

Capitol Campus Child Care Center Design-Build Services Project # 2018-035

Contract Between Owner and Design-Builder

This **CONTRACT** is made and entered into by and between the following parties, for services in connection with the Project identified below. This Contract shall be effective on the date of the last signature.

OWNER: Department of Enterprise Services
1500 Jefferson Street SE
Olympia, WA 98501
P.O. Box 41476
Olympia, Washington 98504-1476

DESIGN-BUILDER: TBD

PROJECT: Capitol Campus Child Care Center
Project # 2018-035

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

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Introduction

There will be a single contract with two phases and additional general terms, both of which are incorporated by reference. The first phase of the contract includes a preliminary agreement to establish major design elements and negotiate a price within the Maximum Allowable Design and Construction Cost (MADCC) for completing the project. The second phase will be added by change order to govern the completion of design, construction, commissioning, performance guarantees, Guaranteed Maximum Price (GMP), and other aspects of scope and terms sufficient to complete the project.

Article 1 – General

1.1 Duty to Cooperate. Owner and Design-Builder (Parties) commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith to permit each party to realize the benefits afforded under this Contract.

1.2 Definitions. Terms, words and phrases used in this Agreement shall have the meanings given them in the General Conditions of Contract Between Owner and Design-Builder (General Conditions).

1.3 Diverse Business Participation. The state of Washington encourages participation in all of its contracts by Diverse Businesses. DES is committed to providing the maximum practicable opportunity for participation by Diverse Businesses through direct contracts with DES, subcontracts, sub-consulting, and supplier participation. Particular requirements are contained in the General Conditions.

Article 2 – Interpretation and Intent

2.1 The Contract Documents, as defined in the General Conditions, are incorporated by reference and 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 Contract Price. 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 Contract, 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 1.2 of the General Conditions.

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

2.3 The Contract Documents form the entire Contract and are fully binding on the parties. No oral representations or other Contracts have been made by the Parties except as specifically stated in the Contract Documents.

Article 3 – Design-Builder's Services and Responsibilities – Phase 1

3.1 Design-Builder Services. Design-Builder shall, consistent with the Request for Proposals issued by the Owner, the Design-Builder's Proposal submitted, and applicable state laws, provide design services, including architectural, engineering and other design professional services, required by this Contract. 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 from independent sources.

Design-Builder agrees to furnish all services necessary to perform Preliminary Services and Design Services required by this Contract.

A. **Preliminary Services.** Design-Builder will collaborate with Owner to further develop the Owner's Project Criteria describing Owner's program requirements and objectives for the

Project. Owner's Project Criteria shall include Owner's use, space, Maximum Allowable Design and Construction Cost (MADCC), time, site, performance and expandability requirements and any other elements necessary to establish the basis of design.

- B. **Design Services.** Design-Builder shall prepare Design Documents in collaboration with the Owner, to an agreed upon level based on Owner's Project Criteria, as developed in Section 4.2 and the RFP, in sufficient detail to enable the Design-Builder to provide a Proposal as set forth in Section 3.2 of this Contract and Section 2.4 of the General Conditions. The Design Documents shall include design criteria, drawings, diagrams and specifications setting forth the requirements of the Project. The Parties shall meet and create a schedule for collaborative communication regarding the design development and the Design Documents and to agree upon revisions, if any, should be made. Design-Builder shall perform such agreed-upon revisions.

3.2 GMP Proposal. Based on Owner's Project Criteria, the Design Documents, as such may be revised pursuant to Paragraph 3.1.B., and any other Basis of Design Documents upon which the parties may agree, Design-Builder shall submit a Guaranteed Maximum Price (GMP) Proposal to Owner, which shall include the following unless the parties mutually agree otherwise:

- A. A proposed contract price for the design and construction of the Project, which price shall be in the form of a GMP, which includes Phases 1 and 2;
- B. A schedule and date of Substantial Completion of the Project upon which the GMP for the Project is based;
- C. All other information necessary for the parties to enter into the Contract Between Owner and Design-Builder - GMP with the accompanying General Conditions; and
- D. The time limit for acceptance of the Proposal.

3.3 Review of Proposal. Design-Builder and Owner shall meet to discuss and review the Proposal. If Owner has any comments regarding the Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If Design-Builder finds the revisions acceptable, Design-Builder shall, upon receipt of Owner's notice, adjust the Proposal.

3.4 Completion of Phase 1. Unless otherwise terminated under paragraphs 3.4.B. of this Contract or Section 11.3 of the General Conditions, Design-Builder's services in Phase 1 shall be deemed completed upon meeting with Owner to discuss the Proposal and making those revisions to the Proposal, if any, Design-Builder and Owner find acceptable, and upon Owner's acceptance of the Proposal.

- A. **Acceptance of Proposal and Execution of Phase 2.** Upon Owner's acceptance of the Proposal, the Parties shall execute an amendment to the Contract to describe and start Phase 2. Phase 2 will complete design and construction of the project.
- B. **Inability to Execute Phase 2 Between Owner and Design-Builder – GMP.** Phase 1 of the Contract is solely for Preliminary Services and Design Services. Owner and Design-Builder recognize that they may not be able to negotiate a GMP for this project. In that event, this Contract will be terminated and Design-Builder will be paid the reasonable value of its documented services to the date of termination and will not be entitled to any other compensation, damages, loss of profits or payment of any other kind.

3.5 Additional Services. Design-Builder shall perform Additional Services necessary to achieve the Owner's objectives as authorized by amendment to this Contract. The scope of the Additional Services shall be set forth in a separate exhibit. 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 Article 6, being adjusted accordingly.

3.6 Prevailing Wages. The location of the Project is Thurston County. See General Conditions for requirements.

Article 4 – Owner's Services and Responsibilities

4.1 Performance. Owner shall throughout the performance of this Contract 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 Contract.

4.2 Owner's Project Criteria. Owner shall collaborate with the Design-Builder in development of Owner's Project Criteria. Owner shall provide Design-Builder with relevant information regarding the Project.

4.3 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:

- A. Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
- B. Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
- C. 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;
- D. To the extent available, as-built and record drawings of any existing structures at the Site; and
- E. 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.

Article 5 – Contract Time – Phase 1

5.1 Notice to Proceed. Design-Builder shall commence performance of the services set forth in this Contract upon receipt of Notice to Proceed. Design-Builder shall complete such services no later than (TBD date to finish Phase 1/GMP).

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

Article 6 – Contract Price

Contract Price. Owner will pay Design-Builder the not-to-exceed agreed-upon sum of **TBD**, excluding Washington State sales tax, for the services required by this Contract. Such price shall be the full compensation due Design-Builder for the performance of all services set forth in Phase 1 of this Contract. The Design-Builder will be paid monthly for its services based on actual time and expenses without markup, not-to-exceed the total compensation set forth above. Any amount that exceeds the total compensation agreed to will be at the Design-Builder's sole cost and expense unless there are scope changes in the Preliminary Services authorized by amendment.

Article 7 – Representatives of the Parties

7.1 Owner's Representatives.

- A. Owner designates the individual listed below as its Senior Representative, which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2 of the General Conditions:

Kevin Dragon, P.E., Program Manager
Department of Enterprise Services
1500 Jefferson St.
P.O. Box 41476
Olympia, WA 98504
(360) 407-7956
kevin.dragon@des.wa.gov

- B. 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:

Oliver Wu, Project Manager
Department of Enterprise Services
1500 Jefferson St.
P.O. Box 41476
Olympia, WA 98504
(360) 407-8534
oliver.wu@des.wa.gov

7.2 Design-Builder's Representatives.

- A. Design-Builder designates the individual listed below as its Senior Representative, which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2 of the General Conditions:

[Design Build Senior representative's name]
[Design Build Senior representative's address]
[Phone/email]

- B. Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Article 2 of the General Conditions:

[Design Build representative's name]
 [Design Build representative's address]
 [Phone/email]

Article 8 – Dispute Resolution

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. Dispute resolution processes shall be in accordance with Article 10 of the General Conditions of the Contract Between Owner and Design Builder.

ATTACHMENTS: The following documents, whether attached or not, are incorporated by reference and made a part of this Contract:

1. Terms and conditions relating to any Services required under this Contract as may apply from the Contract Documents, including the General Conditions of the Contract.
2. Phase 1 Services Proposal from Design Builder

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

OWNER:

DESIGN-BUILDER:

Department of Enterprise Services

(Name of Owner)

(Name of Design-Builder)

(Signature)

(Signature)

Kevin Dragon, PE

(Printed Name)

(Printed Name)

Program Manager

(Title)

(Title)

Date: _____

Date: _____