

## IMPORTANT INFORMATION ON USING THIS

### A & E CONTRACT BOILERPLATE

- This Boilerplate is for **ALL ARCHITECTURAL AND/OR ENGINEERING CONTRACTS.**
- Additional instructions are found in the Boilerplate. All instructions within the Boilerplate are always in *Italics* and in **yellow shaded boxes**. These instructions should be deleted after you have entered the information.
- All blanks within the Boilerplate where you must add information are highlighted in yellow as **\_\_\_\_\_**.
- Use the “Track Changes” tool when making revisions to this Boilerplate.  
To use “Track Changes”:
  - Click on “Tools” in the menu at the top of your screen;
  - Click on “Track Changes”;
  - Click on “Highlight Changes”;
  - Make sure all three check boxes have check marks;
  - Click “OK”.This tool will automatically underline and use a different font color for any text you add. For anything you want to delete, just use the delete key and it will automatically strike through and use a different font color. It will also put a vertical line in the margin across from any added text or deletions you have performed.
- SAVE your Contract document with the revisions showing as follows:
  - Click “File” in the menu at the top of your screen;
  - Click “Save As”;
  - Click “OK”;
  - Enter the name you want to save your Contract under in the “File Name” box (Recommendation for naming: “Draft AE Contract No. \_\_\_\_\_” (enter your contract number));
  - Click “Save”.
- Accept the revisions. After you have saved your Contract with the changes, open your Contract and Accept your changes as follows:
  - Click “Tools” in the menu at the top of your screen;
  - Click “Track Changes”;
  - Click “Accept or Reject Changes”;
  - Click the button titled “Accept All”;
  - Click “Yes”;
  - Click “Close”.
- Save your Contract with the revisions accepted. Use a different document name from the version with the revisions showing. Recommendation for naming: “Final AE Contract No. \_\_\_\_\_” (enter your contract number). **YOU WILL NEED TO PRINT A COPY OF THIS DOCUMENT AND SEND IT, ALONG WITH A SALMON FORM SIGNED BY THE APPROPRIATE MANAGER AND DEPARTMENT HEAD, TO THE PURCHASING DIVISION FOR REVIEW.**

- Submit the following to Purchasing:
  - A Salmon form signed by Department Head ;
  - The Draft copy of the contract with the revisions showing;
  - The copy of the Final version of your Contract without the revisions showing;
  - A Cost Analysis Memorandum.

If further changes are necessary based on review by Purchasing or Legal, the new changes for review would be made in the Final version of the Contract, also using the “Track Changes” tool.

If you have any questions about this process or would like training, please contact Contracts & Procurement Manager at x3470.

**DELETE THIS INFORMATION PAGE PRIOR TO SAVING AND PRINTING THIS CONTRACT.**

**CONTRACT NO. \_\_\_\_\_**

**BETWEEN THE SEATTLE HOUSING AUTHORITY**

**AND**

\_\_\_\_\_  
*[enter name of Design Professional]*

**FOR**

\_\_\_\_\_  
*[enter name of project / contract]*

**TABLE OF CONTENTS**

**WHEN YOU FINISH DRAFTING THE CONTRACT, UPDATE THE TABLE OF CONTENTS PAGE NUMBERS AS FOLLOWS:**

- Highlight the Table of Contents by clicking your cursor anywhere inside it.
- Right Click – Select Update Field

If you have any problems with the Table of Contents or the page numbers, please call Don Tucker in Purchasing at x3475 for help.

**BEFORE YOU SAVE AND PRINT YOUR CONTRACT, DELETE THIS INFORMATION BOX.**

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## Introduction to Contract

THIS CONTRACT is made and entered into between the Housing Authority of the City of Seattle (190 Queen Anne Avenue North, P.O. Box 19028, Seattle, Washington 98109-1028), a public body corporate and politic, hereinafter referred to as "Owner" and/or "SHA," and

*[Name and address of Design Professional]*

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hereinafter referred to as the "Design Professional" and/or "Consultant," for the following Project:

*[Include detailed description of Project, Location, Address, Scope and Program Designation]*

**Project:**

**Contract No.:**

**Location:**

**Address:**

**Scope of Work:**

Design Professional shall perform its duties under this Contract with the care, skill, prudence and diligence that a reasonable, careful, skillful, prudent and diligent person would exercise in similar circumstances.

The Owner and Design Professional agree as set forth below:

## Article A: Services

### A.1 Design Professional's Basic Services

#### A.1.1 Areas of Design Professional's Basic Services

Unless revised in a written addendum or amendment to this Contract, in planning, designing and administering construction or rehabilitation of the Project, the Design Professional shall provide the Owner with professional services in the following areas:

- Architecture
- Site Planning
- Structural Engineering
- Mechanical Engineering
- Electrical Engineering
- Civil Engineering
- Landscape Architecture
- Cost Estimating
- Construction Contract Administration

#### A.1.2 Phases and Descriptions of Basic Services

##### A.1.2.1 Schematic Design/Preliminary Study Phase

After receipt of a Notice to Proceed from the Owner, the Design Professional shall prepare and deliver Schematic Design/Preliminary Study Documents. These documents shall consist of a presentation of the complete concept of the Project, including all major elements of the building(s), and site designs(s), planned to promote economy both in construction and in administration and to comply with current program and cost limitations. The Design Professional shall revise these documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval. Additionally, the Design Professional shall make an independent assessment of the accuracy of the information provided by the Owner concerning existing conditions. Documents in this phase shall include:

- Site plan(s) showing location of all buildings, general grading arrangement, surface drainage, site improvements, pedestrian and vehicular circulation, parking and recreational facilities, and preliminary layouts for utility services.
- Schedule of building types, unit distribution and bedroom count shown on the site plan, including identification of units designed for handicapped or elderly use, identified separately.
- Scale plan of all buildings, and typical dwelling units showing furniture to scale in livable arrangements.
- Wall sections and elevations.
- Outline specifications sufficient to define quality of materials to be used.
- Preliminary construction cost estimates covering all work designed or specified by the Design Professional. This estimate shall represent the Design Professional's best judgment as a design professional familiar with the construction industry. This estimate shall show separately the major components of the Work: Site Improvements, Dwelling Structures, Non-dwelling Structures, Dwelling Equipment, and Non-dwelling Equipment.
- Project specific analysis of codes, ordinances and regulations.
- Three dimensional line drawings.

Pre-design meetings shall occur after the Design Professional has conducted field investigations and before any drawings have been generated by the Design Professional. Progress meetings shall be held to exchange technical information in case modifications are necessitated by cost limitations, field investigations, new technology, or other factors which affect implementation, cost, or execution of the work.

##### A.1.2.1.1 Tests, Inspections and Investigations

If required by the Owner based on the needs of the specific project involved, the Design

Professional shall advise the Owner of the scope and nature of any laboratory or field tests, inspections or investigations which the Design Professional recommends for proper planning and design of the project, and shall recommend suitable arrangements for such tests, inspections or investigations. This includes, but is not limited to, tests, inspections or investigations regarding mechanical systems; equipment; structural systems; electrical systems; plumbing; sewage; chemicals; air and water pollution; hazardous materials (including lead-based paint, asbestos, and polychlorinated biphenyls (PCBs)); and subsurface soil and water conditions (including test borings, test pits, soil bearing values, percolation tests, groundwater tests, ground corrosion and resistivity, and any other necessary investigations). The Design Professional shall keep informed as to the progress of such tests, inspections and investigations and if it finds or is advised of any condition which would make it advisable to alter the scope of testing, inspection or investigation, or alter the nature of the Project, it shall make timely reports and recommendations to the Owner.

#### **A.1.2.2 Design Development Phase**

After receipt of written approval of Schematic Design/Preliminary Study Documents, the Design Professional shall prepare and submit to the Owner Design Development Documents. The Design Professional shall revise these documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval. These documents shall include the following:

- Drawings sufficient to fix and illustrate project scope and character in all essential design elements
- Outline specifications
- Cost estimates and analysis
- Recommendations for phasing of construction

- Site plan(s)
- Landscape plan
- Floor plans
- Elevations, building and wall sections
- Updated three dimensional line drawings
- Engineering drawings

The Design Professional shall provide preliminary design documents to the Owner in sufficient detail to enable the Owner to determine the methodology in resolving each budgeted item, the quality of all materials intended for use, and the cost as anticipated by budgeted line item.

#### **A.1.2.3 Bidding, Construction and Contract Document Phase**

After receipt of the Owner's written approval of Design Development Documents, the Design Professional shall prepare Construction Documents. After consultation with the Owner and the Owner's attorney, if requested by the Owner, the Design Professional shall also prepare and assemble all Bidding and Contract Documents. The Design Professional shall revise these Bidding, Construction and Contract Documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval. They shall include, in a detailed manner, all work to be performed; all material; workmanship; finishes and equipment required for the architectural, structural, mechanical, electrical, and site work; survey maps furnished by Owner; and direct reproduction of any logs and subsurface soil investigations. These documents shall include:

- Solicitation for Bids
- Form of Contract
- Special Conditions
- General Conditions
- Technical Specifications
- Plans and drawings
- Updated cost estimates

#### A.1.2.3.1 Drawings

The drawings shall include the following sufficient to serve as the basis for a cost estimate:

- a. A title sheet with an Index of Drawings.
- b. Site plan(s) showing the location of applicable buildings.
- c. Scale plans of all buildings and typical dwelling units, including handicapped units and facilities, if any.
- d. Wall sections, details, and elevations sufficient to serve the intended work;
- e. All other required architectural, civil, structural, mechanical and electrical documents necessary to complete the work at the Project(s).

#### A.1.2.3.2 Preparation of Plans

Design Professional shall exercise care during the preparation of the plans and the specifications to ensure that the plans and specifications do not conflict, and to ensure that the plans and the specifications do not conflict with the existing site conditions.

#### A.1.2.3.3 Drawings on Floppy or Compact Disks

The Design Professional shall supply drawings on floppy or compact disks to the Owner, in a medium suitable for use by the Owner in the following software format used by the Owner (indicated by a check in the box below.

- Auto Desk Inc.'s Auto CAD computer software, Release 14 or latest edition  
 Other (describe):

On 3 1/2 " High Density Disks or Compact Disks.

#### A.1.2.3.4 Cost Breakdown

Before the bid packages are issued, the Design Professional shall give the Owner, on a form prescribed by the Owner, estimates of the construction costs of the Project(s)

consistent with the drawings and specifications.

#### A.1.2.3.5 Reproduction of Final Bidding Documents

The Design Professional shall reproduce \_\_\_\_\_ (two (2), unless otherwise specified) complete sets of approved construction documents for bidding purposes in such form as may be necessary. The cost of reproducing these documents shall be included in the Design Professional's basic fee. All other required sets of construction documents shall be at an additional cost of \$0.06 per square foot of drawings and \$0.02 per sheet of specifications.

#### A.1.2.3.6 Revisions

The Design Professional shall revise any deficiencies in the bidding documents upon the Owner's request. These revisions shall be made at no additional compensation if the Design Professional is responsible for these deficiencies under the requirements of this contract.

#### A.1.2.3.7 Approvals by Owner

When complete, the Design Professional shall submit the bidding documents to the Owner and shall make all changes necessary to obtain approval by the Owner. No changes shall be made to the bidding documents (including those prepared for contract modifications) except with the concurrence of the Owner.

#### A.1.2.3.8 Separate Construction Contracts

When required by local laws, ordinances, or the Owner, the Design Professional shall assist in preparing the construction solicitation documents in such form and manner as to enable the Owner to solicit separate bids and to award separate contracts for different parts of the Project(s).

#### A.1.2.3.9 Certifications

The Design Professional shall certify to the Owner that it has conducted adequate investigations to coordinate properly the



planned work with the existing conditions on the site, and that, to the best of its knowledge, the bidding documents 1) conform to all applicable laws, codes, ordinances and regulations; and 2) conform with clause C.1.4.

#### **A.1.2.4 Bidding and Award Phase**

After written approval of Bidding, Construction and Contract Documents from the Owner, the Design Professional shall assist in administering the bidding and award of the Construction Contract. This shall include:

- Responding to inquiries
- Drafting and issuing addendum approved by Owner
- Attending pre-bid conference(s)
- Attending public bid openings
- Reviewing and tabulating bids
- Recommending list of eligible bids
- Recommending award
- Altering drawings and specifications as often as required to award within the Estimated Construction Contract Cost

##### **A.1.2.4.1 Revisions After Bid Opening**

In the event that the lowest responsive, responsible bid results in costs which exceed the budget, the Design Professional shall, without additional compensation and upon written order from the Owner, make such revisions and alterations in the drawings and specifications as may be necessary to permit proper construction and completion of the Project(s) within the budget and to permit re-solicitation.

#### **A.1.2.5 Construction Phase**

After execution of the Construction Contract, the Design Professional shall in a prompt and timely manner administer the Construction Contract and all work required by the Bidding, Construction and Contract Documents. The Design Professional shall endeavor to protect the Owner against defects and deficiencies in the execution and

performance of the work. The Design Professional shall:

- Administer the Construction Contract.
- Review the Construction Progress Schedule submitted by the General Contractor and recommend approval/disapproval to the Owner.
- Advise the Owner, in writing, on needed interpretations (other than legal interpretations) and clarifications of the drawings and specifications.
- Conduct pre-construction conference and attend dispute resolution conferences and other meetings when requested by the Owner.
- Review and approve Contractor's shop drawings and other submittals for conformance to the requirements of the Contract Documents.
- Determine the extent of laboratory and field testing, inspections and investigations as set forth in clause A.1.2.1.1. At the Owner's written request, and as Additional Service, procure testing from qualified parties. Recommend in writing to the Owner for approval or disapproval of samples, certificates, and test reports. A copy of all test results shall be furnished to the Owner.
- Monitor the quality and progress of the work and furnish a written field report  weekly,  semi monthly,  monthly, or  \_\_\_\_\_. This service shall be limited to a period amounting to 110% of the construction period as originally established under the Construction Contract unless construction has been delayed due to the Design Professional's failure to properly perform its duties and responsibilities. The Owner may direct additional monitoring but only as Additional Services.
- Require any sub-consultant to provide the services listed in this section where and as applicable and to visit the Project during the time that construction is occurring on the portion of the work

related to its discipline and report in writing to the Design Professional.

- Review, approve and submit to Owner the Contractor Requests for Payment.
- Conduct all job meetings and record action in a set of minutes which are to be provided to the Owner.
- Make modifications to Construction Contract Documents to correct errors, clarify intent or to accommodate change orders.
- Make recommendations to Owner for solutions to special problems or changes necessitated by conditions encountered in the course of construction.
- Promptly notify Owner in writing of any defects or deficiencies in the work or of any matter of dispute with the General Contractor. The Design Professional shall immediately notify, while onsite, the General Contractor and the Owner when the Design Professional discovers any deficiency or defect in the Work. The Design Professional also shall specify in the next field report all observed defects and deficiencies, which are, in the Design Professional's opinion, covered by the guarantees provided for in the contract documents and shall in such a case indicate the pertinent guarantee.
- Advise the Owner of special problems and on changes necessitated by unforeseen conditions encountered in the course of construction.
- Review and countersign change orders after verification that all costs for changes are accurate, consistent with the requirements of the Housing Authority of the City of Seattle General Conditions; and are reasonable in the market place. The Design Professional shall assist the Owner in performing a cost or price analysis, as required by 2 CFR §200.323 for construction contract modifications (including change orders).
- Review and recommend to the Owner payment of periodic estimates of the value of acceptable work in place, and

material delivered to and properly stored on site.

- Prepare written punch list, certificates of completion and other necessary construction close out documents.
- Prepare a set of reproducible record prints of Drawings showing significant changes in the work made during construction, including the locations of underground utilities and appurtenances referenced to permanent surface improvements, based on marked-up prints, drawings and other data furnished by the General Contractor to the Design Professional.
- Assist in the final inspection and properly prepare and sign any required Certificate of Completion.
- The Design Professional shall furnish to the Owner all reports required by the Statement of Work of this Contract.

#### **A.1.2.6 Post Completion/Warranty Phase**

After execution of the Certificate of Completion by the Owner, the Design Professional shall:

- Consult with and make recommendations to Owner during warranties regarding construction, and equipment warranties.
- Perform an inspection of construction work, material, systems and equipment no earlier than nine months and no later than ten months after completion of the Construction Contract and make a written report to the Owner. At the Owner's request, and by Amendment to the Additional Services section of this Contract, conduct additional warranty inspections as Additional Services.
- Advise and assist Owner in construction matters for a period up to eighteen months after completion of the Project, but such assistance is not to exceed forty hours of service and one non warranty trip away from the place of business of the Design Professional.

**A.1.3 Time of Performance**

The Design Professional's schedule for preparing, delivering and obtaining Owner's approval for Basic Services shall be as follows:

- Schematic Design/Preliminary Study Documents within xx calendar days from the date of the receipt of a Notice to Proceed.
- Design Development Documents within xx calendar days from the date of receipt of written approval by the Owner of Schematic Design/Preliminary Study Documents.
- Bidding, Construction and Contract Documents within xx calendar days from the date of receipt of written approval by the Owner of Design Development Documents.

**A.2 Design Professional's Additional Services**

**A.2.1 Description of Additional Services**

Additional Services are all those services provided by the Design Professional on the Project for the Owner that are not defined as Basic Services in Article A, Section 1.2 or otherwise required to be performed by the Design Professional under this Contract. They include major revisions in the scope of work of previously approved drawings, specifications and other documents due to causes beyond the control of the Design Professional and not due to any errors, omissions, or failures on the part of the Design Professional to carry out obligations otherwise set out in this Contract.

**A.2.2 Written Addendum or Contract Amendment**

All additional services not already expressly required by this Contract shall be agreed to through either a written addendum or amendment to this Contract.

**Article B: Compensation and Payment**

**B.1 Basic Services**

**B.1.1 Fixed Fee for Basic Services**

The Owner will pay the Design Professional for Basic Services performed as defined by A.1.2, a Fixed Fee (stipulated sum) of \$XXXXXXXXXXXXXXXXXX plus Reimbursable Expenses identified in Article B.2.0. Such payment shall be compensation for all Basic Services required, performed, or accepted under this Contract.

**B.1.2 Payment Schedule**

Progress payments for Basic Services for each phase of work shall be made in proportion to services performed as follows:

<u>Phase</u>	<u>Amount</u>
Schematic Design/ Preliminary Study Phase	\$0.00
Design Development Phase	\$0.00
<u>Phase</u>	<u>Amount</u>
Bidding, Construction and Contract Document Phase	\$0.00
Bidding and Award Phase	\$0.00
Construction Phase	\$0.00
Post Completion/Warranty Phase	\$0.00
Total Basic Services	\$0.00

**B.2 Reimbursables**

**B.2.1 Reimbursable Expenses**

The Owner will pay the Design Professional for the Reimbursable Expenses listed below up to a Maximum Amount of \$XXXXXXXXXX. Reimbursable Expenses are in addition to the Fixed Fee for Basic Services and are for certain actual expenses incurred by the Design Professional in connection with the

Project as enumerated below. Approved reimbursable expenses shall not exceed 110% of actual costs.

#### **B.2.1.1 Travel Costs**

The reasonable expense of travel costs incurred by the Design Professional when requested by Owner to travel to a location that lies outside of a 45 mile radius of either the Project site, Design Professional's office(s), or Owner's office. Driving travel costs shall be reimbursed at not more than 100% of the current IRS mileage allowance.

#### **B.2.1.2 Long Distance Telephone Costs**

Long distance telephone calls and long distance telefax costs.

#### **B.2.1.3 Delivery Costs**

Courier services and overnight delivery costs.

#### **B.2.1.4 Reproduction Costs**

Reproduction and postage costs of required drawings, photos, excluding the cost of reproductions for the Design Professional or Subcontractor's own use.

#### **B.2.1.5 Permit Fees**

Permit fees shall be reimbursed at actual cost.

#### **B.2.1.6 Additional Reimbursables**

The Design Professional and Owner may agree in an addendum or amendment to this Contract to include certain other expenses not enumerated above as Reimbursable Expenses. These Reimbursable Expenses shall not be limited by the Maximum Amount agreed to above. A separate Maximum Amount for these Reimbursables shall be established.

### **B.3 Additional Services**

#### **B.3.1 Payment for Additional Services**

The Owner will pay the Design Professional only for Additional Services agreed to in an addendum or amendment to this Contract

executed by the Owner and the Design Professional pursuant to A.2. Payment for all such Additional Services shall be in an amount and upon the terms set out in such amendment or addendum and agreed upon by the parties. Each such amendment or addendum shall provide for a fixed price or, where payment for such Additional Services is to be on an hourly basis or other unit pricing method, for a Maximum Amount; each such amendment or addendum shall also provide for a method of payment, including, at a minimum, whether payment will be made in partial payments or in lump sum and whether it will be based upon percentage of completion or services billed for.

### **B.4 Invoicing and Payments**

#### **B.4.1 Invoices**

All payments shall require a written invoice from the Design Professional. Invoices shall be made no more frequently than on a monthly basis. Payments for Basic Services shall be in proportion to services completed within each phase of work. When requesting such payment, the invoice shall identify the phase and the portion completed. All invoices shall state the Contract name and number, and address to which payment shall be made, the services completed and the dates of completion, and whether the invoice requests payment for Basic Services, Reimbursable or Additional Services. Invoices seeking payment for Reimbursable or Additional Services must provide detailed documentation.

#### **B.4.2 Time of Payment**

Upon the Design Professional's proper submission of invoices for work performed or reimbursable expenses, the Owner shall review and, if the work is in conformance with the terms of the Contract, make payment within thirty days of the Owner's receipt of the invoice.

## **Article C: Responsibilities**

### **C.1 Design Professional's Responsibilities**

#### **C.1.1 Basic Services**

The Design Professional shall provide the Basic Service set out in Article A1.2. Additional Phases will be negotiated and added by Change Order.

#### **C.1.2 Additional Services**

When required under this Contract or agreed to as set out in A.2.1, the Design Professional shall provide Additional Services on the Project.

#### **C.1.3 General Responsibilities**

The Design Professional shall be responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other services, furnished by the Design Professional under this Contract. The Owner's review, approval, acceptance of, or payment for Design Professional services shall not be construed as a waiver of any rights under this Contract or of any cause of action for damages caused by Design Professional's negligent performance under this Contract. Furthermore, this Contract does not restrict or limit any rights or remedies otherwise afforded the Owner or Design Professional by law.

#### **C.1.4 Designing Within Funding Limitations**

The Design Professional shall perform services required under this Contract in such a manner so as to cause an award of a Construction Contract(s) that does not exceed (1) \$XXXXXXXX or (2) an amount to be provided by the Owner in writing to the Design Professional prior to the commencement of Design Professional services. This fixed limit shall be called the Maximum Construction Contract Cost. The

amount may be increased by the Owner, but only with written notice to the Design Professional. If the increase results in a change to the scope of work, an amendment to this Contract will be required. The Design Professional and the Owner may mutually agree to decrease the Maximum Construction Contract Cost, but only by signing a written amendment to this Contract. Should bids for the Construction Contract(s) exceed the Maximum Construction Contract Costs, the Owner has the right to require the Design Professional to perform redesigns, rebids and other services necessary to cause an award of the Construction Contract within the Maximum Construction Contract Cost without additional compensation or reimbursement.

#### **C.1.5 Compliance with Laws, Codes, Ordinances and Regulations**

The Design Professional shall perform services that conform to all applicable Federal, State and local laws, codes, ordinances and regulations except as modified by any waivers which may be obtained with the approval of the Owner. The Design Professional shall certify that Contract Documents will conform to all applicable laws, codes, ordinances and regulations. The Design Professional shall prepare all Construction Documents required for approval by all governmental agencies having jurisdiction over the Project. Upon approval by the Owner, the Design Professional shall submit to those agencies all Construction Documents which they have the right to review for approval. The Design Professional shall also submit a copy of the relevant Construction Documents to all other agencies: (1) who will furnish services to the completed Project(s); and (2) whose approval is required to ensure such service. If any agency referred to above is unwilling or without authority to give written approval prior to formal application for construction permits, then the Design Professional shall inform the Owner and certify that, to the best

of the Design Professional's knowledge and belief, the documents as submitted will meet the approval of such agency or agencies. If obtaining any governmental approvals would require noncompliance with the Contract, the Design Professional shall promptly notify the Owner in writing. The Design Professional shall make all changes in the Bidding and Construction Documents necessary to obtain governmental approval without additional compensation or reimbursement, except in the following situations: If subsequent to the date the Owner issues a notice to proceed, revisions are made to applicable codes or non-federal regulations, the Design Professional shall be entitled to additional compensation and reimbursements for any additional cost resulting from such changes. The Design Professional, however, is obligated to notify the Owner of all significant code or regulatory changes within sixty (60) days of their change, and such notification shall be required in order for the Design Professional to be entitled to any additional compensation or reimbursement.

#### **C.1.6 Seal**

Licensed Design Professionals shall affix their seals and signatures to drawings and specifications produced under this Contract when required by law.

#### **C.1.7 Attendance at Conferences**

The Design Professional or designated representatives shall attend Project conferences and meetings involving matters related to basic services covered under this Contract. Attendance at community wide meetings shall be considered an additional service.

### **C.2 Owner's Responsibilities**

#### **C.2.1 Information**

The Owner shall provide information regarding requirements for the Project, including a program that shall set forth the Owner's objectives and schedule. The

Owner shall also establish and update the Maximum Construction Cost. This shall include the Owner's giving notice of work to be performed by the Owner or others and not included in the Construction Contract for the Project. The Design Professional, however, shall be responsible to ascertain and know federal requirements and limitations placed on the Project.

#### **C.2.2 Notice of Defects**

If the Owner observes or otherwise becomes aware of any fault or defects in the construction of the Project or non conformance with the Construction Contract, the Owner shall give prompt written notice of those faults, defects or non conformance to the Design Professional.

#### **C.2.3 Contract Officer**

The Owner shall designate a Contract Officer authorized to act on its behalf with respect to the design and construction of the Project. The Contract Officer shall examine documents submitted by the Design Professional and shall promptly render decisions pertaining to those documents so as to avoid unreasonably delaying the progress of the Design Professional's work.

#### **C.2.4 Duties to Furnish**

The Owner shall provide the Design Professional the items listed below.

##### **C.2.4.1 Survey and Property Restrictions**

The Owner shall furnish topographic, property line and utility information as and where required. The Owner may at its election require the Design Professional to furnish any of these items as an Additional Service.

##### **C.2.4.2 Existing Conditions**

The Owner shall provide the Design Professional any available "as built" drawings of buildings or properties, architect surveys, test reports, and any other written information that it may have in its possession

and that it might reasonably assume affects the work.

**C.2.4.3 Waivers**

The Owner shall provide the Design Professional information it may have obtained on any waivers of local codes, ordinances, or regulations or standards affecting the design of the Project.

**C.2.4.4 Minimum Wage Rates**

The Owner shall furnish the Design Professional the applicable schedule of minimum wage rates as approved by the U.S. Secretary of Labor, the U.S. Department of Housing and Urban Development, or the State of Washington Department of Labor and Industries for inclusion in the bidding and Contract Documents.

**C.2.4.5 Tests**

When expressly agreed to in writing by both the Owner and the Design Professional, the Owner shall reimburse the Design Professional for no more than 110% of actual costs for any laboratory or field tests, inspections, investigations and reports required for the Project. These reimbursable expenses shall not be limited by the Maximum Amount set forth in clause B.2.1.

**C.2.4.6 Contract Terms**

The Owner or its legal counsel may provide the Design Professional text to be incorporated into Bidding and Construction Contract Documents.

**Article D: Contract Administration**

**D.1.0 Prohibition of Assignment**

The Design Professional shall not assign, subcontract, or transfer any services, obligations, or interest in this Contract without the prior written consent of the Owner. Such consent shall not unreasonably be withheld when such assignment is for

financing the Design Professional's performance.

**D.1.1 Ownership of Documents**

All drawings, specifications, studies and other materials prepared under this Contract shall be the property of the Owner and at the termination or completion of the Design Professional's services shall be promptly delivered to the Owner. The Design Professional shall have no claim for further employment or additional compensation as a result of exercise by the Owner of its full rights of ownership. It is understood, however, that the Design Professional does not represent such data to be suitable for re-use on any other project or for any other purpose. If the Owner re-uses the subject data without the Design Professional's written verification, such re-use will be at the sole risk of the Owner without liability to the Design Professional.

**D.1.2 Substitutions**

A. The Design Professional shall identify in writing principals and professional level employees and shall not substitute or replace principals or professional level employees without the prior approval of the Owner which shall not unreasonably be withheld.

B. The Design Professional's personnel identified below are considered to be essential to the work effort. Prior to diverting or substituting any of the specified individuals, the Design Professional shall notify the Owner reasonably in advance and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact on the Contract. No diversion or substitution of such key personnel shall be made by the Design Professional without the prior written consent of the Owner.

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### **D.1.3 Suspension**

The Owner may give written notice to the Design Professional to suspend work on the Project or any part thereof. The Owner shall not be obligated to consider a claim for additional compensation if the Design Professional is given written notice to resume work within 120 calendar days. If notice to resume work is not given within 120 calendar days, the Design Professional shall be entitled to an equitable adjustment in compensation.

### **D.1.4 Subcontracts**

The Design Professional will cause all applicable provisions of this Contract to be inserted in all its subcontracts.

### **D.1.5 Disputes**

**D.1.5.1** All disputes arising under or relating to this contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause. All claims by the Design Professional shall be made in writing and submitted to the Owner. A claim by the Owner against the Design Professional shall be subject to a written decision by the Owner.

**D.1.5.2** The Owner shall, with reasonable promptness (no more than sixty days), render a decision concerning any claim hereunder. Unless the Design Professional, within 30 days after receipt of the Owner's decision, shall notify the Owner in writing that it takes exception to such decision, the decision shall be final and conclusive.

**D.1.5.3** Provided the Design Professional has (1) given the notice within the time stated in clause D.1.5.2; (2) excepted its claim relating to such decision from the final release; and (3) brought suit against the Owner not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the

Design Professional has had a reasonable time to respond to a written request by the Owner that it submit a final voucher and release, whichever is earlier, then the Owner's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court identified in Clause D.1.5.6, or by consent of the Owner and Design Professional by other dispute resolution methods. Design Professional agrees to prepare or modify all agreements between Design Professional and his or her consultants to reflect this option to use alternative dispute resolution procedures.

**D.1.5.4** Claims between Owner and any general contractor and/or its subcontractors, general contractor and Design Professional, and Owner and Design Professional shall, upon demand by Owner, be submitted in the same litigation, arbitration or mediation. Design Professional agrees to prepare or modify all agreements between Design Professional and his or her consultants to reflect Owner's right to make this demand.

**D.1.5.5** The Design Professional shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Owner.

**D.1.5.6** This Contract shall be interpreted under Washington law. Jurisdiction and venue for any legal action to resolve a Dispute shall be in King County Superior Court, Seattle, Washington, or in the United States District Court for the Western District of Washington at Seattle.

### **D.1.6 Termination**

**D.1.6.1** The Owner may terminate this Contract for the Owner's convenience or for failure of the Design Professional to fulfill contract obligations. The Owner shall



terminate by delivering to the Design Professional a Notice of Termination specifying the reason therefore and the effective date of termination. Upon receipt of such notice, the Design Professional shall immediately discontinue all services affected and deliver to the Owner all information, reports, papers, and other materials accumulated or generated in performing this Contract whether completed or in process. If the termination is for convenience of the Owner, the Owner shall be liable only for payment for accepted services rendered before the effective date of termination.

**D.1.6.2** If the termination is due to the failure of the Design Professional to fulfill the Design Professional's obligations under the contract (default), the Owner may: (1) require the Design Professional to deliver to it, in the manner and to the extent directed by the Owner, any work as described in subparagraph D.1.6.1, and compensation be determined in accordance with clause D1.12 Changes: (2) take over the work and prosecute the same to completion by contract or otherwise, and the Design Professional shall be liable for any additional cost incurred by the Owner; and (3) withhold any payments to the Design Professional, for the purpose of set-off or partial payment, as the case may be, of amounts owed the Owner by the Design Professional.

**D.1.6.3** If, after termination for failure to fulfill contract obligations (default), it is determined that the Design Professional had not failed, termination shall be deemed to have been effected for the convenience of the Owner, and the Design Professional shall be entitled to payment as described in clause D.1.6.1.

**D.1.6.4** Any disputes with regard to this clause are expressly made subject to the terms of clause D.1.5.

## **D.1.7 Delays by Owner**

**D.1.7.1** If the performance of all or any part of the work is, for an unreasonable period of time, delayed by an act of the Owner in the administration of this contract other than a suspension of work, or by its failure to act within the time specified in this contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in cost of performance of this contract (excluding profit) necessarily caused by such unreasonable delay, and the contract modified in writing accordingly.

However, no adjustment shall be made under this Paragraph for any suspension or delay to the extent: (1) that performance would have been suspended or delayed by any other cause, including the fault or negligence of the Design Professional; or (2) for which an equitable adjustment is provided for as an exclusion under any other provision of this contract.

**D.1.7.2** No claims under this Paragraph shall be allowed: (1) for any costs incurred more than 20 days before the Design Professional shall have notified the Owner in writing of the act, or failure to act, involved; and (2) unless the claim, in an amount stated, is asserted in writing as soon, as practicable after the termination of such suspension or delay, but no later than the date of final payment. No part of any claim based on this clause shall be allowed unless it is supported by adequate evidence showing that the cost would not otherwise have been incurred.

## **D.1.8 Certificate and Release**

Prior to final payment under this contract or prior to settlement upon termination of the contract, and as a condition precedent thereto, the Design Professional shall execute and deliver to the Owner a Certificate and Release in form acceptable to the Owner, containing a release of all claims

against the Owner by the Design Professional under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Design Professional in stated amounts set forth therein.

### **D.1.9 Inspection and Acceptance**

**D.1.9.1** The Owner has the right to review, require correction, if necessary, and accept the work produced by the Design Professional. Such review(s) shall be carried out within **14 (fourteen) calendar days** so as to not impede the work of the Design Professional. Any work shall be deemed accepted as submitted if the Owner does not issue written comments and/or required corrections within **14 (fourteen) calendar days** from the date of receipt of such work from the Design Professional.

**D.1.9.2** The Design Professional shall make any required corrections promptly and return a revised copy of the work to the Owner within **30 (thirty) calendar days** of notification or a later date if extended by the Owner.

**D.1.9.3** Failure by the Design Professional to proceed with reasonable promptness to make necessary corrections shall be a default.

### **D.1.10 Insurance**

Within seven (7) days from the date of the Notice of Award, and prior to commencement of the Work, Design Professional shall obtain all the insurance required by the Contract Documents and provide evidence satisfactory to Owner that such insurance has been procured. Review of the Design Professional's insurance by Owner shall not relieve or decrease the liability of Design Professional.

Failure of the Design Professional to fully comply with the insurance requirements of

this Contract will be considered a material breach of contract and, at the option of Owner, will be cause for such action as may be available to Owner under other provisions of this Contract or otherwise in law, including immediate termination of the Contract.

### **D.1.10.1. General Insurance Requirements**

1. Prior to undertaking any work under this Contract, the Design Professional shall procure and maintain continuously for the duration of this Contract, at no expense to Owner, insurance coverage as specified below, in connection with the performance of this work of this Contract by Design Professional, its agents, representatives, employees and/or subcontractors (the term subcontractors as used in this Contract shall include sub-consultants). Review of the Design Professional's insurance by Owner shall not relieve or decrease the liability of Design Professional.
2. The Design Professional's insurance shall be primary, as respects Owner and any other insurance maintained by Owner shall be excess and not contributing insurance with the Design Professional's insurance.
3. Except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, the Design Professional's Commercial General Liability and Commercial Automobile Liability insurance coverage shall apply as if each named insured were the only named insured, and separately to each insured against whom claim is made or suit is brought.
4. Insurance policies, deductibles, self-insured retentions, and insurance carriers will be subject to review and approval by Owner. Except for Professional Liability Insurance coverage, if applicable, each

insurer must either be 1) authorized to do business in the State of Washington and maintain A.M. Best's ratings of "A VII" or higher, or 2) procured as surplus lines under the provisions of RCW Chapter 48.15 ("Unauthorized Insurers"), except as may be otherwise approved by the Owner. Insurers or reinsurers of Professional Liability (Errors and Omissions) Insurance must have a rating of "B+VII or higher.

#### **D.1.10.2. Insurance Coverage and Terms:**

Design Professional shall maintain the following insurance coverage during the Work and for one (1) year after Final Completion, except for Products and Completed Operations coverage which shall remain in effect for three (3) years after Final Completion. Design Professional shall also maintain the following insurance coverage during the performance of any corrective Work:-

#### **D.1.10.2 A Commercial General Liability Insurance**

Commercial General Liability (CGL) shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under paragraph D.1.10.2.C written on an Occurrence Form or its equivalent which shall include coverage for:

- A. Premises/Operations
- B. Products/Completed Operations
- C. Personal/Advertising Injury
- D. Contractual
- E. Independent Contractors
- F. Stop Gap (unless insured as Employers Liability under Part B. of a Workers Compensation Insurance Policy
- G. Per project aggregate per ISO CG 25 03 (Aggregate Limits of Insurance per Project) or Equivalent
- H. Explosion, collapse, and underground

#### **I. Waiver of Subrogation**

- **\$1,000,000 each Occurrence Combined Single Limit (CSL) Bodily Injury and Property Damage except \$1,000,000 each Offense Personal/Advertising Injury \$2,000,000 Aggregate**

In the event that the services to be provided under this Contract involve the Design Professional's contact with minor children, and/or elderly, disabled or vulnerable adults as defined in RCW 74.34.020, the Design Professional shall provide evidence that sexual misconduct coverage has not been excluded from the policy and is covered under the policy. Acceptable evidence of sexual misconduct coverage must include an endorsement and policy excerpt(s) and is subject to approval by Owner's risk manager.

#### **D.1.10.2 B Employers Liability or Washington Stop Gap Liability.**

A policy of Employers Liability or a Washington Stop Gap Liability insurance endorsement with the following minimum coverage:

- **\$1,000,000 Bodily Injury by Accident, Bodily Injury by Disease – Each Employee, Bodily Injury by Disease – Policy Limit; Employers Liability or Washington Stop Gap**

#### **D.1.10.2.C. Commercial Automobile Liability Insurance**

A policy of Commercial Automobile Liability Insurance, including coverage for owned, non-owned, leased or hired vehicles written on an insurance industry standard form (CA 00 01) or equivalent, with the following minimum coverage:

- **\$1,000,000 combined single limit (CSL) coverage.**

#### **D.1.10.2.D Worker's Compensation**

A policy of Worker's Compensation. As respects Worker's Compensation insurance

in the State of Washington, the Design Professional shall secure its liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington (RCW). If the Design Professional is qualified as a self-insurer in accordance with Chapter 51.14 RCW, the Contract shall so certify by a letter signed by a corporate officer indicating that it is a qualified self-insured, and setting forth the limits of any policy of excess insurance covering its employees, or any similar coverage required.

**D.1.10.2.E. Contractor's Pollution Liability (CPL):** When project scope of work includes any or all items below, the Design Professional will provide a Contractor's Pollution Liability policy against claims for bodily injury, property damage and cleanup costs/environmental damages arising from pollution conditions caused in the performance of covered operations when:

1. The Work involves remediation, abatement, repair, maintenance or other work with asbestos containing materials, lead-containing products (paint, coatings, components), mercury, underground storage tanks, and/or other hazardous materials. A CPL policy specifically covering these exposures shall be required from the Design Professional or the subcontractor performing such work.
2. The Work involves the transporting hazardous materials or waste, a separate policy or endorsement to the CPL policy specifically providing coverage for liability and cleanup, arising from an upset or collision during transportation of hazardous materials is required from the Design Professional or subconsultant performing such work.

\$1,000,000 each Claim

#### **D.1.10.2.F Professional Liability Insurance**

A policy of Errors and Omissions Liability Insurance appropriate to the Design Professional's profession. Coverage should be for a professional error, act, or omission arising out of the scope of work shown in the Contract, with the following minimum coverage:

- **\$1,000,000 Professional Liability, Errors and Omissions**

If the Professional Liability Insurance policy is written on a claims-made form, the Design Professional warrants continuation of coverage, either through policy renewals or the purchase of an extended reporting period ("tail") for a minimum of (3) three years from the date of completion of the work authorized by the Contract. In the event that the Design Professional is authorized to engage subconsultants, each subconsultant shall provide evidence of separate professional liability coverage equal to the levels specified above, unless such requirement is waived in writing by Owner.

#### **D1.10.2.G Cyber Liability Insurance**

When applicable, the Design Professional shall provide, Cyber liability coverage, including both first and third party coverage, covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security.

- **\$1,000,000 each occurrence.**

Cyber liability coverage can be either stand alone or included within the Professional liability policy

#### **D.1.10.3 Waiver of Subrogation**

Owner and Design Professional waive all subrogation rights against each other, any general contractor and/or subcontractors,

Design Professional's consultants or sub-consultants, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by Owner as fiduciary. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**D1.10.4 Deductibles or Self-Insured Retention:** Any deductibles or self-insured retentions \$25,000 or higher must be declared to, and approved by the Owner. The deductible and/or self-insured retention of the policies shall not limit or apply to the Design Professional's liability to the Owner. Payment of deductibles shall be the responsibility of the Contractor except for (1) earthquake or flood claims, or (2) all risk claims to the extent damage is not caused by the negligent acts of the Design Professional or any Subcontractor.

#### **D1.10.5 No Limitation of Liability**

The limits of liability specified herein are minimum limits only. Such minimum limits of liability requirements shall not be construed to limit the liability of the Design Professional or of any of their respective insurers. The Design Professional shall include Owner as an additional insured for primary and non-contributory limits of liability for the full valid and collectible limits of liability maintained by the Design Professional whether such limits are primary, excess, contingent or otherwise. This provision shall apply regardless of whether limits maintained by the Design Professional are greater than the minimum limits required by this Contract, and regardless of whether the certification of

insurance by the Design Professional's specifies lower minimum limits than those specified for or maintained by the Design Professional.

#### **D.1.10.6 Insurance Coverage Endorsements and Certificates**

##### **D.1.10.6.A. Proof of Insurance and Insurance Expiration**

1. The Design Professional shall furnish certificates of insurance and policy endorsements as evidence of compliance with the insurance requirements of the Contract. Such certificates and endorsements must be signed by a person authorized by that insurance company to bind coverage on its behalf.
2. The Owner shall be named as an Additional Insured on a primary and non-contributory basis on all Commercial General Liability policies of the Design Professional. A policy endorsement (form CG2010B or equivalent) must be provided to Owner as evidence of additional insured coverage.
3. As respects CGL insurance such Additional Insured status shall contain a "separation of insureds" provision.
4. The Design Professional shall include all subconsultants at any tier as insureds under its policies (except for Professional Liability insurance) and ensure that the Design Professional's coverage of subconsultants under the Design Professional's policies is not excluded by any policy provision or endorsement. Alternatively, the Design Professional shall:
  - a.) Obtain from each subconsultant not insured under the Design Professional's policy or policies of insurance, evidence of insurance meeting all the requirements of this Contract, and

- b.) Maintain such evidence on file for a period of one (1) year after Final Completion except for Products and Completed Operations coverage which shall remain in effect for three (3) years after Final Completion and, upon request, submit such evidence to Owner for examination.

5. The Design Professional's insurance shall not be reduced or canceled without forty-five (45) days prior written notice to Owner, except for cancellation for nonpayment of premium, which notice shall not be less than ten (10) days prior to such date, unless a longer period of written notice is required under the provisions of Revised Code of Washington (RCW 48.18.290). The Design Professional shall not permit any required insurance coverage to expire during the term of this Contract.

6. Owner reserves the right to require complete, certified copies of all required insurance policies at any time during the term of this Contract, or to waive any of the insurance requirements of this Contract at its sole discretion.

**D 1.11 CRIMINAL BACKGROUND CHECKS**

Criminal Background Investigation: The selected Design Professional shall conduct a criminal investigation of all employees, volunteers, subcontractors and sub-consultants performing any work who may reasonably be expected to have direct or incidental contact with SHA residents, SHA staff members, or vulnerable population. In addition, a criminal investigation shall be performed for any person performing work under this Contract who needs special entry into SHA buildings, is given temporary use of an SHA building-access card or who collects payments of any kind. The criminal

background investigation shall include, but not necessarily be limited to, a Washington State Patrol background report. In the event a background check provides evidence of a felony conviction within the past seven years, the results of that investigation shall be disclosed to the SHA Project Manager. If any person performing work under this Contract is charged with a felony, the selected Design Professional agrees, if requested by SHA, to replace such person with an individual acceptable to SHA

**D.1.11 Retention of Rights**

Neither the Owner's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or any cause of action arising out of the performance of this Contract, and the Design Professional shall be and remain liable to the Owner in accordance with the applicable law for all damages to the Owner caused by the Design Professional's negligent performance of any of the services furnished under this Contract.

**D.1.12 Changes**

The Owner may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed.

**D.1.12.1** If any such change causes an increase or decrease in the prices charged, the maximum amount of the contract, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or otherwise affect's the conditions of this contract, the Owner shall make an equitable adjustment in the maximum amount, the price(s), the delivery schedule, or other affected terms, and shall modify the contract accordingly.

**D.1.12.2** The Design Professional must assert its right to an equitable adjustment

under this clause within 30 days from the date of receipt of the written order. The Owner will respond within 30 days or within another mutually-agreed upon period.

**D.1.12.3** Failure to agree to any adjustment shall be a dispute under clause D.1.5. However, nothing in this clause shall excuse the Design Professional from proceeding with the contract as changed.

**D.1.12.4** No services for which an additional cost or fee will be charged by the Design Professional shall be furnished without the prior written consent of the Owner.

### **D.1.13 Contract Modification**

Only the Owner Contracting Officer has authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing.

**D.1.13.1** The Owner may modify the contract unilaterally: (1) pursuant to a specific authorization stated in a contract clause (e.g., Changes); or (2) for administrative matters which do not change the rights or responsibilities of the parties (e.g., change in the Owner address). All other contract modifications shall be in the form of supplemental agreements signed by the Design Professional and the Contracting Officer.

### **D.1.14 Hold Harmless and Indemnification**

**D.1.14.1** The Design Professional and each of his/her Sub-contractors, or Sub-Consultants, shall be liable for all damages and injury of every kind and character whatsoever which shall occur to any person or persons or property whatsoever to the extent caused by the negligence of the Design Professional or any of his/her Sub-contractors, Sub-Consultants, agents, servants or employees or caused by any

breach or violation by the Design Professional or any of his/her Subcontractors, Sub-Consultants, agents, servants or employees of any duty owed to any person or persons under the Contract Documents or under any law or ordinance, or rule of any board or officer having authority on the premises.

**D.1.14.2** To the maximum extent permitted by RCW 4.24.115, the Design Professional shall defend, indemnify and hold harmless the Owner, its officers, and employees from all claims, suits and actions of every name and description made or brought against the Owner, or any of its officers, employees, and agents for or on account of any damage to person or property arising from, or growing out of, the work under this Contract. In any claim, suit or action made or brought against the Owner by any employee of the Design Professional or any of his/her Subcontractors or Sub-Consultants, the Design Professional's obligations under this section to the Owner, its officers and employees shall not be limited by any immunity under RCW Title 51, and the Design Professional waives any such immunity as to the Owner, its officers and employees.

The indemnities set forth in this section shall not be limited by the insurance requirements set forth in the Design Professional's Liability and Coverage Limits section, D.1.10 Insurance.

## **Article E: Additional Requirements**

### **E.1 Contract Provisions Required by Federal Law or Owner Contract with the U.S. Department of Housing and Urban Development (HUD)**

#### **E.1.1 Contract Adjustments**

Notwithstanding any other term or condition of this Contract, any settlement or equitable adjustment due to termination, suspension or

delays by the Owner shall be negotiated based on the cost principles stated at 48 CFR Subpart 31.2 and conform to the Contract pricing provisions of 2 CFR §200.323.

### **E.1.2 Additional Services**

The Owner will perform a cost or price analysis as required by 2 CFR §200.323 prior to the issuance of a contract modification/amendment for Additional Services. Such Additional Services shall be within the general scope of services covered by this Contract. The Design Professional shall provide supporting cost information in sufficient detail to permit the Owner to perform the required cost or price analysis.

### **E.1.3 Restrictive Drawings and Specifications**

The Design Professional shall comply with the requirements of 2 CFR §200.319 (c)(1) and contract agreements between the Owner and HUD, related to the use of materials, products, or services that unduly restrict competition.

### **E.1.4 Design Certification**

Where the Owner is required by federal regulations to provide HUD a Design Professional certification regarding the design of the Projects (24 CFR 968.235, 905.260 and 905.639), the Design Professional shall provide such a certification to the Owner.

### **E.1.5 Retention and Inspection of Records**

Access shall be given by the Design Professional to the Owner, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the Design Professional which are directly pertinent to that specific Contract for the purpose of making an audit, examination, excerpts, and transcriptions. All required

records shall be retained for three years after the Owner or Design Professional and other sub grantees make final payments and all other pending matters are closed.

### **E.1.6 Copyrights and Rights in Data**

Section 5.03 of the Housing Authority of the City of Seattle General Conditions requires that contractors pay all royalties and license fees. All drawings and specifications prepared by the Design Professional pursuant to this Contract will identify any applicable patents to enable the General Contractor to fulfill the requirements of the Construction Contract.

### **E.1.7 Conflicts of Interest**

As required by (2 CFR §200.318) and contractual agreements between the Owner and HUD, no employee, officer, or agent of the Owner (a HUD grantee) shall participate in the selection, or in the award or administration of a contract involving Federal funds if such participation will create a conflict of interest.

A conflict of interest exist when:

- (i) The employee, officer or agent, (ii) Any member of his or her immediate family,
- (iii) His or her partner, or
- (iv) An organization that employees, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The Owner or any sub grantee of the Owners officers, employees or agents will not solicit or accept gratuities, favors or anything of monetary value from Design Professional, or parties to sub-agreements.

### **E.1.8 Disputes**

Any disputes or misunderstandings that may arise under this Contract concerning Design Professional's performance shall first be resolved through amicable negotiations, if



possible, between Design Professional's Project Manager and SHA's Project Manager. If necessary, the dispute shall be referred to SHA's Executive Director and Design Professional's designated senior executive. If such parties do not agree upon a decision within a reasonable period of time, the parties may pursue other legal means to resolve such disputes, including but not limited to, alternate dispute resolution processes.

### **E.1.9 Termination for Convenience and Default**

- A. SHA may terminate this Contract in whole, or from time to time in part, for SHA's convenience or the failure of Design Professional to fulfill the contract obligations (default). SHA shall terminate by delivering to Design Professional a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, Design Professional shall: (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to SHA all information, reports, papers, and other materials accumulated or generated in performing this Contract, whether completed or in process.
- B. If the termination is due to the failure of Design Professional to fulfill its obligations under the Contract (default), SHA may (1) require Design Professional to deliver to it, in the manner and to the extent directed by SHA, any work as described in subparagraph A(2) above, and compensation be determined in accordance with the Extra Work section of this Contract; (2) take over the work and prosecute the same to completion by contract or otherwise, and Design Professional shall be

liable for any additional cost incurred by SHA; and (3) withhold any payments to Design Professional, for the purpose of set-off or partial payments, as the case may be, of amounts owed SHA by Design Professional.

- C. If, after termination for failure to fulfill contract obligations (default), it is determined that Design Professional had not failed, the termination shall be deemed to have been effected for the convenience of SHA, and Design Professional shall be entitled to payment as described in paragraph B above.
- D. If the termination is for the convenience of SHA, SHA shall be liable only for payment for services rendered before the effective date of the termination.
- E. Any disputes with regard to this section are expressly made subject to the terms of the Disputes section of this Contract.

### **E.1.10 Interest of Members of Congress**

Because of Contract Agreement between the Owner and HUD, no member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this Contract or to any benefit to arise from it.

### **E.1.11 Limitation of Payments to Influence Certain Federal Transaction**

The Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions Act, Section 1352 of Title 31 U.S.C., provides in part that no appropriated funds may be expended by recipient of a federal contract, grant, loan, or cooperative agreement to pay any person, including the Design Professional, for influencing or attempting to influence an officer or employee of Congress in

connection with any of the following covered Federal actions: the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

### **E.1.12 Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968**

A. The work to be performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). the purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this Contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for

training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with Section 3-covered Indian Housing Assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Contract. Section 7(b) requires that to the greatest extent feasible (i) preference and

opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

H. [Inapplicable].

### **E.1.13 Indian Preference in Indian Housing Authority Contracts**

[Inapplicable]

### **E.1.14 Clean Air and Water**

(Applicable to contracts in excess of \$150,000). Because of 2 CFR §200.326(g) and Federal law, the Design Professional shall comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C.1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

### **E.1.15 Energy Efficiency**

Pursuant to Federal regulations (2 CFR §200.326 (h)) and Federal law, except when working on an Indian Housing Authority Project on an Indian reservation, the Design Professional shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

### **E.1.16 Prevailing Wages**

In accordance with Section 12 of the U.S. Housing Act of 1937 (42 U.S.C. 1437j) the Design Professional shall pay not less than the wages prevailing in the locality, as determined by or adopted (subsequent to a determination under applicable State or local law) by the Secretary of HUD, to all architects, technical engineers, draftsmen, and technicians. These wage rates are published on the Internet at the following web site address:

<http://www.hud.gov/local/shared/working/localpo/xolr.cfm?state=wa>

### **E.1.17 Non-applicability of Fair Housing Requirements in Indian Housing Authority Contracts**

[Inapplicable].

### **E.1.18 Prohibition Against Liens**

The Design Professional is prohibited from placing a lien on the Owner's property. This prohibition shall be placed in all Design Professional subcontracts.

## **Article F: Other Owner Requirements (if any)**

*[If there are any HOPE VI or Choice Neighborhoods Implementation (CNI) funds included in this Contract, leave Sub-section F in. If no HOPE VI or CNI funds, this Sub-section F. must be deleted.]*

### **F.1. Certification and Assurances Form:**

The Design Professional shall obtain and submit to SHA a completed and signed Certifications and Assurances Form for itself and for each sub-consultant utilized on the Contract. Such form shall be submitted to SHA before work is performed by any sub-consultant.

### **F.2. Certifications and Representations of Offerors Form:**

The Consultant shall obtain and submit to SHA a completed and signed Certifications and Representations of Offerors form hud5369c for itself. Such form shall be submitted to SHA before work is performed by the Consultant.

## **Article G: Performance Evaluation**

The Design Professional acknowledges that SHA will evaluate its performance under and pursuant to this Contract. The purpose of such evaluations includes, but is not limited to, determining whether or not the Design Professional and its subconsultant(s) responsibly performed their contractual obligations and whether or not the best interests of SHA were promoted thereby.

SHA will provide a copy of any such performance evaluations to the Design Professional, as soon as practicable after completion of such evaluation, but no later than thirty days after completion of the contract.

The Design Professional may rebut results of their performance evaluations within thirty (30) days of receipt of the completed evaluation report by submitting a written request for review with the SHA Project Manager to attempt to reach mutual understanding. Any such request must include the reasons for such request and documentation necessary to substantiate their claims that initial performance evaluations were inappropriate or otherwise in error. A response will be provided to the Design Professional within thirty (30) days unless notified in writing that additional time will be required.

The Design Professional may file a protest to SHA's Contracting Manager if it is not satisfied with the Department's response. The protest shall be filed within ten (10) days of receipt of the department's response and shall be mailed to the attention of SHA Contracting Manager, P.O. Box 19028, Seattle, WA 98109. The Contracting Manager will review the matter and provide a response to the Design Professional within thirty (30) days of receipt of the protest. If additional time is warranted for the review, the Design Professional shall be notified in writing.

The Design Professional Evaluation document will be available to SHA staff as evaluation reference material for other SHA solicitations for up to five years after the document has been finalized.

(Continue on additional pages as necessary)

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IN WITNESS WHEREOF, the parties hereto have executed this Contract by having their representatives affix their signatures below.

**Design Professional**

**Owner**

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(Firm)

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**Seattle Housing Authority**

(Housing Authority)

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(Signature)

(Date)

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(Signature)

(Date)

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(Print Name)

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(Print Name)

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(Print Title)

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(Print Title)