



FACILITIES

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UNIVERSITY *of* WASHINGTON

## **GENERAL CONDITIONS BETWEEN OWNER AND DESIGN-BUILDER**

# TABLE OF CONTENTS

Article	Name	Page
<u>Article 1</u>	General .....	1
<u>Article 2</u>	Design-Builder's Services and Responsibilities .....	4
<u>Article 3</u>	Owner's Services and Responsibilities .....	12
<u>Article 4</u>	Hazardous Conditions and Differing Site Conditions .....	13
<u>Article 5</u>	Insurance and Bonds .....	14
<u>Article 6</u>	Payment.....	14
<u>Article 7</u>	Indemnification.....	17
<u>Article 8</u>	Time.....	18
<u>Article 9</u>	Changes to the GMP and Time .....	19
<u>Article 10</u>	Contract Adjustments and Disputes.....	20
<u>Article 11</u>	Stop Work and Termination for Cause.....	22
<u>Article 12</u>	Electronic Data .....	24
<u>Article 13</u>	Miscellaneous .....	25

# **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.

### **1.2 Definitions**

**1.2.1** *Agreement* refers to the executed Agreement between Owner and Design-Builder - Cost Plus Fee with for a Guaranteed Maximum Price.

**1.2.2** *Application for Payment* refers to the packet of information submitted by the Design-Builder requesting payment for services or expenses consistent with Article 6 of the General Conditions.

**1.2.3** *Basis of Design Documents* are as follows: The Basis of Design Documents are those documents specifically listed in, as applicable, the GMP Exhibit as being the "Basis of Design Documents."

**1.2.4** *Business Equity Enterprises* (BEE) are any entity licensed to do business in the State of Washington, including a corporation, partnership, sole proprietorship, or other legal entity that meets any of the following:

**Certified Business Enterprise (CBE):** *Any* business enterprise certified with the Washington State Office of Minority and Women's Business Enterprises.

**Lesbian/Gay/Bisexual/Transgender Business Enterprise (LGBTBE):** More than 50% owned and controlled by at least one person who is a member of the LGBT community.

**Minority Business Enterprise (MBE):** More than 50% owned and controlled by at least one person who is a member of one or more of the following minority groups:

- Asian Pacific American
- Black American
- Hispanic American
- Native American
- Subcontinent Asian American

**Minority Women's Business Enterprise (MWBE):** More than 50% owned and controlled by at least one woman who is a member of one or more of the above minority groups.

**Small Business Enterprise (SBE):** A business entity that:

- Can attest that it is owned and operated independently from all other businesses and
- Conforms to the U.S. Small Business Administration Size Standards of the North American Industry Classification System (NAICS) Codes in which it is to be engaged at the UW; or
- Is certified with the OMWBE.

**Veteran's Business Enterprise (VBE):** Certified with the Washington State Department of Veteran's Affairs (DVA)

**Women's Business Enterprise (WBE):** More than 50% owned and controlled by one or more women.

Prior to the execution of the contract for this project, the UW and the selected firm shall agree on an Inclusion Plan that will stipulate an aspirational BEE goal based upon the various scopes of the work and the anticipated services to be provided, as well as the strategies the Design-Builder will use to achieve optimal equitable BEE utilization on the project. BEE participation may be either as a design-builder, sub-consultant, sub-contractor, or supplier.

**1.2.5** *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by Design-Builder consistent with the Basis of Design Documents unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both Owner and Design-Builder, as part of the design review process contemplated by Section 2.3 of these General Conditions.

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

**1.2.7** *Design-Build Team* is comprised of Design-Builder, the Design Consultant, and key Trade Partners or Specialty Sub-consultants as identified by Design-Builder.

**1.2.8** *Design Consultant* is a qualified, licensed design professional who is employed or 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.

**1.2.9** *Facilities Design Standard* is intended for use by design and construction professionals to facilitate the design and construction of University facilities. These standards represent proven systems that satisfy the University's best practice requirements for efficient operation and maintenance. Any deviations to these standards shall be vetted through a documented resolution process.

**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 the events of war, floods, labor disputes, or government acts not caused by Design-Builder, earthquakes, epidemics, adverse weather conditions, and/or other acts of God, not reasonably anticipated.

**1.2.12** *General Conditions* refers to this document.

**1.2.13** *GMP Exhibit* means that exhibit attached to *Agreement between Owner and Design-Builder – Cost-Plus-Fee with a Guaranteed Maximum Price (GMP)*, which will have been agreed upon by Owner and Design-Builder prior to the execution of the Agreement.

**1.2.14** *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.

**1.2.15** *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances,

rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

**1.2.16** *Owner's Project Criteria* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria include the Facilities Design Guide and may include conceptual documents, design criteria, design performance specifications, design specifications, and LEED® or other sustainable design criteria and other Project-specific technical materials and requirements.

**1.2.17** *Preliminary Agreement* refers to the Agreement between the Owner and the Design Builder for the services in the first phase of the Project.

**1.2.18** *Procurement and Equity Plan* is the BEE tracking matrix provided by the Owner that is developed and maintained by the Design-Builder that details all the work of the Project into procurement and work packages, track estimated and sub-contracted work, BEE targets and actual spend by work package.

**1.2.19** *Project Executive Committee (PEC)* refers to the project oversight committee, made up of key Owner representatives that is the final decision making authority on the Project.

**1.2.20** *Project Management Team (PMT)* refers to the working team made up of key members of the Owner and Design-Builder team that is the working team for the Project. The PMT will organize and execute the work, tendering all decisions that cannot be made by consensus to the PEC.

**1.2.21** *Project Performance Criteria* refers to the final measures based on the Owner's Project Criteria, developed by the Design-Builder and agreed to by the PMT as the Project's key performance indicators.

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

**1.2.23** *Specialty Consultants* refers to the design and support professionals hired by the Design-Builder to subcontract on the Project; also a Subcontractor.

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

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

**1.2.26** *Substantial Completion* or *Substantially Complete* means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

**1.2.27** *Trade Partners* refers to the construction and skilled labor businesses and firms hired by the Design-Builder to perform Work on the Project; also a Subcontractor.

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

## **Article 2**

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

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

**2.1.1** 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.

**2.1.2** 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.

**2.1.3** Design-Builder shall provide Owner with a monthly update to the Work Plan and Issues Tracking Log, 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 GMP and within the Contract Time(s).

**2.1.4** Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.5 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall, at minimum, 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.

**2.1.5** The parties will meet periodically throughout the Project to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

#### **2.2 Design Services.**

**2.2.1** The Design-Builder shall perform design services as described in the Preliminary Agreement, Article 2, as agreed by the PMT. Design Services shall continue through all phases of the Project as necessary to complete the Work.

#### **2.3 Preconstruction Services.**

**2.3.1** Design-Builder shall schedule and conduct meetings with Owner on a weekly basis, or as otherwise agreed upon, to discuss such matters as procedures, progress, coordination, and

scheduling of the construction work. Design-Builder shall actively and cooperatively advise Owner on proposed site use and improvements, selection of materials, and building systems and equipment. Design-Builder shall also actively and collaboratively provide recommendations consistent with the Project Performance Criteria requirements to Owner regarding constructability; availability of materials and labor; time requirements for procurement, installation and construction; phasing and site work planning; sequencing and scheduling for procurement, installation and construction; traffic planning; factors related to construction quality, maintainability and durability; and factors related to construction cost including, but not limited to, costs of alternative designs and materials, preliminary budgets, life-cycle data, and possible cost reductions.

**2.3.2** Design-Builder shall work with Owner to incorporate into the project deliverables, recommendations on constructability, means, and/or methods that may reduce cost, save time, improve quality, reduce risk, and/or improve the overall process of Project delivery. A primary objective of these efforts will be to ensure that the final Cost of the Work does not exceed the GMP and the Project is completed on time.

**2.3.3** Design-Builder shall perform site investigations, including but not limited to utility locates, to assist in development of the design and construction planning. Any investigations of hidden or subsurface conditions have been made only for purposes of developing the RFQ/P. The results of these investigations are available for the convenience of Design-Builder but they are not Contract Documents. There is no guarantee, express or implied, that the conditions indicated are representative of those existing throughout the site or that unforeseen developments may not occur. Design-Builder is solely responsible for conducting their own investigations and extrapolating beyond the testing location, including each individual boring, test pit or other location that Design-Builder believes necessary for design or construction.

**2.3.4** Design-Builder may provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. Design-Builder shall take into consideration occupancy needs, cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

**2.3.5** Design-Builder shall maintain the Procurement and Equity Plan and present to the Owner updates at least monthly, and the schedules for long lead items. Design-Builder shall expedite and coordinate the ordering and delivery of long lead materials. If Owner agrees to procure any items prior to the establishment of the GMP, such items will be identified in the Contract Documents and Owner will assign contracts for these items to Design-Builder. Thereafter, Design-Builder shall accept responsibility for them.

**2.3.6** The PMT will work on cost estimates throughout the Project, which may occur in phases as the design is completed, as determined by the PMT, the Design-Builder will prepare detailed cost estimates following completion of design-development documents, when Construction Documents are ninety percent (90%) complete. Estimates will include increasing detail and refinement and allow for the further development of the design. Design-Builder will also prepare other necessary cost studies, comparative estimates, and comparative schedules to evaluate alternatives and options.

**2.3.7** Owner, Design-Builder, Trade Partners and Specialty Sub-consultants should include target value best practices through all phases of the Project and prior to completion of the design. Changes may be proposed to the design as a result of these practices. The PMT will review all value options. At the completion of its review(s), Design-Builder will provide Owner with a formal record of decisions made.

**2.3.8** Throughout the Project, Owner and Design-Builder shall mutually agree on a schedule for Design-Builder to deliver submittals for Owner review and comment. Owner shall have at least fourteen (14) days to review submittals unless otherwise agreed. Design-Builder shall perform no portion of the construction Work for which the Contract Documents require submittals until Owner has accepted and taken action on each required submittal in accordance with the procedure set

forth in the Contract Documents. However, submittals are not Contract Documents. Their purpose is to demonstrate for those portions of the Work for which submittals are required the way that Design-Builder proposes to conform to the Contract Documents. Review and acceptance of submittals by Owner is subject to the limitations of the Contract Documents and shall not constitute an approval of Design-Builder's means and methods or a waiver or modification of any requirement of the Contract Documents. Design-Builder shall resolve all Owner submittal review comments prior to commencement of the Work.

**2.3.9** Design-Builder shall perform no construction Work prior to Owner's review and concurrence of Design-Builder's Construction Documents along with the Procurement and Equity Plan. Review and concurrence of Construction Documents by Owner is subject to the limitations of the Contract Documents and shall not constitute an approval of Design-Builder's means and methods or a waiver or modification of any requirement of the Contract Documents.

## **2.4 Legal Requirements.**

**2.4.1** 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.

**2.4.2** The GMP and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, or if a GMP is established after the date of the Agreement, the date the parties agree upon the GMP. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

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

**2.5.1** Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Trade Partners and Specialty Sub-consultants, 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.

**2.5.2** 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.

**2.5.3** Design-Builder shall employ only Subcontractors who are licensed and skilled to perform the Work consistent with their trade, industry best practices, and Contract Documents. Owner reserves the right to approve and firm to the Project and object to Design-Builder's selection.

**2.5.4** 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.

**2.6.5** 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.

**2.6.6** 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.

**2.6.7** Materials shall conform to the manufacturer's standards in effect at the date of execution of the Contract Documents and shall be installed in strict accordance with the manufacturer's instructions, specifications and directions. Design-Builder shall, if required in writing by Owner, provide satisfactory evidence regarding the kind and quality of any materials identifying thereon the source, and warranting their quality and compliance with the Contract Documents.

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

**2.7.1** 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 their Project Safety Plan 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.

**2.7.2** 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.

**2.7.3** Design-Builder's responsibility for safety under this Section 2.7 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

## **2.8 Design-Builder's Warranty.**

**2.8.1** 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, performed in a skillful and workmanlike manner, 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 2.8 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

## **2.9 Correction of Non-Conforming Work.**

**2.9.1** 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 2.8 hereof, within a period

of one year from the date of Substantial Completion of the entire Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

**2.9.2** 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.

**2.9.3** The one-year period referenced in Section 2.9.1 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 nor is the one-year period any limitation on Design-Builder's Warranty under Section 2.8.

## **2.10 Apprentice Utilization Requirements**

**2.10.1** As required by RCW 49.04 the Design-Builder shall ensure that at least 15% of the total construction labor hours utilized on the project are performed by apprentices registered with the Washington State Apprenticeship and Training Council.

**2.10.1.1** Total labor hours include additional hours worked as a result of change orders.

**2.10.1.2** Total labor hours exclude hours worked by foremen, superintendents, supervisors, owners, and workers who are not subject to prevailing wage requirements. However, total labor hours shall include the hours worked by supervisors, foremen, and superintendents if it is determined they are subject to prevailing wage requirements pursuant to Washington Administrative Code (WAC) 296-127-015.

**2.10.1.3** Total labor hours include all hours worked by Design-Builder and all subcontractors on the Project.

**2.10.1.4** The Design-Builder shall meet or exceed the apprentice utilization requirements of the Contract Documents on all labor hours on the Project. The Owner has determined a monetary incentive of \$ [REDACTED] for meeting the goals, and a monetary penalty of \$ [REDACTED] for not meeting the goals.

**2.10.2** Design-Builder shall prepare an Apprentice Utilization Plan as part of the Procurement and Equity Plan.

**2.10.3** Design-Builder shall include the apprentice utilization requirements of this section in all subcontracts executed for the Project.

**2.10.4** If, during the term of the Agreement, Design-Builder determines that it will be unable to meet the percentage utilization requirement in Paragraph 1, above, Design-Builder may make a written request to Owner to reduce the required percentage. The request, at a minimum shall include documentation of:

**2.10.4.1** Design-Builder's good faith efforts to use registered apprentices; and/or

**2.10.4.2** The lack of availability of registered apprentices; and/or

**2.10.4.3** A disproportionately high ratio of material costs to labor hours, which makes infeasible the required minimum level of apprentice participation.

**2.10.5** Owner shall evaluate the request, and if appropriate, a change order shall be prepared by Owner reducing the utilization requirement. Owner reserves the right to ask for additional information or supporting documentation.

**2.10.6** With its monthly Application for Payment, Design-Builder shall submit the Apprentice and Journey Level Worker Utilization Report on the form provided by Owner. Owner reserves the right to request certified payrolls or other such reporting documentation electronically.

## **2.11 Business Equity Requirements**

### **2.11.1 General Requirements**

The University of Washington is committed to providing optimal opportunity for participation in contracting by Business Equity Enterprises (BEE). The University of Washington defines a Business Equity Enterprise (BEE) as “any entity licensed to do business in the State of Washington, including a corporation, partnership, sole proprietorship, or other legal entity that meets any of the following:

**Certified Business Enterprise (CBE):** Any business enterprise certified with the Washington State Office of Minority and Women’s Business Enterprises. OMWBE website address: <http://www.omwbe.wa.gov/biznetwas/>, or by contacting OMWBE at (360) 753-9693, 406 South Water, P.O. Box 41160, Olympia, Washington 98504-4611.

**Lesbian/Gay/Bisexual/Transgender Business Enterprise (LGBTBE):** More than 50% owned and controlled by at least one person who is a member of the LGBT community.

**Minority Business Enterprise (MBE):** More than 50% owned and controlled by at least one person who is a member of one or more of the following minority groups:

- Asian Pacific American
- Black American
- Hispanic American
- Native American
- Subcontinent Asian American

**Minority Women’s Business Enterprise (MWBE):** More than 50% owned and controlled by at least one woman who is a member of one or more of the above minority groups.

**Small Business Enterprise (SBE):** A business entity that:

- Can attest that it is owned and operated independently from all other businesses and
- Conforms to the U.S. Small Business Administration Size Standards of the North American Industry Classification System (NAICS) Codes in which it is to be engaged at the UW; or
- Is certified with the OMWBE.

**Veteran’s Business Enterprise (VBE):** Certified with the Washington State Department of Veteran’s Affairs (DVA)

**Women’s Business Enterprise (WBE):** More than 50% owned and controlled by one or more women.

The University of Washington has determined that an overall aspirational goal of 20% Business Equity Enterprise (BEE) utilization, inclusive of 15% minority and women-owned business utilization, is practicable and attainable on this construction project; that goal is negotiable,

however, based upon the specialized nature of the work and the relative availability of BEE to perform the specific work scopes identified in this project. The University of Washington welcomes the participation of all BEE, irrespective of gross revenues, including those that are self-designated and those that are state (OMWBE) certified. Those businesses that wish to apply for OMWBE certification should access the following: [omwbe.wa.gov/certification](http://omwbe.wa.gov/certification).

Prior to the execution of the contract for this project, the UW and the selected firm shall agree on an Inclusion Plan that will stipulate an aspirational BEE goal based upon the various scopes of the work and the anticipated services to be provided, as well as the strategies the Design-Builder will use to achieve optimal equitable BEE utilization on the project. BEE participation may be either as a design-builder, sub-consultant, sub-contractor, or supplier. The Inclusion Plan is then tracked and implemented through the Procurement and Equity Plan.

Design-Builder shall comply with the following requirements: In accordance with Chapter 39.19 RCW, it is the policy of the State of Washington to provide the maximum practicable opportunity for increased participation by minority and women-owned and controlled businesses in public works.

## **2.11.2 Affirmative Efforts**

### **2.11.2.1 Design-Builder shall:**

- (a) Breakdown all the Work of the Project into packages that reflects the capabilities and availability in the market of targeted Trade Partners, Specialty Consultants, Service Providers, and Suppliers, regardless of their BEE status.
- (b) Provide all firms that express interest in participating on the Project with adequate and timely information about solicitations, plans, specifications, and requirements of the Agreement.
- (c) Provide the Owner's Business Equity team with procurement schedules, communication materials, and sample solicitation packages at least 3 weeks prior to distributing for advertisement and seek feedback from the Business Equity team.
- (d) Track all interested parties and "bid pools" by package.
- (e) Track the strategies implemented and their success as stated in their Inclusion Plan.
- (f) Have all firms and businesses participating on the Project, at any tier, submit the "declaration form" provided by the Owner.

### **2.11.2.2 Design-Builder is further encouraged to:**

- (a) Look for opportunities to competitively, but alternatively, select sub-consultants, service providers, and subcontractors or similar through qualifications-based selections or assignments before traditionally bidding packages.
- (b) Meet with University personnel to assess insurance requirements by package and develop requirements commensurate with the size and risk of packages.
- (c) Reduce bonding requirements where practicable.

- (d) Utilize the services of available women/minority community organizations, minority contractor groups, and other organizations that provide assistance in recruitment and placement of BEE and other small business.

### **2.11.3 Reporting Requirements**

**2.11.3.1** Prior to Application of First Progress Payment the Design-Builder shall submit their Procurement and Equity Plan on the Owner provided form ("matrix").

**2.11.3.2** Prior to Final Acceptance, Design-Builder shall submit a completed Procurement and Equity Plan that includes final utilization and spend data.

**2.11.3.3** With the monthly Payment Application, Design-Builder shall submit a their updated Procurement and Equity Plan along with the names and amounts paid to subcontractors, sub-consultants, service providers, and suppliers it has utilized during the preceding month.

**2.11.3.4** The Owner reserves the right to request the monthly reporting to be done electronically through an online portal of the Owner's choosing.

### **2.11.4 Non-Discrimination**

Design-Builder shall not create barriers to open and fair opportunities to all businesses, including BEEs, to participate in University contracts and to obtain or compete for contracts and subcontracts as sources of suppliers, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, Design-Builder shall not discriminate on the basis of race, color, creed, religion, sex, age, nationality, marital status, or the presence of any mental or physical disability in an otherwise qualified disabled person.

### **2.11.5 Sanctions and Enforcement**

The Owner reserves the right to withhold payments should it determine the Design-Builder is failing to apply their Inclusion Plan or follow the intent of affirmative efforts. Failure to comply with any of the mandatory requirements of this part of the Agreement may subject Design-Builder to sanctions or damages as provided for by RCW 39.19.090, or by other applicable laws.

## **2.12 Prevailing Wages.**

**2.12.1** Pursuant to RCW 39.12, "Prevailing Wages on Public Works," no worker, laborer, or mechanic employed in the performance of any part of the Work shall be paid less than the "prevailing rate of wage" (in effect as of the date final submissions of the Proposal are due) as determined by the Industrial Statistician of the Department of Labor and Industries. The schedule of the prevailing wage rates for the locality or localities where the Project will be performed is attached to the executed contract and made a part of the Contract Documents by reference as though fully set forth herein; if not attached, then the applicable prevailing wages are determined as of the date proposals were due for King County and are available at <http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp>. A copy is available for review at Owner's office, and will be mailed upon request. Design-Builder shall also keep a paper copy at the Project site. To the extent that there is any discrepancy between the attached or provided schedule of prevailing wage rates and the published rates applicable under WAC 296-127-011, or if no schedule is attached, the applicable published rates shall apply with no increase in the GMP. It is Design-Builder's responsibility to ensure that the correct prevailing wage rates are paid. Design-Builder shall provide Subcontractors with a schedule of the applicable prevailing wage rates. Questions relating to prevailing wage data should be addressed to the Industrial Statistician upon request.

**2.12.2** Pursuant to RCW 39.12.060, in case any dispute arises as to the prevailing rates of wages

for work of a similar nature, and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the director of the Department of Labor and Industries, and his or her decision shall be final, conclusive and binding on all parties to the dispute.

**2.12.3** Design-Builder shall defend, indemnify and hold Owner harmless, including attorneys' fees, from any violation or alleged violation by Design-Builder or any Subcontractor of any tier of Washington's Prevailing Wages Act or Chapter 51 RCW ("Industrial Insurance"), including without limitation RCW 51.12.050.

## **Article 3**

### **Owner's Services and Responsibilities**

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

**3.1.1** To the extent they are available and already in existence, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely upon in performing the Work:

**3.1.1.1** Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

**3.1.1.2** Geotechnical studies describing subsurface conditions, and other surveys describing conditions at the Site;

**3.1.1.3** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;

**3.1.1.4** Record drawings of any existing structures at the Site; and

**3.1.1.5** Environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

**3.1.1.5** UW Facilities Design Standard.

**3.1.2** 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.

#### **3.2 Submittal Review.**

**3.2.1** Owner shall review and take action on Design-Builder's submittals, including but not limited to design documents prepared by Design-Builder, but only for the limited purpose of checking for conformance with information provided and concepts expressed in the Contract Documents. Owner's action shall be taken with reasonable promptness. Review of submittals is not conducted for the purpose of determining the accuracy and completeness of details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of Design-Builder. Owner's review or acceptance shall not be deemed an approval of the Submittals or an agreement to modify the Contract Documents.

#### **3.3 Owner's Representative.**

**3.3.1** Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

### **3.4 Government Approvals and Permits.**

**3.4.1** In accordance with the Design-Builder prepared Permit Log, Owner shall obtain and pay for all zoning, zoning variances, and master use permits required for the design and construction of the Work, as may be required by regulatory agencies having jurisdictions over the Project. All other permits, government charges inspection fees, and licenses required to perform and complete the Work, including but not limited to the plan check fees, building permits, occupancy permit, as well as any renewals and penalties, are intended to be the responsibility of Design-Builder. Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility. All responsibilities will be tracked in the Permit Log.

### **3.5 Owner's Separate Contractors.**

**3.6.1** Owner shall require its separate contractors, if any, to cooperate with Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

## **Article 4**

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

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

**4.1.1** 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. 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, 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** Design-Builder will be entitled, in accordance with these General Conditions, to an adjustment in its GMP 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 attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site for which Owner is responsible and for which the removal or remediation was not the responsibility of Design-Builder.

**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.

#### **4.2 Differing Site Conditions.**

**4.2.1** If Design-Builder encounters conditions at the site which are subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then Design Builder shall give written notice to Owner, as described in Article 10. Conditions shall not be disturbed prior to such notice.

**4.2.2** If such conditions differ materially and cause a change in Design Builder's cost of, or time required for, performance of any part of the Work, the Design Builder may be entitled to an equitable adjustment in the Contract Time or Contract Sum, or both, provided a request for equitable adjustment is made in accordance with Article 10.

## **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 Contract Documents.

**5.1.2** Design-Builder's insurance policies shall not contain any language that could compromise coverages because of the design-build delivery of the Project.

**5.1.3** Other requirement are set forth in the Agreement.

#### **5.2 Owner's Property Insurance.** Requirements for Owner's Property Insurance are set forth in the Agreement.

#### **5.3 Bonds and Other Performance Security.** Requirements for Bonds and Security are set forth in the Agreement.

## **Article 6**

### **Payment**

#### **6.1 Schedule of Values.**

**6.1.1** Unless required by Owner upon execution of this Agreement, within ten (10) days of execution of the GMP Agreement, Design-Builder shall submit for Owner's review and approval a 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.

**6.1.2** Owner will timely review and approve the schedule of values so as not to delay the submission of Design-Builder's first application for payment. Owner and Design-Builder shall timely resolve any differences so as not to delay 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 2.1.5 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** The Application for Payment shall constitute Design-Builder's representation that the Work described herein has been performed consistent with the Contract Documents, that all sub-consultants, subcontractors, and suppliers have been paid, less applicable earned retainage, as their interests appeared in the last preceding Application for Payment, 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.

**6.2.4** Pursuant to Chapter RCW 60.28, Owner will retain five percent (5%) of each approved Application for Payment to be retained as a trust fund for the protection and payment of the claims of any person arising under the contract and the state with respect to taxes imposed pursuant to Titles 50, 51, and 82 RCW which may be due from Design-Builder. The moneys reserved may, at the option of Design-Builder, be retained in accordance with the provisions of Chapter 60.28 RCW. Design-Builder will indicate to the Owner, their retainage option, prior to the execution of the Preliminary Agreement and the Agreement.

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

## **6.3 Withholding of Payments.**

**6.3.1** On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts 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 under the Contract Documents, it will notify Design-Builder in writing 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.

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

**6.4.1** Design-Builder will pay Trade Partners, Specialty Consultants and Sub-contractors, suppliers, or similar, no later than 10 days after receiving payment from the Owner, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will include this same provision for payment on 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.

Design-Builder, their Trade Partner or Specialty Sub-consultants, shall not withhold any payment from any firm, at any tier, without first providing information as is required under 6.4.1 above.

#### **6.5 Substantial Completion.**

**6.5.1** 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.

**6.5.2** 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 6.5.1 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 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 for 1 year after Substantial Completion.

**6.7.3** Deficiencies in the Work discovered after Substantial Completion, prior to the end of the Warranty Period, 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 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.

## **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 applicable 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 required by Owner and not offered 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 written direction, an exemption for all or part of the Work is claimed for taxes, 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** Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's 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 mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien or retainage and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

**7.4 Design-Builder's General Indemnification.** To the maximum extent permitted by law, Design-Builder shall defend, indemnify, and hold Owner harmless from and against all claims, demands, losses, damages, or costs, including but not limited to damages arising out of bodily injury or death to persons and damage to property, caused by or resulting from:

**7.4.1** The sole negligence of Design-Builder or any of its Design Consultants or Subcontractors;

**7.4.2** The concurrent negligence of Design-Builder, or any Design Consultant or Subcontractor, but only to the extent of the negligence of Design-Builder or such Design Consultant or Subcontractor; and

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

**7.4.4** In any action against Owner and any other entity indemnified in accordance with this section, by any employee of Design-Builder, its Subcontractors, Sub-subcontractors, agents, or anyone directly or indirectly employed by any of them, the indemnification obligation of this section shall not be limited by a limit on the amount or type of damages, compensation, or benefits payable by or for Design-Builder or any Subcontractor under RCW Title 51, the Industrial Insurance Act, or any other employee benefit acts. In addition, Design-Builder specifically waives immunity as to Owner and A/E only, in accordance with RCW Title 51.

## **Article 8**

### **Time**

**8.1 Obligation to Achieve the Contract Time.**

**8.1.1** Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time in accordance with Article 5 of the Agreement and the GMP Amendment.

**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.

## **Article 9**

### **Changes to the GMP 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 GMP, if any; and

**9.1.1.3** The extent of the adjustment to the Contract Time, if any.

**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.

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

#### **9.2 Changes in the Work.**

**9.2.1** A change order proposal is a written order prepared and signed by Owner directing a change in the Work prior to agreement on an adjustment in the GMP 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.

**9.2.3** If Owner and Design-Builder are unable to reach agreement, Design-Builder shall keep detailed records of its costs related to the Work Change Directive and, in the absence of mutual agreement, the parties shall use the definition of the Cost of the Work to determine Design-Builder's costs.

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

**9.3.1** Minor changes are changes that cost \$10,000 or less. Minor Changes in the Work do not involve an adjustment in the GMP and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall inform Owner, in writing, in advance of the execution of the change, of any such changes and record such changes on the record documents maintained by Design-Builder.

#### **9.4 Amendments.**

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

**9.4.1.1** Unit prices as 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; or

**9.4.1.3** Costs, fees and any other markups as defined as a Cost of the Work and the Fee in the Agreement.

**9.4.2** 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.

## **9.5 Emergencies.**

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

# **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 of the basis for 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. Written notice of Design-Builder shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief; otherwise the right to pursue a later Claim is waived. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

### **10.2 Dispute Avoidance and Resolution.**

**10.2.1** Design-Builder and Owner are 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 directly within twenty-one (21) days of the written notice required under Section 10.1 unless Owner and Design-Builder mutually agree otherwise.

**10.2.3** If, after direct discussions, the parties determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, Owner and Design-Builder may jointly engage a third party neutral who shall assist in addressing and resolving the dispute. Owner and Design-Builder shall share equally any costs related to engagement of the third party neutral.

**10.2.4** If a dispute or disagreement cannot be resolved through third party neutral efforts, then a Claim can be submitted. Senior representatives will meet as soon as conveniently possible, but in no case later than twenty-one (21) days after submission of the Claim. No fewer than five (5) days prior to the meeting, Owner and Design-Builder will exchange information relevant to the Claim.

### **10.3 Mediation.**

**10.3.1** Any Claim that has not been resolved in accordance with the procedures set forth in Section 10.2, will be subject to non-binding mediation following Substantial Completion. A request for mediation will be filed in writing with the other party to the Contract, and the parties will promptly attempt to mutually agree upon a mediator. If the parties have not reached agreement on a mediator within thirty (30) days of the request, either party may file the request with the American Arbitration Association or such other alternative dispute resolution service to which the parties agree, with a copy to the other party, and the mediation will be administered by the American Arbitration Association (or other agreed service) in accordance with its Construction Industry Mediation Procedures currently in effect as of the Effective Date. Mediation will proceed in advance of binding dispute resolution proceedings, which will be stayed pending the completion of mediation. The parties to the mediation will share the mediator's fee and any filing fees equally. The mediation will be held in Seattle, Washington, unless another location is mutually agreed upon. Agreements reached in mediation will be enforceable as settlement agreements in any court having jurisdiction thereof. Representatives of each party with decision-making authority must attend the mediation session with authority to settle any Claim.

### **10.4 Litigation.**

**10.4.1** Any Claim that has not been resolved in accordance with the procedures set forth in Sections 10.1, 10.2, and 10.3 will be decided by litigation, unless mutually agreed in writing otherwise. All unresolved Claims of Design-Builder will be waived and released unless Design-Builder has complied with the time limits of the Contract Documents, and litigation is served and filed no later than one hundred twenty (120) days after the Substantial Completion date of the entire Work. This requirement cannot be waived except by an explicit written waiver signed by Owner and Design-Builder. The pendency of mediation will toll these deadlines until the earlier of the mediator providing written notice to the parties of impasse or thirty (30) days after the last mediation session ended with no further sessions scheduled by the mediator. Design-Builder is barred from offering in litigation any evidence of facts or legal theories that Design-Builder did not offer or assert in the written Claim provided prior to the mediation.

### **10.5 Duty to Continue Performance.**

**10.5.1** 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.

### **10.6 Consequential Damages.**

**10.6.1** Notwithstanding Anything Herein To The Contrary (Except As Set Forth In Section 10.6.2 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.

**10.6.2** In addition, this limitation shall not affect either party's duty to indemnify the other with respect to claims by third parties arising out of bodily injury or property damage, or the insurance requirements of the Agreement.

## **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 GMP 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 which is not caused by the acts of the Design Builder or its agents, Consultants or Subcontractors.

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

**11.2.1** If Design-Builder materially 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 identified 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 for 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. At such time, if the unpaid balance of the GMP exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, 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 the GMP, 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 re-procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.6 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 Terminate for Cause.**

**11.3.1** 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:

**11.3.1.1** 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.

**11.3.1.2** 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.

**11.3.1.3** Owner's failure to cure the problems set forth in Section 11.4.1.2 above after Design-Builder has stopped the Work.

**11.3.2** Upon the occurrence of an event set forth in Section 11.3.1 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 for 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.

### **11.4 Bankruptcy of Design-Builder.**

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

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

**11.4.1.2** Design-Builder 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 Design-Builder fails to comply with its foregoing obligations, Owner shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to Owner under this Article 11.

**11.4.2** The rights and remedies under Section 11.4.1 above shall not be deemed to limit the ability of Owner to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code.

## **Article 12**

### **Electronic Data**

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

**12.1.1** The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among 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 Compliance with Washington Law.**

**13.1.1** Design-Builder shall abide by the provisions of all applicable Washington statutes and regulations. Although a number of statutes are referenced in the Contract Documents, these references are not meant to be a complete list and should not be relied upon as such.

**13.1.2** Pursuant to RCW 39.06, "Registration, Licensing of Contractors," Design-Builder shall be registered and licensed as required by the laws of the State of Washington, including but not limited to RCW 18.27. Design-Builder shall also have a current State unified business identifier number; have industrial insurance coverage for Design-Builder's employees working in Washington as required in Title 51 RCW; have necessary licenses to perform the design work required by the Contract Documents; have an employment security department number as required in Title 50 RCW; have a State excise tax registration number as required in Title 82 RCW, and; not be disqualified from bidding on any public works contract under RCW 39.06.010 (unregistered or unlicensed contractors) or RCW 39.12.065(3) (prevailing wage violations).

#### **13.2 Assignment.**

**13.2.1** Design-Builder shall not assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents without the written consent of Owner.

#### **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 State of Washington. Venue shall be in the King County Superior Court.

#### **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, 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.

**13.10 Information to CPARB.**

As required by RCW 39.10.320(1)(e), Design-Builder, Subcontractors of any tier, and the Design Consultant shall submit Project information required by the Capital Projects Advisory Review Board.

**13.11 Right to Audit**

The Owner reserves the right to request, up to 6 years after project completion, and audit all records, documents, plans, drawings, estimates, or similar created to perform the Work of the Project. Records may be subject to the Public Disclosure Act. It will be at the Owner's discretion the audit process that will be used. Design-Builder shall provide the records requested within 10 working days, unless an alternative timeframe is agreed by the Parties.

**End of General Conditions**