$ 1,500,000
Total	\$ 65,800,000
Start with Baseline Budget	\$ 65,475,586
Difference from Baseline Project to the Bond+Interest Total (65,800,000-65,475,586 = \$324,414)	\$ 324,414
5/12/16 - Additional Projected Bond Interest	\$ 125,000
New Total Bond Budget (May 24, 2016)	\$ 65,925,000
Fund 1950 - Park Cumulative Reserve Fund	\$ 167,039
Deadman Install (12k from Capital Budget to RR)	\$ 12,000
Funds from Street Dept for lighting RR Alt#6	\$ 43,000
Owner Scope - Skyride Relocation of Equipment	\$ 50,000
FF&E (Grant from Prudential, 100k to RR)	\$ 100,000
Water Main Upgrade (10" to 18") MOU w_Utilities to HSBS	\$ 150,000
Water Main Upgrade (10" to 18") MOU w_Utilities Promenades	\$ 500,000
Water Main Upgrades MOU w_Utilities to Looff	\$ 150,000
Rotary Fountain Improvements	\$ 785,000
Budget with Non-Bond Funds	\$ 67,882,039

	DEC 2016 BUDGET	% of Overall Budget	CURRENT / PROPOSED BUDGET	% of Overall Budget	Delta to DEC-16 \$	Delta to DEC-16 %
*Construction	\$ 7,853,626	11.67%	\$ 8,197,099	12.08%	\$ 343,473	0.41%
Design	\$ 852,653	1.27%	\$ 852,653	1.26%	\$ 0	-0.01%
**Other	\$ 621,489	0.92%	\$ 590,164	0.87%	\$ (31,325)	-0.05%
Construction	\$ 8,432,718	12.53%	\$ 9,273,682	13.66%	\$ 840,964	1.14%
Design	\$ 1,078,000	1.60%	\$ 1,188,595	1.75%	\$ 110,595	0.15%
Other	\$ 668,262	0.99%	\$ 668,556	0.98%	\$ 294	-0.01%
Construction	\$ 5,524,457	8.21%	\$ 5,634,815	8.30%	\$ 110,358	0.10%
Design	\$ 989,811	1.47%	\$ 1,021,511	1.50%	\$ 31,700	0.03%
Other	\$ 729,874	1.08%	\$ 709,813	1.05%	\$ (20,061)	-0.04%
Construction	\$ 2,387,471	3.55%	\$ 2,339,294	3.45%	\$ (48,177)	-0.10%
Design	\$ 243,820	0.36%	\$ 327,311	0.48%	\$ 83,491	0.12%
Other	\$ 331,246	0.49%	\$ 299,158	0.44%	\$ (32,088)	-0.05%
Construction	\$ 3,976,193	5.91%	\$ 3,864,309	5.69%	\$ (111,884)	-0.21%
Design	\$ 357,621	0.53%	\$ 390,044	0.57%	\$ 32,423	0.04%
Other	\$ 637,978	0.95%	\$ 585,759	0.86%	\$ (52,219)	-0.08%
Construction	\$ 16,196,292	24.06%	\$ 15,787,652	23.26%	\$ (408,640)	-0.80%
Design	\$ 1,675,208	2.49%	\$ 1,675,208	2.47%	\$ -	-0.02%
Other	\$ 1,664,331	2.47%	\$ 2,199,376	3.24%	\$ 535,045	0.77%
Construction	\$ -	0.00%	\$ -	0.00%	\$ -	0.00%
Design	\$ 10,000	0.01%	\$ 10,000	0.01%	\$ -	0.00%
Other	\$ 268	0.00%	\$ 268	0.00%	\$ -	0.00%
Construction	\$ 4,951,979	7.36%	\$ 4,719,514	6.95%	\$ (232,465)	-0.40%
Design	\$ 553,320	0.82%	\$ 703,920	1.04%	\$ 150,600	0.22%
Other	\$ 419,866	0.62%	\$ 373,377	0.55%	\$ (46,489)	-0.07%
Construction	\$ -	0.00%	\$ 108,800	0.16%	\$ 108,800	0.16%
Design	\$ 49,635	0.07%	\$ 49,635	0.07%	\$ (0)	0.00%
Other	\$ 347	0.00%	\$ 347	0.00%	\$ 0	0.00%
Construction	\$ 1,503,535	2.23%	\$ 1,077,610	1.59%	\$ (425,926)	-0.65%
Design	\$ 873,993	1.30%	\$ 873,993	1.29%	\$ -	-0.01%
Other	\$ 4,739,309	7.04%	\$ 4,359,576	6.42%	\$ (379,733)	-0.62%
Construction	\$ 50,826,271	75.50%	\$ 51,002,775	75.13%	\$ 176,504	-0.36%
Design	\$ 6,684,061	9.93%	\$ 7,092,869	10.45%	\$ 408,808	0.52%
Other	\$ 9,812,970	14.58%	\$ 9,786,395	14.42%	\$ (26,575)	-0.16%

\$ 67,323,302 100.00% \$ 67,882,039 100.00% \$ 558,737 0.00%

*Construction Includes Sales Tax

**Other inclds Professional Svcs, FF&E & Other Project Dev. Costs

Rotary Fountain Improvement Budget

2014 Riverfront Redevelopment Project Budget Reallocations:	
<i>Art Budget Placeholder</i>	\$150,000.00
<i>Legal Fees</i>	\$50,000.00
Total from Bond	\$200,000.00
Park Fund:	
<i>2017 Capital*</i>	Not to exceed \$350,000.00
<i>Park Fund Balance*</i>	Not to exceed \$400,000.00
Total from Park Fund	Not to exceed \$750,000.00

*Park Fund accounts shall be reimbursed if bond project contingences are available after project completion.



Riverfront Park Rotary Fountain Summary

ANALYSIS OF EXISTING FEATURE

1. Constructed in 2005, the Harold Balazs sculpture included crown spray ring and multiple water jets within decorative bronze grate. Five (5) water jets are encased in basalt stones with 3" diameter hollow stream nozzles (with one light each).
2. 12' diameter decorative bronze grate:
 - a. Incorporates numerous water jets (several are inoperable).
 - b. Grate is not secure, shifts when stepped on.
 - c. Grate is not currently ADA or code compliant.
3. Several lights do not work.
4. Significant rust stains on stainless steel columns and concrete.
5. Access hatch to controls is warped
6. Vault flooded 5' deep. Damage to electrical system including pumps and controls.
7. Water jets deliver flow in excess of existing code limitations.
8. Automatic and manual drain systems in underground vault are not code compliant.

CONCLUSIONS AND RECOMMENDATIONS

1. New design and construction scope of work must include new pumping, piping, lighting, water jets, and controls to meet all existing codes to including WAC 240-260 and 240-262, NEC 680, local building, mechanical, plumbing, and electrical codes.
 - a. Incorporation of Programmable Logic Controller (PLC) to allow pre-programmed water effects. New Control System should include remote access to monitor and control fountain effects. Incorporation of alarms and notifications to management via city network.
 - b. Incorporate Variable Frequency Drives (VFD) on all pumps for energy savings and control of water effects.
 - c. New chemical monitoring system and chemical feed system with alarms broadcast by connection to PLC (programmable logic controller).
2. All water jets (including existing crown ring jets) should be replaced to meet code.
3. New fountain lights should be LED for lower energy cost and increased life expectancy.
4. Complete investigative study to determine solution for ongoing rust/staining.
5. Add two (2) sump pumps (one for backup) to prevent flooding.
6. Add dedicated water service (detach from Fountain Café water service).

PROJECT BUDGET

\$950,000 (including 10% contingency and 8.8% tax)

ROTARY FOUNTAIN

SPOKANE, WASHINGTON



FOUNTAIN EQUIPMENT, PIPING, SCULPTURE
AND GENERAL CONDITIONS
Revised March 30, 2017



TABLE OF CONTENTS

<u>Title</u>	<u>Page</u>
Report	3
Fountain Description	3
General Conditions	6
Miscellaneous Concerns	8
Health and Safety Issues	8
Conclusions and Recommendations	9
Appendices	10
Scope Matrix and Estimate of Probable Cost	11
Basic Splashpad Schematic	12
Additive Alternate to Splashpad Schematic	13
Vault and Supply Piping Schematic	14
Return Piping Schematic	15
Combined (basic + additive splashpad) Schematic Site Plan	16
Water Recreation Facilities Chapter 346-260 WAC	17
Recreational Water Contact Facilities - Chapter 246-262 WAC	50

ROTARY FOUNTAIN REPORT

On February 23, 2017, Kerry Friedman of Hydro Dramatics, St. Louis, MO., met with Dave Randolph from the City of Spokane, WA, Parks Department, Dave Nelson, Clayton Varick, Tom Pratt and Brandon Jeske, all from Land Expressions of Spokane. The purpose of this meeting was to evaluate the existing Fountain and Equipment of the Rotary Fountain in Riverfront Park, to see what could be used to update the Fountain to be used as an "Interactive Fountain" complying with the Washington State Legislature, Chapter 246-260 WAC, Water Recreation Facilities, Health and Safety Code, and Chapter 246-262 Recreational Water Contact Facilities.

FOUNTAIN DESCRIPTION

The Rotary Fountain was built and completed in 2005. The Fountain consists of various components. A large stainless steel sculpture, with five pentagon legs supports a large spray ring with 40 smooth bore nozzles projecting water upward towards the center of the fountain (photo 1). This produces a large center fall effect. Water supplies to the legs of this sculpture keep them wet. A 12' diameter grated area in the center of the fountain (photo 2), which has the reservoir beneath, contains four piping manifolds that supply 3 sets of misting jets and 1 set of aerator jets.



Photo 1



Photo 2

Outside of the five legs, there are five shaped stones (photo 3) that each have a 3" hollow stream nozzle and one light illuminating each stream. The water effect and light are on a 45-degree face of the stone. Currently the stones are somewhat tangentially directed in the scheme. The concrete of the plaza and fountain is sectioned into shapes and colors with bands of fish plaques displaying donor's names (photo 4).



Photo 3



Photo 4

Directly adjacent to the reservoir in the center of the Fountain is a 12' X 30' X 9' concrete Pump and Equipment Room. This room is accessible through a double door access hatch (photo 27) on the south end away from the reservoir. Climbing down a ladder gets you into this space. The first area contains all the electrical power, variable speed motor drives, and fountain controls (photos 5, 6 , 7).



Photo 5



Photo 6

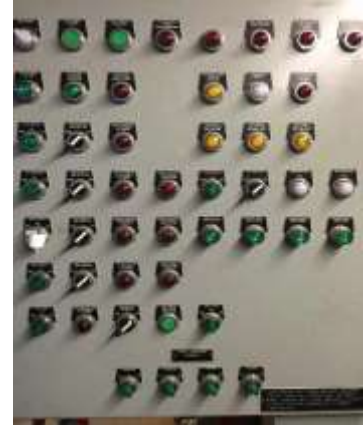


Photo 7

Opposite to the electrical equipment is the Chemical Monitoring Controller and the chemical storage tanks and feed pumps. A 1" water supply coming from the south past the chemicals feeds a hose bib and eye wash (photos 8, 9, 10).



Photo 8



Photo 9

Going north in the vault, a 2" water supply comes in the wall and is connected to an automatic feed system solenoid valve (photo 11).



Photo 10



Photo 11

The rest of the western wall starts with a 12" fiberglass basket strainer (photo 12) that is fed directly from the reservoir in the center of fountain. The strainer supplies a steel pipe manifold to which the fountain pumps are connected. The first is a 25 HP pump that supplies the uppermost spray ring on top of the sculpture (photo 13). Next are three 10 HP pumps, the aerator jet pump, bollard pump, and filter pump (photo 14).



Photo 12



Photo 13



Photo 14

The filter pump which should have run continuously 24 hours a day, feeds across the room to two 36" diameter sand filters (photo 15). A differential pressure switch (photo 16, 17), which reads the difference between the influent and effluent pressures of these filters, controls motorized valves to backwash the sand filters. A flow control valve after the sand filters will maintain a constant flow rate through the filters, regardless of pressure.



Photo 15



Photo 16



Photo 17

Any water in the vault, whether through leakage, backwash, strainer cleaning, weather, or automatic draining would fill the sump in the north end of the vault (photo 18, 20). Two automatic sump pumps empty the sump when the level raises. If the level comes out of sump, alarm sensors (photo 19) should turn off equipment and notify personnel of impending problem.



Photo 18



Photo 19



Photo 20

Power for the fountain comes from a panel to the east of the plaza (photo 21). One side has all the utility equipment and the other side has the main breakers for the vault. The water service and meter are in a manhole (photo 24) that supplies two backflow preventers located in the Donor's Plaque column (photo 22, 23). There is a 1" and a 2" feeding the respective pipes described in the vault. Sewer connections are in manholes located on the plaza.



Photo 21



Photo 22



Photo 23



Photo 24

GENERAL CONDITIONS

The Fountain was not running during our visit in the middle of the winter. Initial visual inspection of the massive stainless steel 5-legged sculpture is very impressive. But after several minutes, the most striking residual of the water season is the rust stains on the sculpture legs running all the way down and into the central basin. The orange-brown color can be seen in photos 3, 4, and 25. This stain over powers the colored concrete of the plaza.

The rust is probably a combination of several factors. Does the city water supply contain iron? Has the chemical water balance of the pH caused a problem? Are all the galvanized iron pipes that are in the vault and underground rusty and causing the stains? Are there massive steel columns beneath the skins on the pentagon shaped legs that are producing the rust? These are conditions that should be reviewed and studied during this renovation. At a minimum, the area could be pressure washed several times during each season to minimize the problem, but prevention would be better.



Photo 25

The vault access hatch (photo 27) is swollen and misshapen and will not close securely. One of the 5 stone bollards has been moved (photo 26) out of place, and the supply pipe the nozzle is broken and visible from above.



Photo 26



Photo 27

The center area of the spray plaza has a 12-foot diameter cast bronze decorative grate. Many of the nozzles and lights are missing or not directly below the holes or light areas in the grate (photo 28). Several welds can be seen where the grates have broken and been repaired (photo 29). Standing on the grate and heaving up and down allows the feeling of the grate flexing when not directly above the stainless-steel support frame. This could be a serious problem with an abundance of people jumping on the grate and overloading it. The original size was not to code.



Photo 28



Photo 29

Upon entering the below grade vault, it is evident that there has been about 5 feet of water in the vault which has flooded over pumps, control panels, exhaust fan, motorized valves, chemical pumps, circuit breaker panels, and wiring systems (photo 30, 31). Any plans of re-using this equipment have become uneconomical due to the cost to remove/repair and replace vs. new more efficient equipment.



Photo 30



Photo 31

MISCELLANEOUS CONCERNS

Several items that need to be reviewed that are either in violation of codes or just general concerns are:

- One of the water supplies feeding the Fountain Vault, leaves the vault and then feeds another building with restrooms and restaurant; should have separate supplies and backflow devices
- Whenever a lightning storm occurs, main breakers to Fountain are turned off; Procedure should be reviewed
- Backwashing into vault, does not meet code of having 2X air gap
- Having automatic and manual drain systems in underground vault that requires sump pump would require back-up power and pumps, or flooding is likely

HEALTH AND SAFETY ISSUES

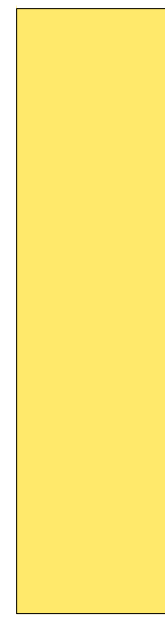
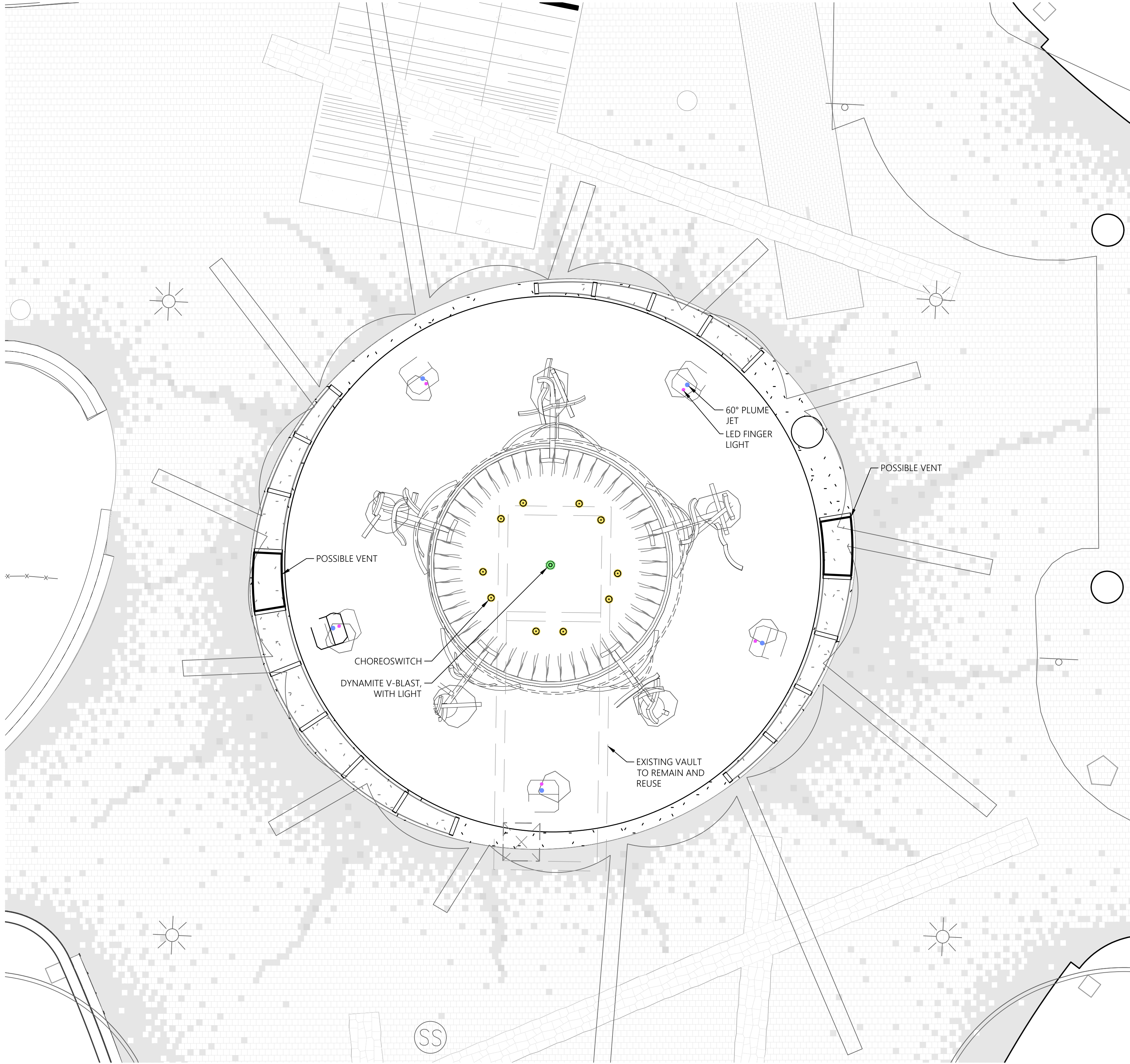
Numerous factors and equipment specifications must be considered when updating an existing, or building a new "Interactive Fountain". Some of these items were incorporated in the original construction and others may be newer regulations.

- Water storage reservoir three times water flow, GPM (approximately 7,500 gallons)
- 24-hour filtration, turning entire water volume every 30 minutes
- Maximum water velocity of spray jet 20 ft/sec, or 5-6 feet high
- Chemical monitoring and automatic feed for Chlorine level, ORP, and pH level
- Above ground chemical rooms
- Emergency phone availability
- Signage for user rules
- Restroom facilities
- Maximum grate openings so ½" sphere will not go through openings for ADA and maximum ⅜" orifice size for toe and finger entrapment
- Ultra-Violet sterilizer for added water purity

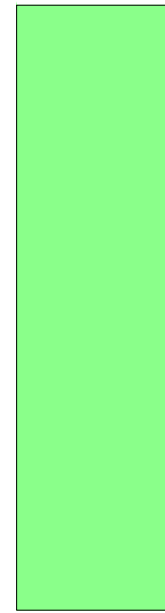
CONCLUSIONS AND RECOMMENDATIONS

- Based on all the above items, we recommend that the entire pumping, piping, lighting, nozzles and controls be re-designed to meet all existing codes to include WAC 240-260 and 240-262, NEC 680, local building, plumbing, and electrical codes.
- All nozzles including existing overhead spray ring nozzles should be replaced with lower volume nozzles for lower pumping requirements and less water pounding on the little bathers.
- New low voltage LED RGBW fountain lights for long lasting, lower operating cost and unlimited show capacity.
- New Control System with remote access capability to turn system on, off, change show, lower spray height, change light colors, text or e-mail alarms to multiple recipients. Can use, PC, I-Phones, I-Pads, Androids, and more, to access from anywhere. Remote troubleshooting also.
- All new PVC and stainless steel or brass piping. Plastic pumps and strainers where applicable. Cast iron pumps, if required, to have fusion epoxy coating on all wetted iron parts.
- Complete investigative study to determine cause and solution for rust staining.
- Variable speed drives on all pumps for energy savings and control of fountain spray heights. VFD (variable frequency drive) on filter pump with controller to maintain constant filter flow even as filter gets dirty by increasing speed and pump pressure.
- New chemical monitoring system with chemical feed system and system alarms and chemical levels broadcast by connection to PLC (programmable logic controller).
- New duplex sump pump system with alternating and backup capabilities. Alarm to be sent whenever backup pump runs, to notify possible problem before both pumps are out.
- All necessary fountain equipment to be NSF certified.
- Isolate water supplies from fountain and building.

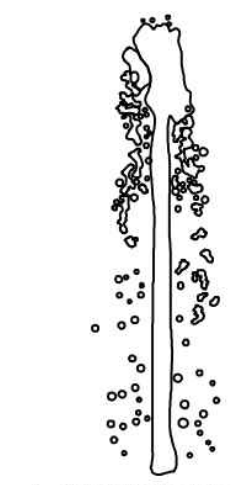
APPENDICES



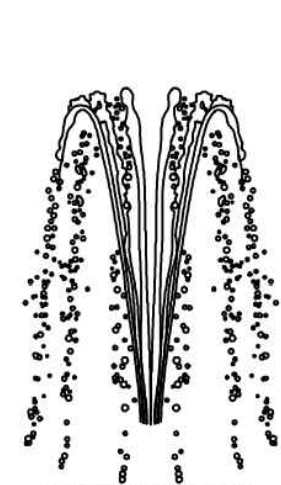
ChoreoSwitch



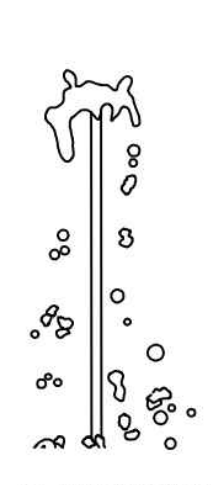
Dynamite V-Blast



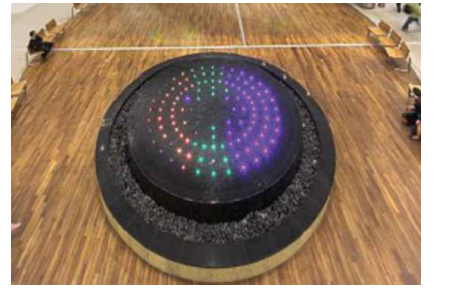
1. NWS110C115
Column effect



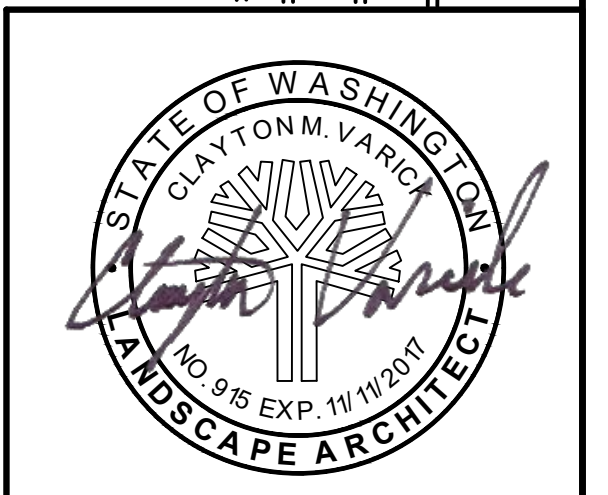
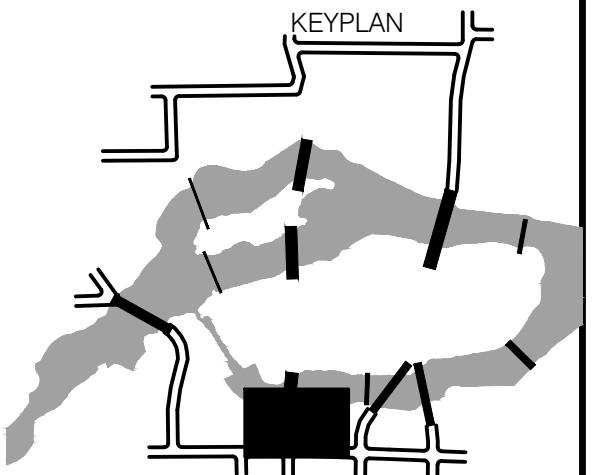
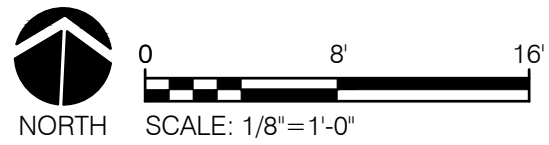
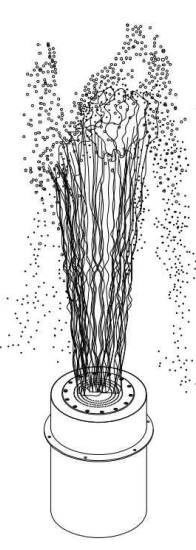
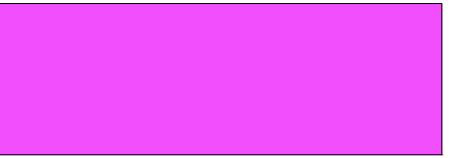
2. NWS110C104
Angled Ring effect



3. NWS110A122
Clear stream effect



LED Finger Light



DIGITALLY SIGNED: 03-30-17

TYPE OF IMPROVEMENT: PARK

CITY PURCHASING NUMBER

XXXX-XX

REVISION NO.

DRAWING NUMBER

WF1.01

FILE NAME:

DATE: Mar 29, 2017 - 3:31pm by: Omar

BY	REVISIONS	DATE



LAND
EXPRESSIONS

5615 E. DAY MT. SPOKANE RD. MEAD, WA 99021
P: 509.466.6683 W: LandExpressions.com

LOCATION BRASS CAP IN WALL SW CORNER OF NORTH
RIVER DRIVE & DIVISION

ELEVATION 1886.71

CBM NO. # Old City #173

NAVD88 DATUM

HORIZONTAL

VERTICAL

SCALE

BAR IS ONE INCH ON
ORIGINAL DRAWING.
IF NOT ONE INCH ON
THIS SHEET, ADJUST
SCALES ACCORDINGLY

CURRENT DESIGN STANDARDS
CCS - ADOPTED 2/95

DRAWN

DESIGNED

CHECKED

APPROVED



CITY OF SPOKANE, WASHINGTON

DEPARTMENT OF PARKS AND RECREATION

808 WEST SPOKANE FALLS BLVD.

SPOKANE, WASHINGTON 99201-3343

(509) 625-8200

PROJECT TITLE:

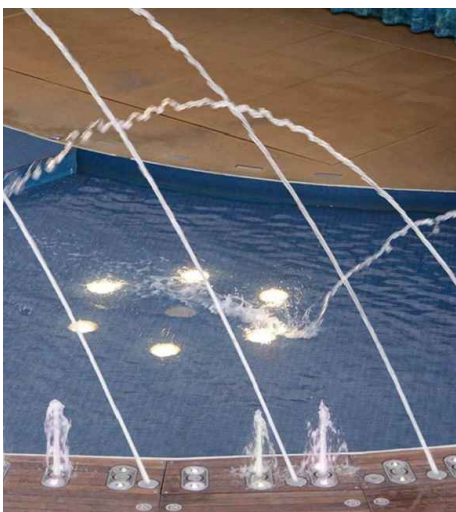
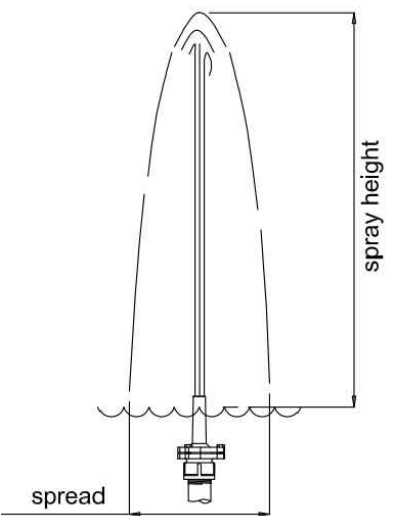
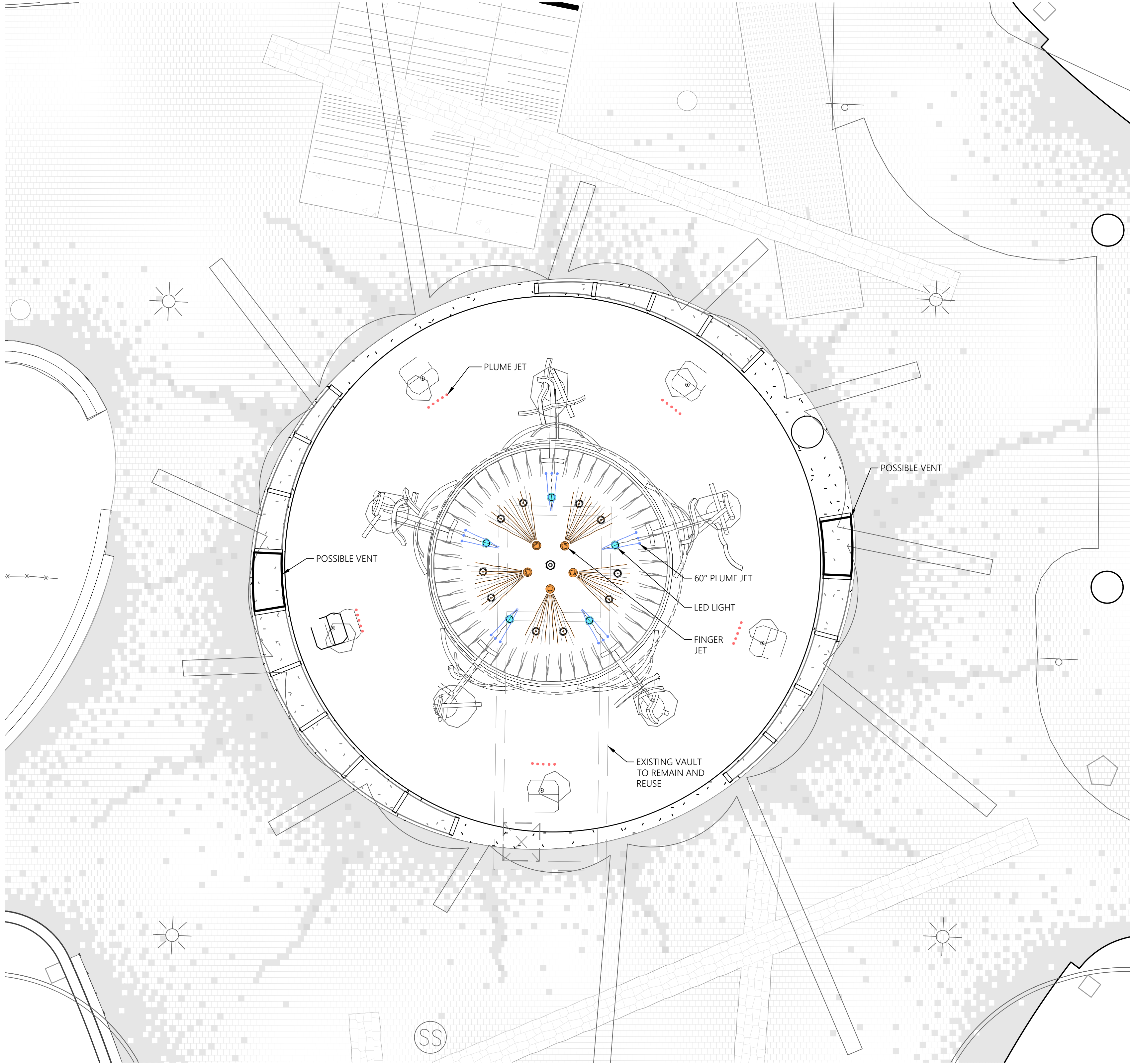
RIVERFRONT PARK

ROTARY FOUNTAIN

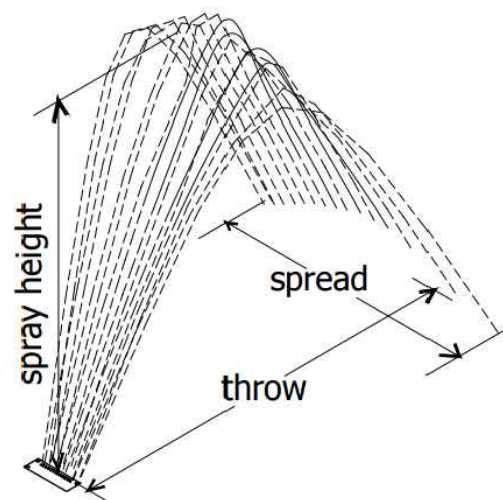
SHEET TITLE:

SCHEMATIC SITE PLAN

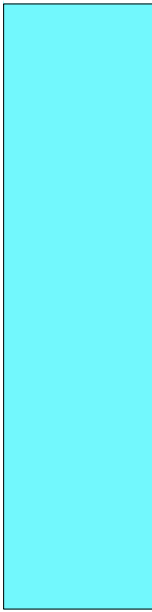
BASIC SPLASH PAD



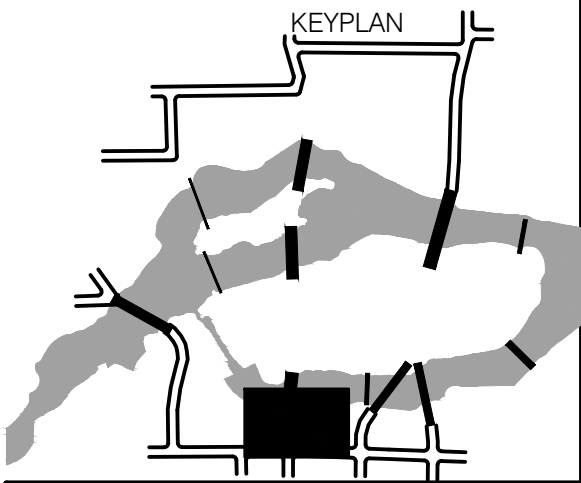
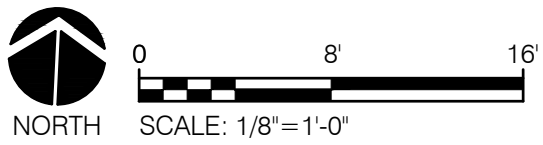
60° Plume Jet



Finger Jet



LED Light



DIGITALLY SIGNED: 03-30-17

TYPE OF IMPROVEMENT: PARK

CITY PURCHASING NUMBER

XXXX-XX

DRAWING NUMBER

WF1.01 ALT

FILE NAME:

DATE: Mar 29, 2017 - 3:31pm by: Omar

BY	REVISIONS	DATE



LAND
EXPRESSIONS

5615 E. DAY MT. SPOKANE RD. MEAD, WA 99021
P: 509.466.6683 W: LandExpressions.com

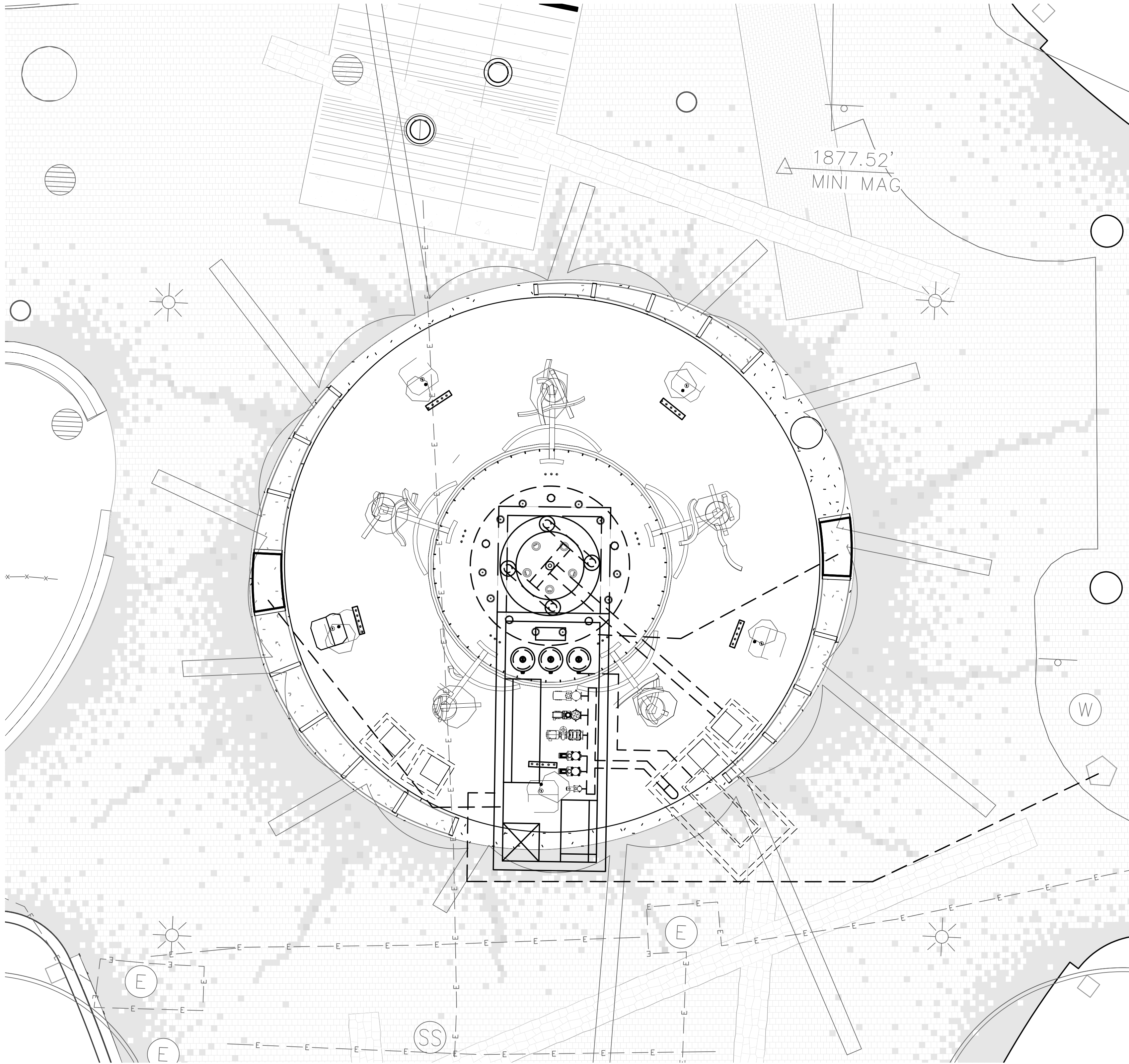
LOCATION BRASS CAP IN WALL SW CORNER OF NORTH RIVER DRIVE & DIVISION	
ELEVATION 1886.71	HORIZONTAL
CBM NO. # Old City #173	VERTICAL
NAVD88 DATUM	SCALE

CURRENT DESIGN STANDARDS CCS - ADOPTED 2/95	
DRAWN	DESIGNED
CHECKED	APPROVED

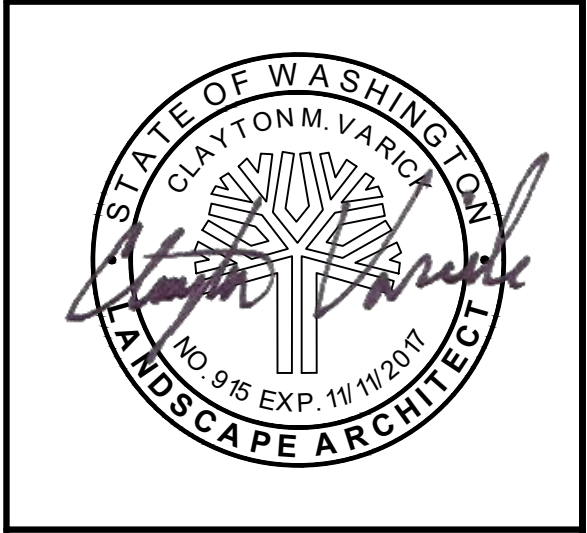
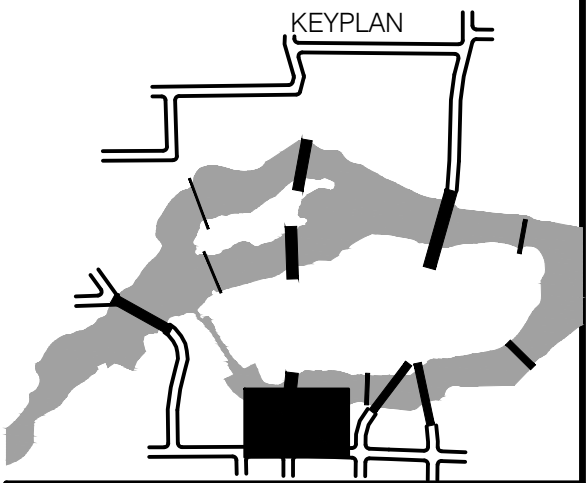
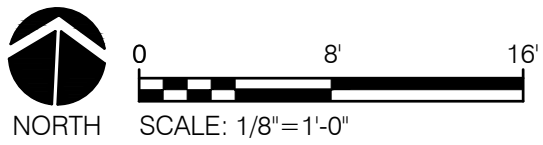


CITY OF SPOKANE, WASHINGTON
DEPARTMENT OF PARKS AND RECREATION
808 WEST SPOKANE FALLS BLVD.
SPOKANE, WASHINGTON 99201-3343
(509) 625-8200

PROJECT TITLE: RIVERFRONT PARK ROTARY FOUNTAIN
SHEET TITLE: SCHEMATIC SITE PLAN ADDITIVE ALTERNATE SPLASH PAD



1877.52'
MINI MAG



DIGITALLY SIGNED: 03-30-17	
TYPE OF IMPROVEMENT: PARK	
CITY PURCHASING NUMBER	DRAWING NUMBER
XXXX-XX	WF1.02
FILE NAME:	REVISION NO.

BY	REVISIONS	DATE




LAND
EXPRESSIONS

5615 E. DAY MT. SPOKANE RD. MEAD, WA 99021
P: 509.466.6683 W: LandExpressions.com

LOCATION BRASS CAP IN WALL SW CORNER OF NORTH RIVER DRIVE & DIVISION		
ELEVATION 1886.71	HORIZONTAL	BAR IS ONE INCH ON ORIGINAL DRAWING. IF NOT ONE INCH ON THIS SHEET, ADJUST SCALES ACCORDINGLY
CBM NO. # Old City #173	VERTICAL	
NAVD88 DATUM	SCALE	

CURRENT DESIGN STANDARDS
CCS - ADOPTED 2/95

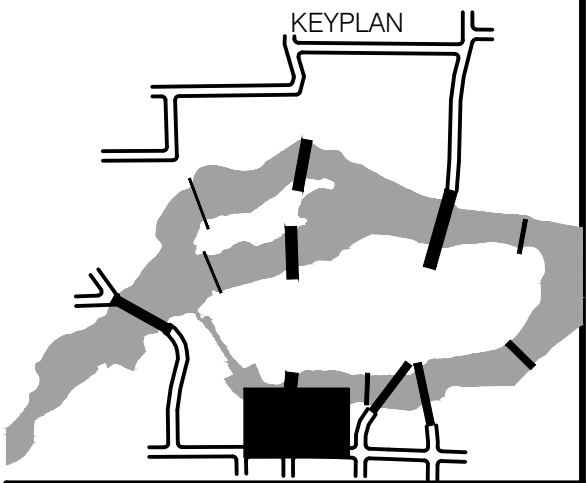
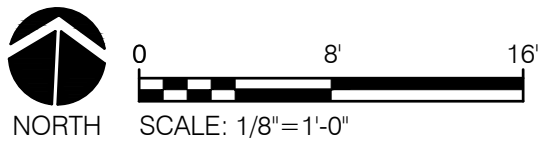
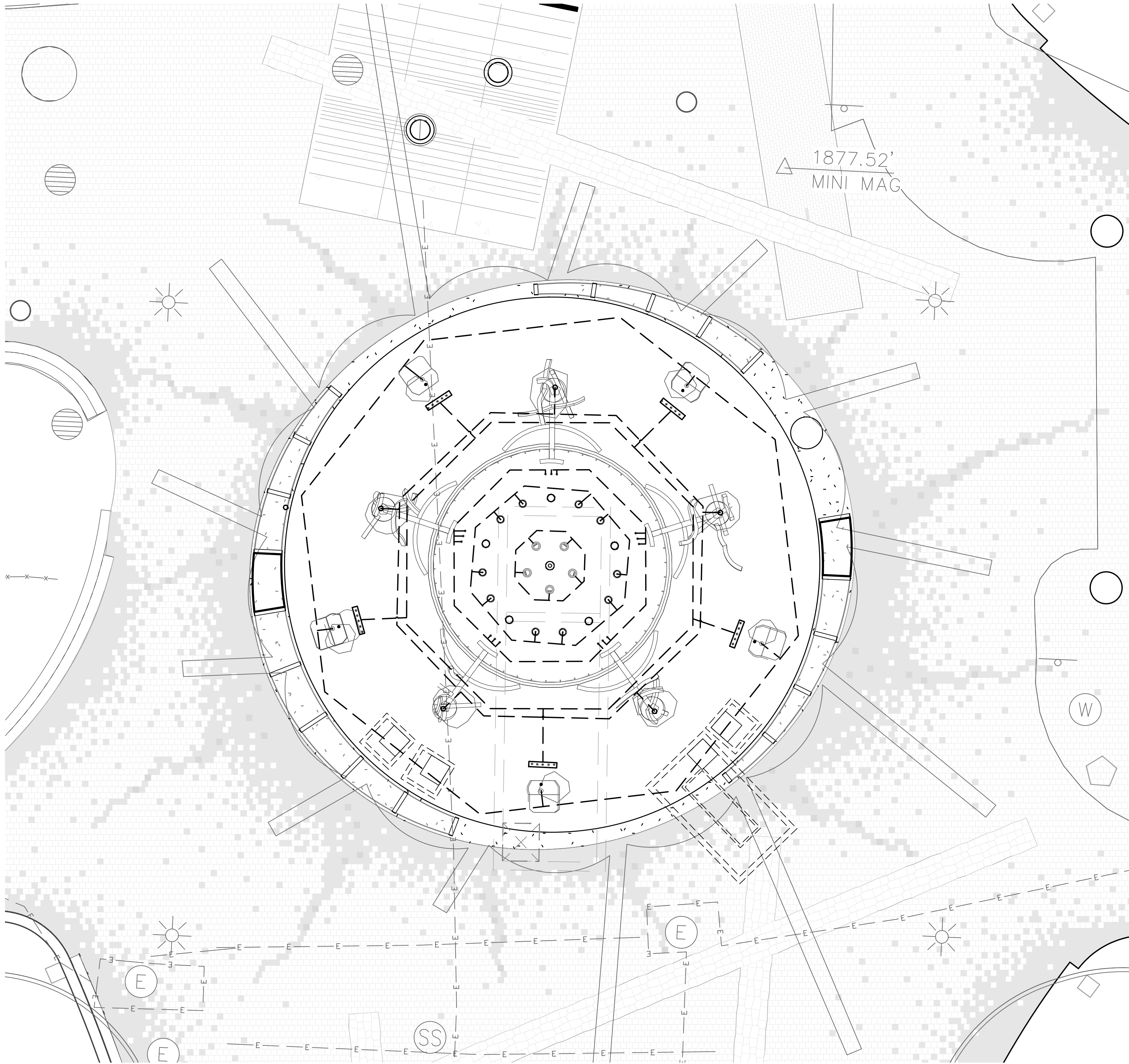


DRAWN
DESIGNED
CHECKED
APPROVED

CITY OF SPOKANE, WASHINGTON
DEPARTMENT OF PARKS AND RECREATION
808 WEST SPOKANE FALLS BLVD.
SPOKANE, WASHINGTON 99201-3343
(509) 625-8200

PROJECT TITLE:	RIVERFRONT PARK ROTARY FOUNTAIN
SHEET TITLE:	SCHEMATIC PLUMBING PLAN

DATE: Mar 29, 2017 - 3:32pm by: Omar



DIGITALLY SIGNED: 03-30-17

TYPE OF IMPROVEMENT: PARK

CITY PURCHASING NUMBER

XXXX-XX

DRAWING NUMBER

WF1.03

FILE NAME:

DATE: Mar 29, 2017 - 3:32pm by: Omar

BY	REVISIONS	DATE




LAND
EXPRESSIONS

5615 E. DAY MT. SPOKANE RD. MEAD, WA 99021
P: 509.466.6683 W: LandExpressions.com

LOCATION BRASS CAP IN WALL SW CORNER OF NORTH RIVER DRIVE & DIVISION		
ELEVATION 1886.71	HORIZONTAL	BAR IS ONE INCH ON ORIGINAL DRAWING. IF NOT ONE INCH ON THIS SHEET, ADJUST SCALES ACCORDINGLY
CBM NO. # Old City #173	VERTICAL	
NAVD88 DATUM	SCALE	

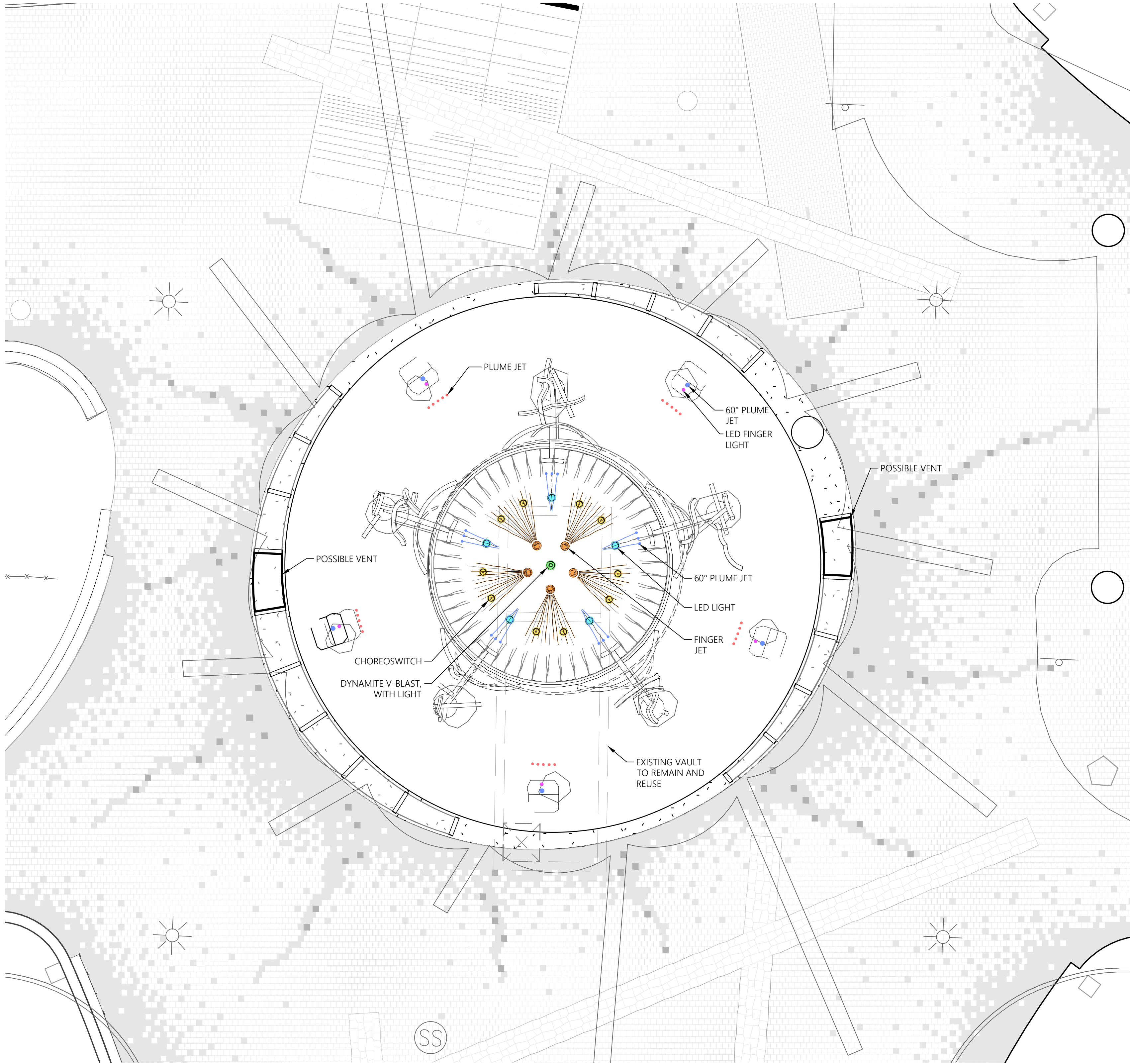
CURRENT DESIGN STANDARDS
CCS - ADOPTED 2/95


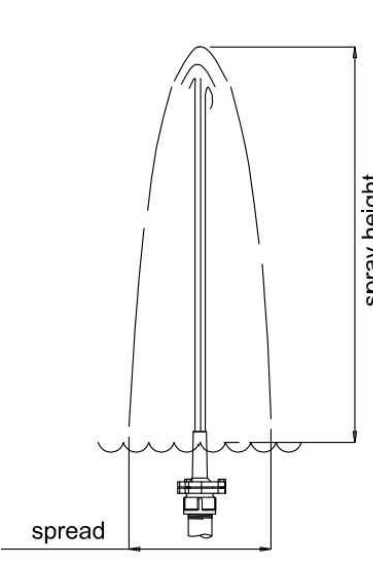


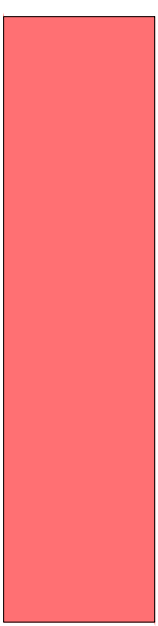



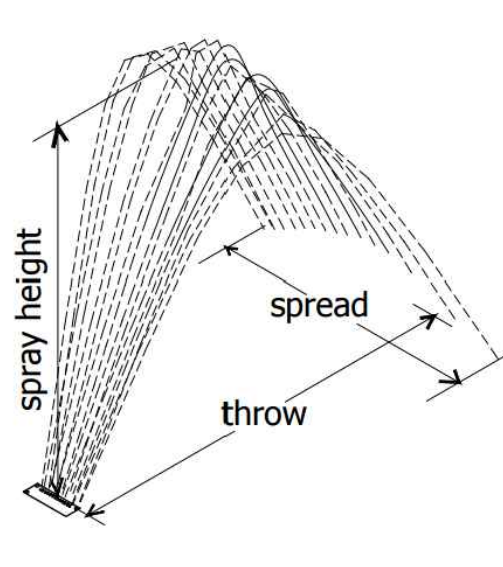


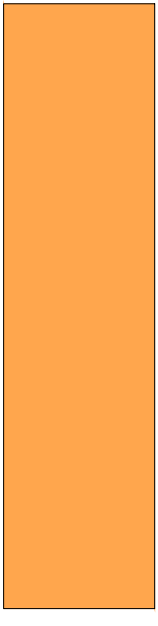
DRAWN
DESIGNED
CHECKED
APPROVED

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DEPARTMENT OF PARKS AND RECREATION
808 WEST SPOKANE FALLS BLVD.
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(509) 625-8200

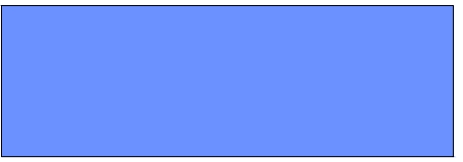
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SHEET TITLE: SCHEMATIC PLUMBING PLAN



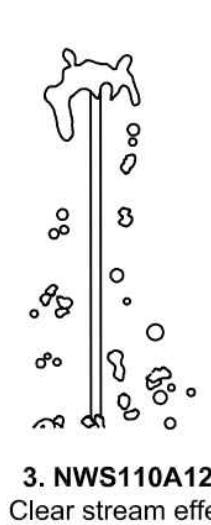
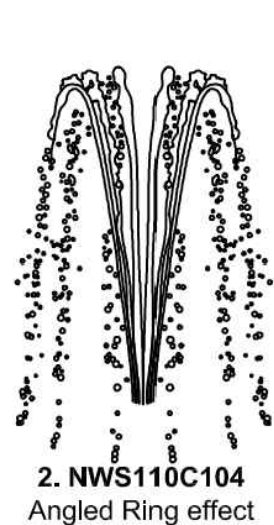
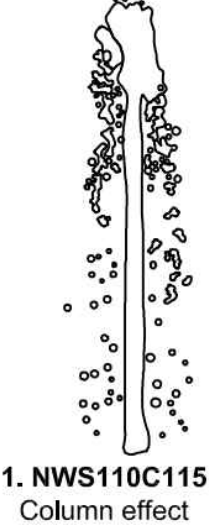

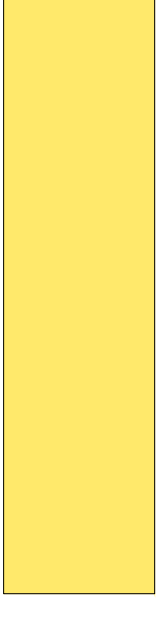




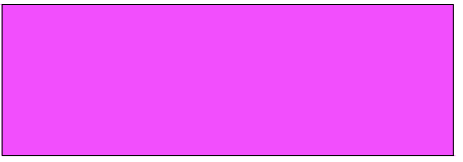


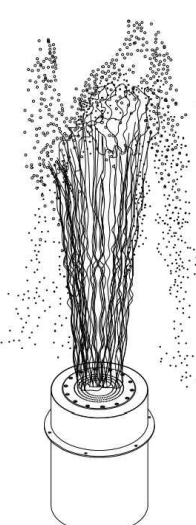



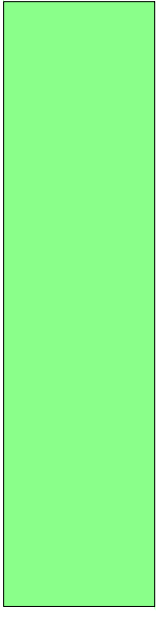
60° Plume Jet





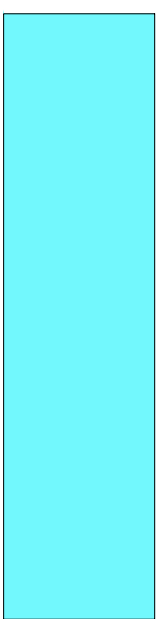


LED Finger Light

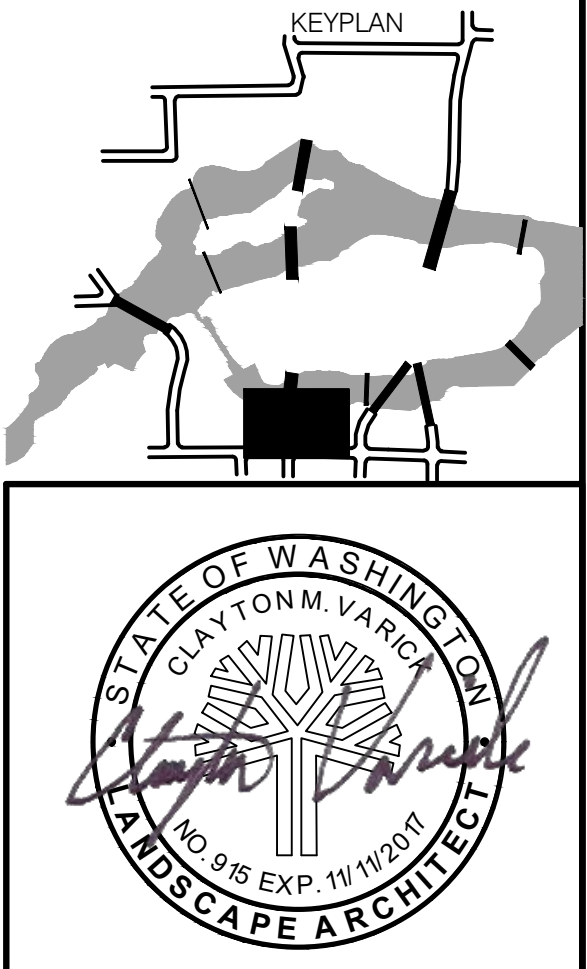
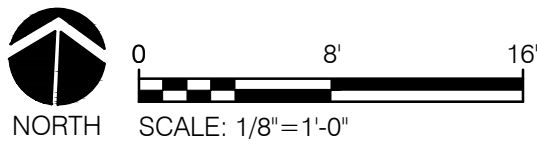






Dynamite V-Blast



LED Light



			 <div>5615 E. DAY MT. SPOKANE RD. MEAD, WA 99021 P: 509.466.6683 W: LandExpressions.com</div>		<div>LOCATION: BRASS CAP IN WALL SW CORNER OF NORTH RIVER DRIVE & DIVISION</div> <table><tr><td>ELEVATION: 1886.71</td><td>HORIZONTAL:</td><td rowspan="3"><div>BAR IS ONE INCH ON ORIGINAL DRAWING. 0 1"</div><div>IF NOT ONE INCH ON THIS SHEET, ADJUST SCALES ACCORDINGLY</div></td></tr><tr><td>CBM NO. # Old City #173</td><td>VERTICAL:</td></tr><tr><td>NAVD88 DATUM</td><td>SCALE</td></tr></table>		ELEVATION: 1886.71	HORIZONTAL:	<div>BAR IS ONE INCH ON ORIGINAL DRAWING. 0 1"</div> <div>IF NOT ONE INCH ON THIS SHEET, ADJUST SCALES ACCORDINGLY</div>	CBM NO. # Old City #173	VERTICAL:	NAVD88 DATUM	SCALE	<div>CURRENT DESIGN STANDARDS CCS - ADOPTED 2/95</div> <table><tr><td>DRAWN</td><td></td></tr><tr><td>DESIGNED</td><td></td></tr><tr><td>CHECKED</td><td></td></tr><tr><td>APPROVED</td><td></td></tr></table>		DRAWN		DESIGNED		CHECKED		APPROVED		 <div>CITY OF SPOKANE, WASHINGTON DEPARTMENT OF PARKS AND RECREATION 808 WEST SPOKANE FALLS BLVD. SPOKANE, WASHINGTON 99201-3343 (509) 625-6200</div>		<div>PROJECT TITLE: RIVERFRONT PARK ROTARY FOUNTAIN</div> <table><tr><td>CITY PURCHASING NUMBER</td><td>DRAWING NUMBER</td></tr><tr><td>XXXX-XX</td><td>XX1.01</td></tr></table>		CITY PURCHASING NUMBER	DRAWING NUMBER	XXXX-XX	XX1.01
ELEVATION: 1886.71	HORIZONTAL:	<div>BAR IS ONE INCH ON ORIGINAL DRAWING. 0 1"</div> <div>IF NOT ONE INCH ON THIS SHEET, ADJUST SCALES ACCORDINGLY</div>																													
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<div>BY: REVISIONS: DATE:</div>									<div>SHEET TITLE: SCHEMATIC SITE PLAN</div> <table><tr><td>PR</td><td>OF</td><td>REVISION NO.:</td></tr></table>		PR	OF	REVISION NO.:																		
PR	OF	REVISION NO.:																													

March 29, 2017

Rotary Fountain Renovation
Scope Matrix and Estimate of Probable Costs
Per Fountain Report and SD plans dated 03.30.17

NO.	SCOPE ASSOCIATED WITH OPTIONS:	OPTION 1: Restore Original Effects Only	OPTION 2: Convert to Basic Splash Pad	OPTION 3: Additive Alternate to Splash Pad
1	MOBILIZATION	•	•	•
2	SITE PROTECTION / ACCESS	•	•	•
3	DEMOLITION	•	•	•
4	EXCAVATION / TRENCHING	•	•	•
5	MECHANICAL STRUCTURES (VAULTS)	•	•	•
7	PIPING	•	•	•
8	UTILITIES (SANITARY SEWER, STORM, POTABLE WATER)	•	•	•
9	OPTION 1: ORIGINAL FOUNTAIN EQUIPMENT	•	•	•
	- New nozzles on spray rings and bollards	•	•	•
	- New lights	•	•	•
	- associated pumps and piping			
10	OPTION 2: BASIC SPLASH PAD EQUIPMENT		•	•
	- 10 choreoswitches with LED light fixtures		•	•
	- 1 dynamite blast with LED light fixture		•	•
	- associated pumps and piping		•	•
11	OPTION 3: ADDITIVE ALTERNATE SPLASH PAD EQUIPMENT			•
	- 5 niched finger jets (fan pattern)			•
	- 5 x 5 custom smooth bore niched nozzle (25 jets)			•
	- 5 x 3 custom smooth bore niched nozzle (15 jets)			•
	- 5 niched LED light fixtures			•
	- associated pumps and piping			•
12	CONCRETE FLATWORK	•	•	•
13	DETAIL / STARTUP	•	•	•
14	ELECTRICAL / MECHANICAL	•	•	•
15	PERMITS, FEES, INSURANCE, ETC.	•	•	•
		OPTION 1: \$ 852,587.33	OPTION 2: \$ 844,756.15	OPTION 3: \$ 944,714.48

CONTINGENCY ALLOWANCE: \$ 76,000.00

NOTES / ASSUMPTIONS / EXCLUSIONS:

- Prevailing wages used are based on those issued with the Loof Carousel bid solicitation (01/16/2017).
- Sales tax has not been included.
- City of Spokane assumed to pay all connection fees (sanitary, storm, potable water).
- City of Spokane assumed to pay all permit fees.
- Cost estimate is based on concept drawings only and should not be considered a bid for construction.
- Currently, it is understood that Walker has a set fee to dispose of material from excavation activities. **No money has been allocated for disposal in this Cost Estimate.**
- Currently, it is understood that Walker has a set fee for rock hammering activities. **No money has been allocated for rock hammering in this Cost Estimate.**
- For the purposes of this Cost Estimate, we have assumed that the existing artwork functions as intended and will remain in place with the only improvements being the replacement of smooth bore nozzles.

ORDINANCE NO _____

An ordinance amending Ordinance No. C-35457, passed the City Council November 28, 2016, and entitled, "An ordinance adopting the Annual Budget of the City of Spokane for 2017, making appropriations to the various funds, departments, and programs of the City of Spokane government for the fiscal year ending December 31, 2017, and providing it shall take effect immediately upon passage", and declaring an emergency.

WHEREAS, subsequent to the adoption of the 2017 budget Ordinance No. C-35457, as above entitled, and which passed the City Council November 28, 2016, it is necessary to make changes in the appropriations of the Park and Recreation Fund, which changes could not have been anticipated or known at the time of making such budget ordinance; and

WHEREAS, this ordinance has been on file in the City Clerk's Office for five days; - Now, Therefore,

The City of Spokane does ordain:

Section 1. That in the budget of the Park and Recreation Fund and the budget annexed thereto with reference to the Park and Recreation Fund, the following changes be made:

From:	1400-99999-99999 Unappropriated Reserves	<u>\$ 50,000</u>
-------	--	------------------

To:	1400-54961-75280-56301 Other Improvements	<u>\$50,000</u>
-----	---	-----------------

Section 2. It is, therefore, by the City Council declared that an urgency and emergency exists for making the changes set forth herein, such urgency and emergency arising from the need to budget for the Retree Spokane tree giveaway to the public not anticipated during the 2017 budget process, and because of such need, an urgency and emergency exists for the passage of this ordinance, and also, because the same makes an appropriation, it shall take effect and be in force immediately upon its passage.

Passed the City Council _____

Council President

Attest: _____
City Clerk

Approved as to form: _____
Assistant City Attorney

Mayor

Date

Effective Date

To: Director Eadie and Members of the Park Board
From: Friends of the Bluff
Date: April 13, 2017

The unauthorized road construction on High Drive Bluff that occurred in the last few days is shocking to behold. Over a mile long, scores of trees downed, and huge amounts of earth moved, some on steep terrain, some less than 100 feet from the creek bank.

This road was for a project not yet fully approved and was completely unnecessary because there is an existing road from the Qualchan driving range to the adjacent site of the proposed 3-hole golf course.

This unauthorized act may exceed, in terms of human-caused destruction, anything to befall City park land in modern times.

Friends of the Bluff is a 501(c)3 nonprofit that has signed a Memorandum of Understanding with the City of Spokane Parks & Recreation to support the City's stewardship of High Drive Bluff. We provide the following recommendations that are aimed at repairing the damage done and rebuilding trust with the community. We urge the Park Board to:

- Immediately make available a copy of the written order to First Tee and their contractors not to move any more earth or cut any more trees until a complete plan is approved.
- Immediately provide a copy of the public notice and documentation authorizing First Tee to remove trees or to begin construction of the three hole golf course.
- Revoke the permit for tree removal and cease immediately any discussions or negotiations regarding the proposed golf course until the damage from the road construction is completely remediated.
- Before reinitiating discussion or negotiations regarding the proposed golf course, develop and publicize a process of community involvement that will allow a complete and open airing of the golf course proposal before any level of approval is granted.
- Use all legal means to require the parties responsible for the unauthorized roadbuilding activity to completely remediate the damage.
- Define, in consultation with the Friends of the Bluff what "complete remediation" means, which is, at the very least, moving all of the displaced earth back into the roadway, restoring it to the natural contour that existed April 9th, and replanting and nurturing vegetation native to the bluff.
- Begin, in consultation with Friends of the Bluff, remediation in the next few weeks while the ground is still soft and easily worked. Provide weekly reports on the progress of this remediation to help rebuild trust.
- If the parties responsible for this destruction do not agree to immediately begin the remediation work, civil or even criminal prosecution should be considered.
- After further investigation of this episode and in advance of the next Park Board discussion of the First Tee proposal, issue a public statement explaining whether the City followed all applicable laws and policies, the details regarding any communications that led to the road construction, and steps taken to prevent similar unauthorized activity in the future.

Friends of the Bluff will do our best to keep those that care about the Bluff informed and we will encourage them to make their voices heard. We will strive to be a constructive and helpful partner as the remediation work and the community involvement takes place.

Sincerely,

Jim Wilson
President
Friends of the Bluff