

# **AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER - COST PLUS FEE WITH A GUARANTEED MAXIMUM PRICE**

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**University of Washington**

**Project Name**

**Project No.**

**Agreement Between  
Owner and Design-Builder - Cost Plus Fee with a  
Guaranteed Maximum Price**

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This **AGREEMENT** is made and entered into by and between the following parties, for Work and services in connection with the Project identified below. This Agreement shall be effective on the date last set forth on the signature page.

**OWNER:**

University of Washington  
UW Facilities | Project Delivery Group  
Box 352205  
Seattle, WA 98195

**DESIGN-BUILDER:**

*(Name and address)*

**PROJECT:**

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

## **Article 1**

### **Scope of Work**

**1.1** Already having completed the design to the extent a Guaranteed Maximum Price can be established, the Design-Builder shall continue to perform all previously contracted services, including designing and constructing the Project as described in the Contract Documents, and begin the construction along with the provision of all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

**1.2** Design-Builder accepts the relationship of trust and confidence established by the Contract Documents and Agreements with Owner to cooperate with Owner and others involved with the Project and to exercise Design-Builder's best skill and judgment; to furnish efficient, professional and competent design services and construction administration, management and supervision with sufficient quantities of fully qualified, competent and experienced personnel; and to perform the Work in an expeditious and economical manner consistent with Owner's interests. The parties will endeavor to promote harmony, cooperation and mutual respect among Project participants to the fullest extent possible in order to further the success of the Project and to effect prompt and successful completion of the Project within the requirements of the Contract Documents.

**1.3** The Design-Builder will continue to maintain the Procurement and Equity Plan and update monthly, for the purpose of procuring Trade Contractors and Specialty Consultants necessary to perform the Work in accordance with the Contract Documents. Trade Contractors and Specialty Consultants should be engaged early in the Project to ensure a collaborative team environment which will contribute its best efforts for the complete development and delivery of the Project.

## **Article 2**

### **Contract Documents**

**2.1** The Contract Documents are comprised of the following:

**2.1.1** All written modifications, amendments, minor changes, and Change Orders to this Agreement issued in accordance with the General Conditions;

**2.1.2** Upon execution, the GMP Exhibit referenced in Section 6.6.2 herein;

**2.1.3** This Agreement, including all Attachments to the Agreement (not including the GMP Exhibit);

**2.1.4** The General Conditions; and

**2.1.5** Construction Documents, and/or other documents necessary to execute the Work, prepared and approved in accordance with Section 2.3 of the General Conditions.

## **Article 3**

### **Interpretation and Intent**

**3.1** This Agreement is authorized by and entered into in accordance with the design-build requirements of RCW 39.10, and shall be interpreted to be consistent with the requirements of those statutory provisions. Design-Builder and Owner, prior to execution of the Agreement (and again, at the time of execution of the GMP Exhibit), shall carefully review all the Contract Documents, including the various documents

comprising the Basis of Design Documents, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement and prior to execution of the GMP Exhibit.

**3.2** The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the GMP. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, or after execution of the GMP Exhibit, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof.

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

**3.4** The Contract Documents form the entire, complete, and integrated agreement between Owner and Design-Builder and supersedes prior negotiations, representations or agreements, either written or oral. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents. The Contract Documents shall not be construed to create a contractual relationship of any kind between any Persons other than Owner and Design-Builder.

## **Article 4**

### **Ownership of Work Product**

**4.1 Instruments of service.** The Drawings (including original Construction Documents), Specifications, materials, models, sketches, renderings, surveys, reports, and other documents, including those prepared as 3D electronic models, using CAD, and existing in other electronic formats, prepared or provided by Design-Builder are instruments of service intended for use solely with respect to the Project. Owner shall be permitted to retain copies, including reproducible and originally stamped copies, of all instruments of service, and is granted an unlimited and royalty free license to utilize instruments of service to communicate about the Project, expand the Project, build or complete the project in the case of a termination for any reason or if the parties do not agree to a Guaranteed Maximum Price, correct any deficiencies, make any renovations or repairs to the Project, or for future projects other than the construction of another building. Owner agrees to indemnify and hold Design-Builder harmless from any subsequent modification of the instruments of service by Owner and from Owner's use of the instruments of service on other projects not involving Design-Builder.

**4.2 Design-Builder to convey instruments of service to Owner.** Upon Owner's request if made during the Project or within five (5) years of Substantial Completion, Design-Builder shall be required to convey to Owner in whatever format Owner may designate instruments of service for the completion, use, updating, modernizing, and maintenance of the Project, conditioned upon Owner's agreement to indemnify and hold harmless Design-Builder as set forth above.

**4.3 Submission of instruments of service does not waive rights.** Submission or distribution of Design-Builder's instruments of service to meet official regulatory requirements or for similar purposes in connection with the Project shall not be construed as publication in derogation of any rights reserved in this Section.

## **Article 5**

### **Contract Time**

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

**5.2 Substantial Completion and Final Completion.**

**5.2.1** Substantial Completion of the entire Work shall be achieved no later than \_\_\_\_\_ (DATE) ("Scheduled Substantial Completion Date") unless otherwise stated in the GMP Exhibit.

**5.2.2** Interim milestones and/or Substantial Completion of identified portions of the Work ("Scheduled Interim Milestone Dates") shall be achieved as follows unless otherwise stated in the GMP Exhibit:

Interim Milestone: \_\_\_\_\_

**5.2.3** For a minimum of ninety (90) calendar days after Substantial Completion or until Final Completion is achieved, whichever is later, provide adequate qualified on-site staff that is authorized to act on behalf of the Design-Builder to coordinate and insure that any outstanding work items, Punch Lists, testing and commissioning are completed, at no additional cost to the Owner.

**5.2.4** Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable and within 45 Working days of Substantial Completion, unless otherwise agreed by the PMT. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 6.5 of the General Conditions.

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

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

## **Article 6**

### **Contract Price**

**6.1 Contract Price.**

**6.1.1** Owner shall pay Design-Builder for the work of this Agreement in accordance with Article 6 of the General Conditions a contract price ("Contract Price") equal to Design-Builder's Fee (as defined in Section 6.2 hereof) plus the Cost of the Work (as defined in Section 6.3 hereof), subject to the GMP established in Section 6.6 hereof and any adjustments made in accordance with the General Conditions. The Owner will pay Washington State Sales Tax (WSST) to the Design-Builder based on approved progress payments.

**6.2 Design-Builder's Fee.**

**6.2.1** Design-Builder's Fee shall be:

\_\_\_\_\_% . The Fee will be established based on the percentage fee provided by Design-Builder in response to Owner's request for proposals.

**6.2.2** Design-Builder's Fee will be adjusted as follows for any changes in the Work:

**6.2.2.1** For changes to the GMP, Design-Builder's Fee will be applied.

**6.2.2.2** For deductive changes, Design-Builder's Fee will not be reduced.

**6.3 Cost of the Work.** The term Cost of the Work shall mean costs actually incurred by Design-Builder in the performance of the Work. The Cost of the Work shall include only the following:

**6.3.1** Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site; provided, that the employees, their scope of work and costs for those employees with rates are set forth in an Attachment to this Agreement or the GMP Exhibit. Work continuing from the Preliminary Agreement under the Project Work Plan shall be reflected as such under the Cost of the Work.

**6.3.2** Travel and per diem expenses incurred per United States General Services Administration ("GSA") guidelines while traveling more than fifty (50) miles in connection with the Work with Owner's prior written approval. All travel must be approved by the PMT prior to each occurrence.

**6.3.3** Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants. Subcontractor and Design Consultant services will be compensated on a Cost-Plus Fee basis with a Guaranteed Maximum Price unless mutually agreed otherwise in writing.

**6.3.4** Costs incurred by Design-Builder in repairing or correcting damaged Work (including any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise its best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained.

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

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

**6.3.7** Costs of removal of debris and waste from the Site.

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

**6.3.9** Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work.

**6.3.10** Premiums for insurance and bonds required by this Agreement.

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

**6.3.12** Sales, use or similar taxes, (excluding income and B&O taxes) tariffs or duties incurred in the performance of the Work.

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

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

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

**6.3.16** Accounting and data processing costs related to the Work.

**6.3.17** Other costs reasonably incurred in the performance of the Work to the extent approved in writing by Owner.

#### **6.4 Allowance Items and Allowance Values.**

**6.4.1** Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the GMP Exhibit and are included within the GMP.

**6.4.2** Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values.

**6.4.3** No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner.

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

**6.4.5** Whenever the actual direct costs for an Allowance Item is more than or less than the stated Allowance Value, the GMP shall be adjusted accordingly by Change Order, subject to Section 6.4.4. The amount of the Change Order shall reflect the difference between actual direct costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

#### **6.5 Non-Reimbursable Costs.**

**6.5.1** The following shall not be deemed as costs of the Work as they are covered by Design-Builder's Fee or are otherwise at Design-Builder's risk:

**6.5.1.1** Compensation for Design-Builder's personnel not directly supporting the Project.

**6.5.1.2** Overhead and general expenses including B&O taxes, except as provided for in Section 6.3 hereof, or which may be recoverable for changes to the Work.

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

**6.5.1.4** If the parties have agreed on a GMP, costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

**6.5.1.5** Parking and daily commuting to the job site.

**6.6 The Guaranteed Maximum Price ("GMP").**

**6.6.1 GMP Established Upon Execution of this Agreement.**

**6.6.1.1** Design-Builder guarantees that it shall not exceed the GMP of \_\_\_\_\_Dollars (\$\_\_\_\_\_), excluding Washington State Sales Tax. Documents used as a basis for the GMP shall be identified in the GMP Exhibit. Design-Builder agrees that it will be responsible for paying all costs of completing the Work that exceed the GMP, as adjusted in accordance with the Contract Documents, without reimbursement by Owner.

**6.6.1.2** The GMP includes a Contingency in the amount of \_\_\_\_\_Dollars (\$\_\_\_\_\_) which is available for Design-Builder's use for unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration; (c) escalation of materials; (d) correction of damaged or nonconforming Work or design errors or omissions, however caused; (e) Subcontractor defaults; or (f) those events under Section 8.2.1 of the General Conditions that result in an extension of the Contract Time but do not result in an increase in the GMP. The Contingency is not available for changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents. Design-Builder shall request all use of the Contingency, and shall provide Owner as part of the monthly status report required by Section 2.1.3 of the General Conditions an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. Design-Builder agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency. Any funds remaining in the Contingency Account shall be returned to the Owner and will not be included in the Savings described in Section 6.6.3.

**6.6.2 GMP Exhibit.**

**6.6.2.1 GMP Exhibit.** The GMP Exhibit shall include the following, unless the parties mutually agree otherwise:

**6.6.2.1.1** The GMP, which shall be the sum of:

- i. Design-Builder's Fee as defined in Section 6.2.1 hereof;
- ii. The estimated Cost of the Work as defined in Section 6.3 hereof, inclusive of any Design-Builder's Contingency as defined in Section 6.6.1.2 hereof; and

**6.6.2.1.2** The Basis of Design Documents, which may include, by way of example, Owner's Project Criteria, which are set forth in detail and are attached to the GMP Exhibit;

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

**6.6.2.1.4** The Scheduled Substantial Completion Date upon which the proposed GMP is based, to the extent said date has not already been established under Section 5.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based;

**6.6.2.1.5** The updated Procurement and Equity Plan;

**6.6.2.1.6** If applicable, a list of Allowance Items, Allowance Values, and a statement of their basis;

**6.6.2.1.7** If applicable, a schedule of alternate prices;

**6.6.2.1.8** If applicable, a schedule of unit prices; and

**6.6.2.1.9** If applicable, a statement of Additional Services which may be performed but which are not included in the GMP and which, if performed, shall be the basis for an increase in the GMP and/or Contract Time(s).

### **6.6.3 Savings.**

**6.6.3.1** If the sum of the actual Cost of the Work and Design-Builder's Fee is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall be shared as follows:

Fifty percent (50%) to Design-Builder and Fifty percent (50%) to Owner.

**6.6.3.2** Savings shall be calculated and paid as part of Final Payment under Section 7.3 hereof, with the understanding that to the extent Design-Builder incurs costs after Final Completion which would have been payable to Design-Builder as a Cost of the Work, the parties shall recalculate the Savings in light of the costs so incurred, and Design-Builder shall be paid by Owner accordingly.

**6.6.3.3** In no event shall Design-Builder's allocation of the Savings exceed two percent (2%) of the GMP. Notwithstanding anything herein to the contrary, Design-Builder shall forfeit and waive any right or eligibility to receive a Savings bonus if it initiates or participates in any litigation against Owner seeking an increase in the GMP.

## **Article 7**

### **Procedure for Payment**

#### **7.1 Progress Payments.**

**7.1.1** Progress payments will be made monthly for work duly certified, approved, and performed during the calendar month preceding the Application.

**7.1.1.1 Draft Application.** On or about the 25<sup>th</sup> of each month, Design-Builder shall submit to Owner a report on the current progress of the Work as compared to Design-Builder's Construction Schedule, and a draft, itemized application for payment for work performed during the current calendar month on a form supplied or approved by Owner. This shall not constitute a payment request. Design-Builder and Owner shall confer regarding the current progress of the Work and the amount of payment to which Design-Builder is entitled. Owner may on occasion request Design-Builder to provide data substantiating

Design-Builder's right to payment, such as copies of requisitions from Subcontractors of any tier, and reflecting retainage as provided elsewhere in the Contract Documents.

**7.1.1.2 Payment Request.** After Design-Builder and Owner have met and conferred regarding the updated draft application, and Design-Builder has furnished all progress information required and all data requested by Owner under 7.1.1.1 above, Design-Builder shall submit to Owner on or before the tenth (10<sup>th</sup>) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment for Work completed during the previous month in accordance with Article 6 of the General Conditions on a form supplied or approved by Owner. Among other things, the Application shall state that prevailing wages have been paid in accordance with the pre-filed statements of intent to pay prevailing wages on file with Owner and that all payments due Subcontractors of any tier from Owner's payment the prior month have been made.

**7.1.1.3 Disputed Amounts.** If Design-Builder believes it is entitled to payment for Work performed during the prior calendar month in addition to the agreed-upon amount, Design-Builder may, also by the tenth (10<sup>th</sup>) day of the month, submit to Owner along with the approved payment request a separate written payment request specifying the exact additional amount due, the category in the Schedule of Values in which the payment is due, the specific Work for which the additional amount is due, and why the additional payment is due. Furthermore, Design-Builder and all Subcontractors shall file with Owner by the tenth day of the month certified copies of all payroll records relating to the additional amount due.

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

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

## **7.2 Retainage on Progress Payments.**

**7.2.1** Pursuant to Chapter RCW 60.28, and Article 6 of the General Conditions, 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.

**7.3 Final Payment.** Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment (less any amount the parties may have agreed to set aside for warranty work) within thirty (30) days after Owner's receipt of the Final Application for Payment, provided that:

(a) Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions.

(b) Owner shall have the right to withhold all amounts to which Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions.

**7.4 Interest.** Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, may bear interest as specified by RCW 39.76.

**7.5 Record Keeping and Finance Controls.** Design-Builder acknowledges that this Agreement is to be administered on an “open book” arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of six (6) years after Final Payment, Owner and Owner’s accountants shall be afforded access to, and the right to audit, including electronic audit \ Design-Builder’s records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of six (6) years after Final Payment. Such inspection shall take place at Design-Builder’s offices during normal business hours unless another location and time is agreed to by the parties. The provisions shall also apply to any cost-reimbursable subcontractors of any tier and to any subcontractors of any tier that assert a claim.

## **Article 8**

### **Termination for Convenience**

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

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

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

**8.1.3** Overhead and profit up to but no more than seven percent (7%) on the sum of items 8.1.1 and 8.1.2 above.

**8.2** If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner’s rights to use the Work Product shall be as set forth in Section 4.1 hereof.

## **Article 9**

### **Representatives of the Parties**

#### **9.1 Owner’s Representatives.**

**9.1.1** Owner designates the individual listed below as its Senior Representative (“Owner Senior Representative”), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2 of the General Conditions:

Director  
Title  
University of Washington  
University Facilities Building  
Box 352205  
Seattle, WA 98195-2205  
Phone  
[Email:](#)

**9.1.2** Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.3 of the General Conditions:

Name  
Project Manager  
University of Washington  
University Facilities Building  
Box 352205  
Seattle, WA 98195-2205  
Phone  
Email:

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

**9.2.1** Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2 of the General Conditions:

*(Identify individual's name, title, address and telephone numbers)*

**9.2.2** Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.2 of the General Conditions:

*(Identify individual's name, title, address and telephone numbers)*

# **Article 10**

## **Bonds and Insurance**

### **10.1 Design-Builders Insurance.**

Design-Builder shall carry the following insurance coverages from insurance carriers acceptable to Owner and which shall be rated no less than A- by A.M. Best. Design-Builder shall give prompt notice to Owner if any carrier falls below this rating. All policies will name the University of Washington as an additional insured, primary and non-contributory basis, with the exception of the Design-Builder's Professional Liability policy.

For all high-risk Design-Build team members, Specialty Consultants, and/or Trade Contractors, the PMT will convene and evaluate the contract values and risk factors, jointly assigning the level of insurance coverage and bonding limits appropriate for all tiers of work. The Owner does not expect Specialty Consultants or Trade Contractors, or their subcontractors, to carry more insurance or bonds beyond the total liability of their individual work/contract obligation. High-risk team members may share a bigger risk and therefore need insurance coverage greater than their contract/work value. Consistent with the Procurement and Equity Plan, the PMT will develop an Insurance Policy Matrix itemizing the recommended insurance limits by sub-package and present to the SMT for review and approval.

#### **10.1.1 Coverages and Limits.**

The insurance shall provide the minimum coverages and limits set forth below. Owner shall be provided forty-five (45) days written notice prior to cancellation, ten (10) days written notice for non-payment of premium. Owner does not warrant or represent that such coverages and limits are appropriate or adequate to protect Design-Builder. Neither Owner's specification nor approval of the insurance in this Contract, nor of its amount, nor providing coverage in these stated minimum limits shall be construed to relieve Design-Builder from liability in excess of such limits. Coverages are the minimum to be provided and are not limitations of liability under the

Contract, indemnification, or applicable law provisions. Design-Builder may, at its expense, purchase larger coverage amounts. The cost of any claim payments falling within the deductible shall be the sole responsibility of Design-Builder. Design-Builder shall maintain insurance coverage during the Work and for one year after Final Acceptance. Design-Builder shall also maintain insurance coverage during the performance of any corrective Work required by Section 2.9 of the General Conditions. Design-Builder shall submit upon execution of this Contract Certificates of Insurance as evidence of all insurance required herein:

**10.1.2 CGL:** A policy of Commercial General Liability Insurance which includes coverage for bodily injury, property damage, premises operations, independent contractors, and broad-form contractual liability, and Stop Gap, unless covered as Employers Liability under Part B of a Worker's Compensation Insurance Policy with the following minimum limits:

\$2,000,000	General Aggregate
\$2,000,000	Product-Completed Operations Aggregate
\$1,000,000	Per Occurrence
\$1,000,000	Personal and Advertising Injury

**10.1.3 XCU:** The Contractor's CGL insurance must not exclude perils generally known as XCU (explosion, collapse, and underground property damage), subsidence, absolute earth movement (excepts as it pertains to earthquake peril only) or any equivalent peril.

**10.1.4 Products Completed Operations Additional Insured:** The Contractor's CGL insurance must include the Owner as an additional insured status on the ISO CG 20 10 11 85 or CG 20 37 endorsement, or by an equivalent policy or endorsement provisions. The Products Completed Operations additional insured status for the Owner must remain in effect for not less than 3 years following Final Completion.

Policy shall apply as Primary Insurance with Owner's Insurance Non-Contributory, include a Waiver of Subrogation in favor of the Owner, and contain a separation of insureds provision.

**10.1.5 Employer's Liability:**

\$1,000,000	Each Accident
\$1,000,000	Disease - Policy Limit
\$1,000,000	Disease - Each Employee

**10.1.6 Automobile:** Commercial Automobile Liability with a combined single limit of not less than \$1,000,000 for each accident. Coverage shall include Bodily Injury and Property Damage Liability for all owned, non-owned, leased, and hired automobiles and contain a Waiver of Subrogation in favor of the Owner. If pollutants are to be transported, MCS 90 and CA 99 48 endorsements are required on the Auto Liability policy unless the transportation pollution risk is covered under the Contractor's Pollution Liability insurance policy.

**10.1.7 Excess or Umbrella Liability:** The Contractor must provide minimum Excess or Umbrella Liability coverage limits of \$4,000,000 each occurrence in excess of the primary CGL and Automobile liability insurance limits specified in Section 10.1.2 and Section 10.1.6. The minimum total limits of \$5,000,000 may also be satisfied with primary CGL insurance limits or any combination of primary excess/umbrella limits.

**10.1.8 Contractors Pollution Liability:** A policy providing coverage for claims involving remediation, on or off site, disposal, or other handling of pollutants, including investigation, arising out of Design-Builder's operations, or made worse, including vicarious liability of subcontractors at every tier, from the transportation of hazardous materials; or involving remediation, abatement, repair, maintenance or other work with lead-based paint or materials containing asbestos. Such Pollution Liability policy shall provide at least \$1,000,000 per claim coverage for Bodily Injury and Property Damage. The Design-Builder may require its

first-tier Specialty Trade Contractors performing work described in this section to maintain equivalent insurance coverage.

**10.1.9 Design-Builder's Professional Liability:** Design-Builder and the Architect shall each maintain for three years after Substantial Completion subject to RCW 4.16.310 (or, if earlier, until demolition of the buildings) professional errors and omissions insurance in an amount no less than \$2 million. Design-Builder shall promptly notify Owner of any material changes to, interruption of, or termination of, this insurance. Design-Builder may contractually require its Specialty Consultants of any tier to maintain professional errors and omissions insurance in an amount of at least \$1 million.

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

## **10.2 Self-Insurance.**

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

## **10.3 Builder's Risk.**

**10.3.1** Owner will purchase and maintain Builder's Risk property insurance written on an "all-risk" or "special form" basis with Design-Builder and Specialty Trade Contractors of every tier included as named insureds. Such Builder's Risk insurance shall be in the amount of the Contract Price, plus Washington State Sales Tax, including all Change Orders for the Work on a replacement cost basis excluding earthquake and flood coverage until Substantial Completion. Design-Builder will pay for the first \$5,000 of the policy deductible. The Owner will be responsible for losses to the Work due to Earth Movement and Flood if coverage is not provided under the Builder's Risk policy.

**10.3.2** Owner and Design-Builder waive all subrogation rights against each other, any Subcontractors, and separate contractors, if any, and any of their subcontractors, for damages caused by fire or other perils to the extent covered by property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by Owner as fiduciary. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**10.3.3** If Design-Builder believes it has a loss that is covered by Builder's Risk Insurance and it is likely to exceed the policy deductible, Design-Builder shall notify the Owner within 24 hours of discovery.

**10.4 Bonds and Other Performance Security.** Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

**10.4.1 Performance and Payment Bonds.** Design-Builder shall secure and maintain from a

surety company acceptable to Owner, admitted and licensed in the State of Washington, and shall pay for bonds covering the faithful performance of the Contract and payment of obligations arising under the Contract Documents, each in the full amount of the GMP, including Washington State sales tax, pursuant to Chapter 39.08 RCW.

The form of the Payment Bond and Performance Bond form shall be as published by and available from the American Institute of Architects (AIA) – form A312.

The Bonds must be signed by the principal and notarized; be signed and notarized by an approved Surety or Sureties that:

- a. Is registered with the Washington State Insurance Commissioner;
- b. Appears on the current Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner;
- c. Has a current rating of at least A-VII in A.M. Best's Key Rating Guide or is included in the U.S. Department of the Treasury's Listing of Approved Sureties (Circular 570);

and be accompanied by an original power of attorney document with the same date as the notarization by the Surety.

The scope of the bonds or the form thereof prescribed in these Contract Documents shall in no way affect or alter the liabilities of Design-Builder to Owner as set forth herein.

## **Article 11**

### **Other Provisions**

#### **11.1 Other provisions, if any, are as follows:**

**11.1.1 Apprenticeship Utilization Requirements.** Mandatory apprentice utilization of at least fifteen percent (15%) of the total labor hours worked on the contract is required. Apprentices must be registered as apprentices with the State Apprenticeship and Training Council. Design-Builder shall comply with the requirements of the Contract Documents related to apprenticeship. The Design-Builder acknowledges that apprenticeship utilization goals should be met, and that the Owner has determined monetary incentives for meeting the goals, and monetary penalties for not meeting the goals. The Contractor further agrees that, from the compensation otherwise to be paid, the Owner may retain the sum of \$ [REDACTED] as a monetary penalty for not meeting the apprenticeship utilization goals. The Design-Builder further agrees, that in addition to the compensation otherwise to be paid, the Owner will pay by issuance of a Change Order \$ [REDACTED] as an incentive for meeting the apprenticeship utilization goals.

**11.1.2 Business Equity.** Owner is committed to providing the maximum practicable opportunity for participation in contracting by Business Equity Enterprises (BEE). See the General Conditions.

**11.1.3 Electronic Data.** In addition to the requirements set forth in the General Conditions for electronic data, Design-Builder shall comply with the requirements of Attachment B, CAD, BIM and PDF Standards and Requirements, in the performance of services under this Contract.

**ATTACHMENTS:** In addition to the General Conditions Between Owner and Design-Builder, which are a part of the Contract Documents, the following documents, whether attached hereto or not, are hereby incorporated by reference and made a part of this Agreement, as if set forth herein in full:

- Attachment A: GMP Exhibit and Schedule of Vales
- Attachment B: CAD, BIM, and PDF Standards and Requirements
- Attachment C: Updated Inclusion Plan
- Attachment D: Procurement and Equity Plan
- Attachment E: Approved Insurance Policy Matrix

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

**OWNER:**

**DESIGN-BUILDER:**

\_\_\_\_\_  
*(Name of Owner)*

\_\_\_\_\_  
*(Name of Design-Builder)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed Name)*

\_\_\_\_\_  
*(Printed Name)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Title)*

Date: \_\_\_\_\_

Date: \_\_\_\_\_