

construction.

**§ 9.2.3** When the Control Estimate is acceptable to the Owner, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

**§ 9.2.4** The Design-Builder shall develop and implement a detailed system of cost control that will provide the Owner with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Design-Builder's first Application for Payment and shall be revised and submitted with each Application for Payment.

**§ 9.2.5** The Owner shall authorize the Design-Builder to prepare revisions to the Design-Build Documents that incorporate the agreed-upon assumptions contained in the Control Estimate. Based upon the Owner's authorization, the Design-Builder shall revise the Design-Build Documents to incorporate the agreed-upon assumptions contained in the Control Estimate.

### **§ 9.3 Applications for Payment**

**§ 9.3.1** At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The Application for Payment shall be notarized, if required, and supported by all data substantiating the Design-Builder's right to payment that the Owner requires, such as copies of requisitions, and releases and waiver of liens from the Architect, Consultants, Subcontractors, and suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

**§ 9.3.1.1** As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders. As provided in Section 2.1, compensation for Work prior to execution of the Design-Build Amendment may include payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, a Consultant, a Subcontractor, or a supplier, unless such Work has been performed by others whom the Design-Builder intends to pay.

**§ 9.3.2** Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

**§ 9.3.3** The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Design-Builder, Architect, Consultants, Subcontractors, suppliers, or any other persons or entities that provided labor, materials, and equipment relating to the Work.

### **§ 9.4 Certificates for Payment**

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, either (1) issue to the Design-Builder a Certificate for Payment in the full amount of the Application for Payment; (2) issue to the Design-Builder a Certificate for Payment for such amount the Owner determines is properly due, and notify the Design-Builder of the Owner's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Design-Builder of the Owner's reason for withholding certification in whole as provided in Section 9.5.1.

### **§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect