PRELIMINARY AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Article</th>
<th>Name</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 1</td>
<td>General</td>
<td>2</td>
</tr>
<tr>
<td>Article 2</td>
<td>Design-Builders Services and Responsibilities</td>
<td>3</td>
</tr>
<tr>
<td>Article 3</td>
<td>Owners Services and Responsibilities</td>
<td>6</td>
</tr>
<tr>
<td>Article 4</td>
<td>Ownership of Work Product</td>
<td>7</td>
</tr>
<tr>
<td>Article 5</td>
<td>Contract Time</td>
<td>7</td>
</tr>
<tr>
<td>Article 6</td>
<td>Contract Price</td>
<td>7</td>
</tr>
<tr>
<td>Article 7</td>
<td>Electronic Data</td>
<td>8</td>
</tr>
<tr>
<td>Article 8</td>
<td>Other Provisions</td>
<td>9</td>
</tr>
</tbody>
</table>
This AGREEMENT is made and entered into by and between the following parties, for 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

General

1.1 Duty to Cooperate. 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. Terms, words and phrases used in this Agreement shall have the meanings given them in the General Conditions.

1.3 Project Executive Committee. Owner has identified a project/program executive to form the Project Executive Committee (PEC). The PEC will work together to provide supervision, coaching, and management of the PMT. The PEC will make human resource decisions in the interest of the Project and will provide oversight of the decisions made by the PMT. In the event that the PMT cannot reach agreement on an issue, the PEC will collaborate with the PMT to resolve the issue. The decisions will be documented by the PMT. A replacement PEC member may be appointed by written notice and mutual acceptance by the other party.

1.4 Project Management Team. Owner and the Design-Builder shall each identify key members from their teams to form the Project Management Team (“PMT”). The PMT will work together in a collaborative manner to provide management-level leadership throughout the Project. The intent of the PMT will be to make as many project decisions that are needed to successfully complete the Work of the Project. Each member shall be identified in the Work Plan. A replacement of, or additional PMT, members may be appointed by providing written notice, and mutual acceptance, to the other party. The PMT works under the guidance and oversight of the PEC. The PMT reports progress and seeks approval, as necessary, of design, cost, and schedule changes.

1.5 Project Contacts.

1.5.1 Owner’s Representatives.

Owner designates the individual listed below as its Senior Representative ("Owner’s Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions:

Name
Title
University Facilities Building
Box 352205
Seattle, WA 98195-2205
Phone
Email:

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:
1.5.2. Design-Builder’s Representatives.

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:

[Name of Design-Builder’s Senior Representative]
[Title of Design-Builder’s Senior Representative]
[Name of Design-Builder]
[Address of Design-Builder 1]
[Address of Design-Builder 2]
[Phone Number of Design-Builder’s Senior Representative]
[E-mail of Design-Builder’s Senior Representative]

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:

[Name of Design-Builder’s Representative]
[Title of Design-Builder’s Representative]
[Name of Design-Builder]
[Address of Design-Builder 1]
[Address of Design-Builder 2]
[Phone Number of Design-Builder’s Representative]
[E-mail of Design-Builder’s Representative]

**Article 2**

**Design-Builder’s Services and Responsibilities**

2.1 Preliminary Services.

2.1.1 Owner has attached the Owner’s Project Criteria describing Owner’s program requirements and objectives for the Project. Owner’s Project Criteria also includes the Facilities Design Standard. Design-Builder will utilize the Facilities Design Standard and will coordinate with the Owner throughout the Project to determine how the provisions of the Design Standard will be incorporated into the design and construction of the Project. Owner must approve any deviation from the Design Standard. Owner’s Project Criteria shall include Owner’s use, space, price, time, site, performance and expandability requirements. These documents define Owner’s design intent for the Project. Owner’s Project Criteria may also include design documents and specifications, design performance specifications and other technical materials and requirements prepared by or for the Owner.

2.1.2 Upon execution of this Preliminary Agreement the Design-Builder shall review the Project Criteria and prepare Project Performance Criteria keeping the Owner’s Project Criteria as the basis for project key performance indicators and the project definition. The Project Performance Criteria will be used as the project framework to guide the design and construction. The Design-Builder may include recommendations to Owner for different and innovative approaches to the design and construction of the Project. The Owner expects the Design-Builder to maximize opportunities both in state-of-the-art design and construction approaches to realize the intent of project goals and objectives in the most cost effective manner. The parties shall meet to discuss the Project Performance Criteria. The PMT will accept the final Project Performance Criteria by consensus.
2.1.3 The Design-BUILDER shall develop an overall (design and construction) Project Work Plan ("Work Plan"). The Work Plan shall include, but is not limited to, an overall project schedule, listing all tasks of the project with target milestones listing responsible parties (Design-BUILDER and Owner) or subject matter experts, Trade Partners, and Specialty Consultants. The Work Plan shall also include, estimated time and cost to administer and support the Project.

2.1.4 The Design-BUILDER shall also develop, and submit to the Owner for approval, a procurement plan and Business Equity plan (the "Procurement Plan") for the purpose of procuring all Work on the project including, but not limited to, 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. The Procurement Plan will be monitored monthly.

2.2 Schematic Design Documents. Design-BUILDER shall prepare Schematic Design Documents based on the agreed Project Performance Criteria. The Schematic Design Documents shall include design criteria, drawings, diagrams and specifications setting forth the requirements of the Project. The parties shall meet to discuss the Schematic Design Documents and agree upon what revisions, if any, should be made. Design-BUILDER shall perform such agreed-upon revisions.

2.2.1 Issues Tracking Log. To aid in the discussion and decision making process the Design-BUILDER shall develop, maintain, and own a project issues log and decision matrix. The ITL shall articulate all decisions needing to be made, made decisions, the responsible party, as well as all design RFIs, design updates, or similar. The PMT shall ensure that all open items in the ITL are resolved prior to final permitting and/or construction activities begin.

2.3 Design Services. Design-BUILDER shall, consistent with applicable state licensing laws, provide design services, including architectural, engineering and other design professional services, required by this Agreement and as necessary to fully design the Project. Such design services shall be provided through qualified, licensed design professionals who are either (i) employed by Design-BUILDER or (ii) procured by Design-BUILDER. Nothing in this Agreement is intended to create any legal or contractual relationship between Owner and any independent design professional. The Design-BUILDER is responsible for performing all the required design that is necessary to permit and construct the Work of the Project in accordance to all applicable codes and Project Performance Criteria. The PMT will decide how often to meet to review design, what format design review will be presented and the methods for making decisions regarding design and construction.

2.3.1 Design-BUILDER shall advise and work with Owner and its representatives to make recommendations for alternate or substitute technologies, construction techniques, methods and practices based on maintainability and durability as well as cost savings, time saving and/or other related efficiencies. Design-BUILDER’s design services will result in a Project design in accordance with the Contract Documents and suitable for its intended purpose. When the Contract Documents require or Design-BUILDER causes a Subcontractor of any tier to provide professional design services or certifications related to systems, materials or equipment, Design-BUILDER shall cause design services or certifications to be provided by properly licensed design professionals and shall ensure that all documents bear such design professional’s written approval. Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals. Design-BUILDER shall, at no cost to Owner, promptly and satisfactorily correct any of Design-BUILDER’s design services that are defective or not in conformity with the requirements of the Contract Documents. The obligations of Design-BUILDER to correct defective or non-conforming design services shall not in any way limit any other obligations of Design-BUILDER or other rights and remedies available to Owner under the Contract Documents or otherwise by law.
2.3.2 The PMT shall agree upon any interim design submissions the PEC may wish to review, which may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process. On or about the time of the scheduled submissions, the PMT shall meet and discuss the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder’s schedule.

2.3.3 Design-Builder, consistent with Section 2.3 of the General Conditions, shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work, which shall be consistent with the Basis of Design Documents and scope of work set forth in the GMP. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting and recorded in the meetings minutes. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

2.3.4 Owner’s review and approval of interim design submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Work. Neither Owner’s review nor approval of any interim design submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.

2.3.5 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.4 Government Approvals and Permits.

2.4.1 The PMT will develop a Permit List, including the responsible party assigned, and review all jurisdictional requirements prior to submitting for government approvals. The Owner is responsible for obtaining permits as necessary, however, will delegate responsibility to the Design-Builder, Trade Partners or Specialty Consultants as subject matter experts where most appropriate. Timing for permits, along with subsequent work, will be agreed on by the PMT.

3.4.1 Except as identified in the Permit List, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

2.5 Guaranteed Maximum Price Exhibit. The PMT will agree when the Project Performance Criteria, Project Definition, and Design has developed enough for the Design-Builder to submit a Cost-plus-fee for a Guaranteed Maximum Price Exhibit which shall include the following unless the parties mutually agree otherwise:

2.5.1 a proposed guaranteed maximum price ("GMP") for the design and construction of the Project;
2.5.2 a schedule and date of Substantial Completion of the Project upon which the GMP for the Project is based; and

2.5.3 a Procurement and Equity Plan

2.5.4 all other information necessary for the parties to enter into Agreement Between Owner and Design-Builder for the GMP.

2.6 **Review of the GMP Exhibit.** The PMT shall meet to discuss and review the draft GMP Exhibit. The PMT shall discuss any revisions, updates, or additional information needed to develop the GMP Exhibit. The PMT shall then submit to the PEC for consideration and acceptance. The PMT shall take into consideration any feedback, comments, or requests by the PEC for changes or updates to the GMP Exhibit. The PEC will be responsible to accept the GMP.

2.7 **Completion of the Preliminary Agreement.** Unless otherwise terminated under paragraphs 2.7.1 or 8.7 of this Agreement, Design-Builder’s services under this Agreement shall be deemed completed upon acceptance of the GMP Exhibit. The terms of this Agreement shall terminate upon finalization of the GMP Exhibit and execution of the GMP Agreement by both parties.

2.7.1 **Inability to Execute GMP Agreement.** This Agreement is solely for the Services defined in this Section 2 and as detailed in the Work Plan. In entering into this Agreement, Owner and Design-Builder recognize that they may not be able to finalize the GMP Exhibit and execute a GMP Agreement for this Project. In the event Owner and Design-Builder do not successfully finalize the GMP Exhibit and execute a GMP Agreement for this project, this Agreement will be terminated and Design-Builder will be paid the value of its services to the date of termination, not to exceed the Contract Price, and will not be entitled to any other compensation, damages, loss of profits or payment of any other kind.

2.8 **Additional Services.** Design-Builder shall perform any Additional Services pre-approved by Owner by amendment to this Agreement. The cost for such services shall be as mutually agreed upon by Owner and Design-Builder, with the Contract Price for this Agreement, as set forth in Section 6.1 hereof, being adjusted accordingly.

**Article 3**

**Owner’s Services and Responsibilities**

3.1 **Performance.** Owner shall throughout the performance of this Agreement cooperate with Design-Builder. Owner shall perform its responsibilities, obligations and services, including its reviews and approvals of Design-Builder’s submissions, so as not to delay or interfere with Design-Builder’s performance of its obligations under this Agreement.

3.2 **Owner’s Project Criteria.** Owner shall provide Design-Builder with Owner’s Project Criteria including the UW Facilities Design Standard. If Owner desires that Design-Builder assist Owner in developing such criteria, Owner shall provide Design-Builder with its objectives, limitations and other relevant information regarding the Project.

3.3 **Owner Provided Information.** To the extent deemed necessary by the Parties, 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 its obligations hereunder:

3.3.1 Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
3.3.2 Geotechnical studies describing subsurface conditions at the Site unless Owner elects to have Design-Builder perform such studies as part of its design services;

3.3.3 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;

3.3.4 To the extent available, as-built and record drawings of any existing structures at the Site;

3.3.5 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including, but not limited to, Hazardous Conditions, in existence at the Site; and

3.3.6 UW Facilities Design Standard.

**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. 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 **Commencement Date.** Design-Builder shall commence performance of the services set forth in this Agreement within five (5) calendar days of the mutual execution of this Agreement (“Date of Commencement”) unless the parties mutually agree otherwise in writing. Design-Builder shall complete such services as stated in the accepted Work Plan.

5.2 **Interim Dates.** Interim milestone dates, if any, of identified portions of the services set forth in this Agreement shall be achieved as described in a separate exhibit to this Agreement.

Interim Milestone:  *(Insert milestone)*
Article 6

Contract Price

6.1 Contract Price. The Contract Price for this Agreement is as set forth below:

Owner will Award the Design-Builders a sum of Ten Thousand Dollars ($10,000), excluding Washington State sales tax, to begin the services required by this Agreement. After the Work Plan is developed, and accepted by the Owner, this Agreement will be amended to reflect the agreed Contract Price. Such price shall be the full compensation due Design-Builders for the performance of all services set forth in this Agreement. Design-Builders will be paid monthly for its services based on actual time and expenses, plus the Fee proposed to the Owner in response to the Owner's request for proposal, not-to-exceed the total compensation set forth above. Any amount that exceeds the total compensation agreed to will be at Design-Builders' sole cost and expense unless there are scope changes in the Preliminary Services authorized by amendment. All invoicing and payments will be subject to the applicable provisions found in the General Conditions attached to, and referenced herein.

6.2 Payment. Consistent with Article 6 of the General Conditions, on or before the date established by the Owner, Design-Builders shall submit for Owner's review and approval and Application for Payment requesting payment for all Work performed as of the date of the Application. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents or the PMT. For purposes of this Agreement, the minimum supporting documentation will be an accounting of time at agreed rates, reconciled to the agreed Work Plan.

Article 7

Electronic Data

7.1 Electronic Data.

7.1.1 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-Builders and others in electronic media as an alternative to paper hard copies (collectively “Electronic Data”).

7.2 Transmission of Electronic Data.

7.2.1 Design-Builders shall comply with the requirements of UW CAD, BIM and PDF Standards and Requirements, and Owner and Design-Builders shall otherwise agree on all other Electronic Data protocols. 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.

7.2.2 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.

7.2.3 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.

7.3 Electronic Data Protocol.
7.3.1 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 7.3.

7.3.2 Electronic Data will be transmitted in the format agreed upon in Section 7.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

7.3.3 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 if such information changes prior to Final Completion.

7.3.4 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 8
Other Provisions

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

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

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

8.1.3 If, after meeting, the Senior Representatives 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.

8.2 Assignment. Design-Builder shall not assign, transfer, or sublet any portion or part of its obligations under this Agreement without the written consent of Owner.

8.3 Governing Law. This Agreement and the rights of the parties herein shall be governed by the laws of the State of Washington. Venue shall be in the King County Superior Court.

8.4 Severability. If any provision or any part of a provision of this Agreement shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to applicable laws by any authority having jurisdiction, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provisions or parts of the provision of this Agreement, which shall remain in full force and effect as if the unenforceable provision or part was deleted.

8.5 Amendments. This Agreement may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of both parties.

8.6 Entire Agreement. This Agreement forms the entire agreement between Owner and Design-Builder. No oral representations or other agreements have been made by the parties except as specifically stated in this Agreement.

8.7 Owner's Termination for Convenience. Upon ten (10) days’ written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement or any portion of this Agreement. Upon receipt of the notice, Design-Builder shall immediately discontinue all services. Owner shall pay Design-Builder for services performed up to the date of receipt of the notice. If Owner terminates this Agreement 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 Article 4 herein.

8.8 Business Equity. The University of Washington is committed to providing optimal opportunity for participation in contracting by Business Equity Enterprises (BEE).

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 project; that goal is negotiable, 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.

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.

**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.

**ATTACHMENTS:** 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:

1. Owner’s Project Criteria
2. General Conditions Between Owner and Design-Builder
3. Insurance Requirement for Preliminary Agreement
4. Prevailing Wage Information for Preliminary Agreement.
5. Accepted Inclusion Plan (to be added by Amendment)
6. Procurement and Equity Plan

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.

**UNIVERSITY OF WASHINGTON:**

(Signature)  
(Printed Name)  
(Title)  
Date: ___________________________

**[DESIGN-BUILDER FIRM NAME]:**

(Signature)  
(Printed Name)  
(Title)  
Date: ___________________________
AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER - COST PLUS FEE WITH A GUARANTEED MAXIMUM PRICE
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Article</th>
<th>Name</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 1</td>
<td>Scope of Work</td>
<td>4</td>
</tr>
<tr>
<td>Article 2</td>
<td>Contract Documents</td>
<td>4</td>
</tr>
<tr>
<td>Article 3</td>
<td>Interpretation and Intent</td>
<td>4</td>
</tr>
<tr>
<td>Article 4</td>
<td>Ownership of Work Product</td>
<td>5</td>
</tr>
<tr>
<td>Article 5</td>
<td>Contract Time</td>
<td>5</td>
</tr>
<tr>
<td>Article 6</td>
<td>Contract Price</td>
<td>6</td>
</tr>
<tr>
<td>Article 7</td>
<td>Procedure for Payment</td>
<td>10</td>
</tr>
<tr>
<td>Article 8</td>
<td>Termination for Convenience</td>
<td>12</td>
</tr>
<tr>
<td>Article 9</td>
<td>Representatives of the Parties</td>
<td>13</td>
</tr>
<tr>
<td>Article 10</td>
<td>Bonds and Insurance</td>
<td>14</td>
</tr>
<tr>
<td>Article 11</td>
<td>Other Provisions</td>
<td>16</td>
</tr>
</tbody>
</table>
Agreement Between Owner and Design-Builder - Cost Plus Fee with a Guaranteed Maximum Price

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 M 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, 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, 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 25th 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 (10th) 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 (10th) 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:
9.2 Design-Builders Representatives.

9.2.1 Design-Build designates the individual listed below as its Senior Representative ("Design-Build'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-Build designates the individual listed below as its Design-Build'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-Build 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-Build 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-Build'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-Build. 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-Build 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-Build 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-Builders Professional Liability: Design-Builders 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-Builders shall promptly notify Owner of any material changes to, interruption of, or termination of, this insurance. Design-Builders 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-Builders is qualified as a self-insurer in accordance with Chapter 51.14 RCW, Design-Builders 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-Builders’ self-insurance for liability coverage in lieu of insurance from a commercial insurer. Design-Builders 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-Builders 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-Builders, irrespective of whether such amount falls wholly within the level or amount of Design-Builders’ 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-Builders 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-Builders 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-Builders 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-Builders believes it has a loss that is covered by Builder’s Risk Insurance and it is likely to exceed the policy deductible, Design-Builders shall notify the Owner within 24 hours of discovery.

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

10.4.1 Performance and Payment Bonds. Design-Builders 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 $500.00 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 $500.00 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 Values
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:  

(Name of Owner)  
(Signature)  
(Printed Name)  
(Title)  
Date: ____________________________

DESIGN-BUILDER:  

(Name of Design-Builder)  
(Signature)  
(Printed Name)  
(Title)  
Date: ____________________________