Project 2019-271
SCC Maintenance, Operations, and Security Building

# ATTACHMENT 1:
# CONTRACT

# [Project Name] Design-Build Services
# Project # _____

# Contract
# Between Owner, DES, 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:** **Client's Name**

**DEPARTMENT OF ENTERPRISE SERVICES (DES):**
1500 Jefferson Street SE
Olympia, WA 98501
P.O. Box 41476
Olympia, Washington 98504-1476

**DESIGN-BUILDER:** TBD

**PROJECT:** **[Project Name] Design-Build Services**
**Project # _____**

In consideration of the mutual covenants and obligations contained herein, Owner and DES (jointly referred to as Owner/DES) and Design-Builder agree as set forth herein.

**Contents**


Introduction ..... 2
Article 1 – General ..... 2
Article 2 – Interpretation and Intent ..... 2
Article 3 – Design-Builder's Services and Responsibilities ..... 3
Article 4 – Owner's/DES' Services and Responsibilities ..... 6
Article 5 – Contract Time – Phase 1 ..... 7
Article 6 – Fee Percentage ..... 7
Article 7 –Liquidated Damages Amount ..... 7
Article 8 - Representatives of the Parties ..... 7
Article 9 – Dispute Resolution ..... 8
ATTACHMENTS: ..... 8


DRAFT

## INTRODUCTION

The Project consists of the Work described in the Owner's/DES' Project Criteria and the Basis of Design Documents, as applicable, and is a single contract with two phases. Phase 1 of the project will generally include design and other services culminating in the Design-Builder providing to the Owner/DES a Guaranteed Maximum Price (GMP) Proposal. Provided the parties agree to the terms, Phase 2 shall begin when the Parties enter into the GMP Amendment. The Scope of Work for Phase 2 shall be set forth in the GMP Amendment; however, at a minimum, such scope shall include the completion of design, construction, commissioning, performance guarantees, GMP, and other aspects of scope and terms sufficient to complete the project.

## ARTICLE 1 – GENERAL

**1.1 Duty to Cooperate.** Owner/DES 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 Contract shall have the meanings given them in the "General Conditions of Contract Between Owner/DES and Design-Builder" (General Conditions), (Attachment A).

**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 Contract Documents.** The Contract Documents are comprised of the following which are incorporated by reference, and are in order of precedence:

A. All written modifications, amendments, and change orders to the Contract, including but not limited to the GMP Amendment and its attachments, the most recent take precedence over previous documents;

B. The Contract;

C. The General Conditions;

D. The Owner's/DES' Project Criteria, including but not limited to, Request for Qualifications, Request for Proposals and any Addenda;

E. Design-Builder's Statement of Qualifications and its Proposal submitted in response to the Owner's/DES' Request for Proposals, and Design-Builder's GMP Proposal, submitted in Phase 1 of this Contract, as accepted by Owner/DES;

F. Construction Documents prepared and approved in accordance with Section 2.3.F of the General Conditions; and

G. Attachment B Scope of DB Services.

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 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

DRAFT

ambiguities between or among the Contract Documents are discovered after execution of the Contract, Design-Builder and Owner/DES 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

**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

### 3.1 Phase 1 – Validation and GMP Development Period

A. **Scope of Work for Phase 1.** Phase 1 shall commence upon a written Notice to Proceed from the Owner/DES and shall end on the Phase 1 Completion Date as set forth below. The services to be provided by the Design Builder during the Phase 1 are set forth in Attachment B "Phase 1 and Phase 2 Scope of Services".

B. **Phase 1 Not to Exceed Amount.** Design Builder guarantees that during Phase 1, Design Builder's Compensation shall not exceed the Phase 1 Not to Exceed Amount ("Phase 1 NTE") of _____Dollars ($_____). Design Builder agrees that it will be responsible for paying all costs of completing the Phase 1 Work which exceed the Phase 1 NTE and shall not seek reimbursement from the Owner/DES for any costs that exceed the Phase 1 NTE, as adjusted in accordance with the Contract Documents including by written Change Order.

C. **Phase 1 Completion Date.** The Phase 1 Completion Date is _____.

D. **Maximum Allowable Design and Construction Cost.** The Maximum Allowable Design and Construction Cost ("MADCC") is _____ Dollars ($_____).

E. **Design Builder's Phase 1 Compensation.** Design Builder's compensation for Work performed in Phase 1 shall consist of the following:

1. The Cost of the Work as set forth in Section 6.5 of the General Conditions, for Work performed in Phase 1; and.
2. The Design-Builder's Fee Percentage, which shall be multiplied by the Cost of the Work for Phase 1.

F. **GMP Proposal.** At the conclusion of Phase 1, the Design Builder will submit a GMP Proposal pursuant to the requirements set forth in Attachment B. Unless the Parties agree otherwise, the GMP Proposal shall include the deliverables set forth in Attachment B, including but not limited to the following:

1. A proposed GMP for the cost of completing all remaining Work on the Project, up to and including Final Completion of the Project. The GMP shall be less than or equal to the MADCC, unless the Parties agree in writing otherwise. Unless the parties agree otherwise, the GMP Proposal shall include the documents listed in Section 1.07.C of Attachment B:

G. **Owner's/DES' Option to Enter Into Phase 2**

1. After submission of the GMP Proposal, Design Builder and Owner/DES shall meet to

discuss and review the GMP Proposal. The Owner/DES shall make its best efforts to provide such comments within thirty (30) days of the Owner's/DES' receipt of the GMP Proposal, unless the Owner/DES provides notification that it requires additional time for review. If Owner/DES has any comments regarding the GMP Proposal or finds any inconsistencies or inaccuracies in the information presented, it shall give written notice to Design Builder of such comments or findings in a reasonably prompt manner. If appropriate, Design Builder shall, upon receipt of Owner's/DES' notice, make appropriate adjustments to the GMP Proposal. To assist in the Owner's/DES' review of the GMP Proposal, the Design Builder shall, upon the Owner's/DES' Request, provide all information, including but not limited to all data, reports, cost analysis, pricing, designs and specifications on which the Design Builder relied or used as a basis for the GMP Proposal. The Owner/DES shall make its best efforts to review any revised GMP Proposal within thirty (30) days of receipt of the revised GMP Proposal.

2. The Owner/DES, at its sole discretion, may exercise its option to enter into Phase 2 of the Contract and accept the GMP Proposal.

    a. The Owner/DES shall notify the Design Builder within thirty (30) days of receipt of the GMP Proposal of its decision whether or not to exercise its option to enter into Phase 2.

    b. If the Owner/DES accepts the GMP Proposal, the parties shall enter into the GMP Amendment. The total compensation paid to Design Builder for this Project shall not exceed the GMP, as amended pursuant to this Contract.

    c. The Owner/DES may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design Builder, the GMP Proposal shall be deemed accepted and the Parties shall proceed in accordance with Section 3.1.F.1.a. above.

    d. If Owner/DES decides not to exercise its option to enter into Phase 2 and notifies Design Builder in writing or rejects the GMP Proposal, then the GMP Proposal shall be deemed withdrawn and of no effect. In such event, Owner/DES and Design Builder shall meet and confer as to how the Project will proceed, with Owner/DES having the following options:

        i. The Owner/DES may authorize Design Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 3.1.E. above as supported by Design-Builder's Payment Applications and subject to the Phase 1 Not to Exceed Amount; or

        ii. If the Owner/DES elects not to exercise its option to enter into Phase 2, the Design-Builder shall be compensated for the amount incurred pursuant to Section 3.1.E. above, as supported by Design-Builder's Payment Applications and subject to the Phase 1 Not to Exceed Amount. The compensation set forth herein shall be the Design-Builder's sole compensation for the Project if the Owner elects not to exercise its option to enter into Phase 2, and the Design Builder hereby agrees that it will not seek any other compensation, remedy or damages of any kind whatsoever if the Owner/DES elects not to exercise its option to enter into Phase 2.

3. The Design Builder shall not perform any Work after the submission of the GMP Proposal unless the Owner/DES exercises its option to enter into Phase 2 and has approved and signed the GMP Proposal unless the Design Builder obtains the Owner's/DES' prior, written consent to perform such Work and only to the extent that

DRAFT

such Work is expressly described in writing in such written consent.

4. If the Design Builder performs Work after the submission of the GMP Proposal but before the Parties enter into the GMP Amendment, Design Builder shall be compensated pursuant to Section 3.1.E. of the Contract; however, in no case shall the Design Builder be entitled to be paid in excess of the Phase 1 NTE, as amended by the Parties.

**3.2 Phase 2, Post GMP Period.**

A. **Commencement and Scope of Work.** Phase 2 shall commence when the Owner/DES exercises its option to enter into Phase 2 and both Parties sign the GMP Amendment. Phase 2 is the final phase of the Contract. The scope of Work for Phase 2 will be developed during Phase 2 and set forth in the GMP Amendment, but it will, at a minimum, include the services set forth in Attachment B, including but not limited to the following:

1. Completion of the design services and the development of Construction Documents for the Project,
2. Performance and completion of construction work, start-up, testing and commissioning and closeout of the Project in accordance with the requirements of the Contract Documents; and
3. Any ongoing contractual obligations after Final Completion, such as guarantees, warranty services, and/or obligations to provide insurance and indemnity to the Owner/DES.

B. **Guaranteed Maximum Price.** The GMP Amendment shall establish a binding GMP between the Parties. Design Builder agrees that it will be responsible for paying all costs of completing the Phase 2 Work which exceed the GMP, as adjusted in accordance with the Contract Documents. Execution of the GMP Amendment constitutes Design Builder's representation and agreement to the following:

1. The Project is adequately defined in the Basis of Design Documents to provide an accurate Guaranteed Maximum Price;
2. The Project is sufficiently clear and understandable for the Design Builder to perform the Work in accordance with the Contract Documents for an amount that will not exceed the GMP and within the Project Schedule; and
3. If the Work cannot be completed for the agreed GMP, any additional costs shall be the responsibility of the Design Builder, and Design Builder hereby assumes liability for such costs without reimbursement by the Owner/DES.

C. **Project Schedule.** The Substantial and Final Completion Dates will be set forth in the GMP Amendment. By entering into the GMP Amendment, the Design-Builder makes the following representations:

1. The Project Schedule is sufficient time to complete the Project in accordance with the GMP Amendment and the Contract Documents.
2. If the Design-Builder fails to achieve Substantial Completion by the date set forth in the GMP Amendment, the Design-Builder will pay liquidated damages in the amount set forth in Section 7.1 of the Contract as agreed compensation to Owner/DES for the cost of delay and not as a penalty.

D. **Design Builder's Compensation.** Design Builder shall be compensated for Phase 2 for the following costs up to the established GMP.

1. The Cost of the Work as set forth in Section 6.5 of the General Conditions for Phase 2 Work.
2. The Design-Builder's Fee allocated to Phase 2 Work, calculated pursuant to Section 6.4.A. of the General Conditions;

E. Any costs incurred in excess of the GMP shall be the responsibility of the Design Builder.

**3.3 Inability to Execute Phase 2 Between Owner/DES and Design-Builder – GMP.** Phase 1 of the Contract is solely for Preliminary Services and Design Services as defined in Sections 2.1 and 2.2. Owner/DES 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.

**3.4 Prevailing Wages.** The location of the Project is _____ County. See General Conditions for requirements.

## ARTICLE 4 – OWNER'S/DES' SERVICES AND RESPONSIBILITIES

**4.1 Performance.** Owner/DES shall throughout the performance of this Contract cooperate with Design-Builder. Owner/DES 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/DES' Project Criteria.** Owner/DES shall provide Design-Builder with relevant information regarding the Project for developing the BOD.

**4.3 Owner/DES Provided Information.** To the extent deemed necessary by the Parties, Owner/DES 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.

**4.4 Reliance on Owner/DES Provided Information.** The Owner/DES Provided Information contains design or prescriptive specifications, and the Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design or prescriptive specifications and their compatibility with other information set forth in Owner/DES Provided Information, including any performance specifications, but only for the purposes of developing the Phase 1 Level of Effort, the Phase 1 Not to Exceed Amount.

Notwithstanding the above, Design-Builder is required to perform an independent evaluation of the Owner/DES Provided Information during Phase 1 as set forth in Attachment B to the Contract and may not rely on the Owner/DES Provided Information for the purposes of performing the Work. Provided Design-Builder complies with other requirements set forth in the Contract Documents regarding entitlement to adjustment of Commercial Terms, such as but not limited to those regarding notice of claims to the Owner/DES and identification of differing site conditions, Design-Builder may be entitled to an adjustment in the Phase 1 Not to Exceed Amount, but only to the extent Design-Builder's cost and/or time of performance have been adversely impacted by materially inaccurate design or prescriptive specifications in the Owner/DES Provided Information that is discovered in Phase 1.

**4.5** Owner/DES is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner/DES is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

**4.6** **Basis of Design Documents.** Owner/DES shall collaborate with the Design-Builder in development of Basis of Design Documents.

## 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 – FEE PERCENTAGE

**6.1** **Fee Percentage.** Design Builder's Fee Percentage shall be:

_____ percent (_____%) of the Cost of the Work set forth in Section 6.5 of the General Conditions.

## ARTICLE 7 –LIQUIDATED DAMAGES AMOUNT

**7.1** **Liquidated Damages for Delay.**

*[alternate provision]* Design-Builder agrees that if Substantial Completion is not attained by _____ (_____) days after the Scheduled Substantial Completion Date (the "LD Date")

Design-Builder shall pay Owner _____ Dollars ($_____) as liquidated damages for each day that Substantial Completion extends beyond the LD Date.

## ARTICLE 8 - REPRESENTATIVES OF THE PARTIES

**8.1** **Owner's/DES' Representatives.**

A. Owner/DES 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.B of the General Conditions:

Nancy K. Deakins, P.E.

Department of Enterprise Services
1500 Jefferson St.
P.O. Box 41476
Olympia, WA 98504
360-407-9333
Nancy.deakins@des.wa.gov

B. Owner/DES designates the individual listed below as its Owner's/DES' Representative, which individual has the authority and responsibility set forth in Section 3.2 of the General Conditions:

Department of Enterprise Services
1500 Jefferson St.
P.O. Box 41476
Olympia, WA 98504

**8.2 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.B. of the General Conditions:

TBD

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:

TBD

## ARTICLE 9 – 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/DES 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/DES and Design Builder.

## ATTACHMENTS:

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

A. General Conditions of the Contract Between Owner/DES and Design-Builder.

B. Phase 1 and Phase 2 Scope of Design Build Services

C. Owner's/DES's Project Criteria

DRAFT

D. Hourly Rates

E. Design-Builder's Proposal

F. Owner/DES-specified CAD Standards

G. Other attachments cited

In executing this Contract, Owner/DES 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:**

_____
*(Name of Owner)*

_____
*(Signature)*

_____
*(Printed Name)*

_____
*(Title)*

Date: _____

**DESIGN-BUILDER:**

_____
*(Name of Design-Builder)*

_____
*(Signature)*

_____
*(Printed Name)*

_____
*(Title)*

Date: _____

**DEPARTMENT OF ENTERPRISE SERVICES:**

_____
*(Signature)*

_____
*(Printed Name)*

_____
*(Title)*

Date: _____

DRAFT

Project 2019-271
SCC Maintenance, Operations, and Security Building

# ATTACHMENT 1a:
# AMENDMENT TO THE CONTRACT

# Department of Enterprise Services
# Project #_____

# [Project Name] Design-Build Services

# Contract/Amendment adding Phase 2
# Between Owner, DES, and Design-Builder
# Guaranteed Maximum Price

Pursuant to Article 3.2.A. in this Contract, the Contract is amended by agreement of the Parties with the following additional articles, adding Phase 2 Services to the Contract. All other terms and conditions remain in full force and effect. This Amendment shall be effective on the date of the last signature.

## Contents


**ARTICLE 10 – SCOPE OF WORK** ..... 2
**ARTICLE 11 – CONTRACT TIME – PHASE 2** ..... 2
**ARTICLE 12 – CONTRACT PRICE** ..... 2
**ARTICLE 13 – ELECTRONIC DATA** ..... 2


DRAFT

## ARTICLE 10 – SCOPE OF WORK

**10.1** Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents, including but not limited to the attached Basis of Design Documents .

## ARTICLE 11 – CONTRACT TIME – PHASE 2

**11.1 START OF PHASE 2.** The Work in Phase 2 shall commence within five (5) days of execution of this Amendment, unless the parties mutually agree otherwise in writing.

**11.2 Substantial Completion and Final Completion.**

A. Substantial Completion of the entire Work shall be achieved within TBD calendar days after the start of Phase 2.

B. Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.L of the General Conditions.

C. All of the dates set forth in this Article 11 (collectively the "Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions.

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

**11.4 Liquidated Damages.** Design-Builder understands that if Substantial Completion is not attained by the Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by the Substantial Completion Date, Designer-Builder shall pay Owner, subject to adjustments made in accordance with the General Conditions, $___TBD as liquidated damages for each day that Substantial Completion is not achieved. All other requirements related to liquidated damages are in Section 8.4.A of the General Conditions.

## ARTICLE 12 – CONTRACT PRICE

**12.1 Contract Price**. The Contract Price is the Guaranteed Maximum Price, $_____, that shall be paid to Design-Builder. The Contract Price shall be complete compensation for all Work to be performed by Design-Builder under the Contract Documents. The Contract Price shall be subject to adjustment in accordance with Article 9 of the General Conditions.

**12.2 GMP Savings.** 100 percent of savings shall be retained by the Owner.

## ARTICLE 13 – ELECTRONIC DATA

**13.1 Electronic Data.** In addition to the requirements set forth in Article X of the General Conditions for electronic data, Design-Builder shall comply with the requirements of DES [or Owner-specified] CAD Standards, in the performance of services under this Contract, incorporated by reference in Attachment X**Attachment:** The following documents are hereby incorporated by reference and made a part of this Agreement, as if set forth herein in full:

1. Guaranteed Maximum Price pursuant to Section 2.05.C of Attachment B to the Contract ("Attachment B");
2. List of Assumptions (Section 2.05.C.2.a of Attachment B)
3. Material Changes (Section 2.05.C.2.b of Attachment B)
4. Basis of Design Documents pursuant to Section 2.04 of Attachment B;
5. Project Schedule pursuant to Section 2.02 D of Attachment B;



DRAFT

6. Schedule of Values pursuant to Section 2.05.C of Attachment B;
7. BIM Model and Execution Plan pursuant to Section 2.03.B of Attachment B;
8. Subcontractor Procurement Procedure pursuant to Section 2.06 of Attachment B;
9. Project Specific Safety Plan pursuant to Section 2.07.B of Attachment B;
10. Project Phasing/Staging Analysis pursuant to Section 2.08 of Attachment B;
11. Permitting Strategy Plan pursuant to Section 2.09 of Attachment B;
12. QA/QC Plans pursuant to Section 2.10 of Attachment B;
13. Contract Close Out Plan pursuant to Section 2.11 of Attachment B;
14. Differing Site Conditions Report pursuant to Section 2.12 of Attachment B;
15. Updated Responsibilities Matrix pursuant to Section 2.13 of Attachment B.

Terms and conditions relating to any Services required under this Agreement as may apply from the Contract Documents, including the Guaranteed Maximum Price Contract and the General Conditions of the Contract Between Owner/DES and Design Builder (as provided in the Request for Proposals).

In executing this Contract, Owner/DES 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:**

_____
*(Name of Owner)*

_____
*(Signature)*

_____
*(Printed Name)*

_____
*(Title)*

Date: _____

**DESIGN-BUILDER:**

_____
*(Name of Design-Builder)*

_____
*(Signature)*

_____
*(Printed Name)*

_____
*(Title)*

Date: _____

**DEPARTMENT OF ENTERPRISE SERVICES:**

_____
*(Signature)*

_____
*(Printed Name)*

_____
*(Title)*

Date: _____

DRAFT

Project 2019-271
SCC Maintenance, Operations, and Security Building

# ATTACHMENT 2:
# GENERAL CONDITIONS

# GENERAL CONDITIONS
# OF
# DESIGN-BUILD GMP CONTRACT

# BETWEEN OWNER AND DESIGN-BUILDER

DRAFT

**[client]**
**[Project Name] Design-Build Services**
**Project #____**

Article 1 – General ..... 2
Article 2 – Design-Builder's Services and Responsibilities ..... 4
Article 3 – Owner's Services and Responsibilities ..... 12
Article 4 – Ownership of Work Product ..... 12
Article 5 – Insurance and Bonds ..... 13
Article 6 – Contract Price and Taxes ..... 15
Article 7 – Payment ..... 19
Article 8 – Time ..... 23
Article 9 – Changes to the Contract Price and Time ..... 24
Article 10 – Contract Adjustments and Dispute Resolution ..... 30
Article 11 – Stop Work and Termination ..... 33
Article 12 – Electronic Data ..... 36
Article 13 – Hazardous Conditions and Differing Site Conditions ..... 37
Article 14 – Diverse Business Inclusion ..... 38
Article 15 – Miscellaneous ..... 41
Article 16 – Indemnification ..... 41
Article 17 – PHASE 1 and Phase 2 Scope of Design-Build Services ..... 43

DRAFT

## ARTICLE 1 – GENERAL

### 1.1 Commitment to Collaborate

The Parties wish to fully embrace the principles of collaboration in the performance of the Work of this Project. Collaboration emphasizes a cooperative approach to problem solving involving all key parties to the Project: the Owner, Design-Builder, Designer and principal Subcontractors (electrical, mechanical and others as the Design-Builder and the Owner jointly agree are appropriate). Toward that end, the Parties agree to employ the following techniques to maximize efficiency and minimize waste:

A. Create a culture of open and honest communication throughout the course of the Project;

B. Resolve disputes at the lowest possible level;

C. Integrate the design and construction team (including key specialty contractors and trade partners) as early as possible into the design process;

D. Utilize lean construction methods efficiently and effectively;

E. Establish a collaborative environment where all parties have the opportunity to contribute their best efforts for the benefit of the Project as a whole rather than to the benefit of individual parties; and

F. Establish business terms that allow for equitable shared risk and reward for the parties who are members of the Design-Build Team.

### 1.2 Definitions

A. *Basis of Design Documents* are developed collaboratively between the Owner and Design-Builder as part of Phase 1 and provided with the Design-Builder's GMP Proposal. Provided the parties enter into the GMP Amendment, the Basis of Design Documents establish the scope of work for Phase 2 and the requirements for the Project.

B. *Commercial Terms* are any terms that establish the Contract Price or Design-Builder's Compensation, including but not limited to the MADCC, the GMP, any Not to Exceed amount. The term "Commercial Terms" also includes any terms that establish the Contract Time, including but not limited to the Project Schedule, Substantial Completion, and Final Completion. Commercial terms can only be changed through a change order.

C. *Construction Documents* consist of Drawings and Specifications, to be prepared or assembled by the Design-Builder consistent with the Basis of Design Documents unless a revision from the Basis of Design Documents is specifically set forth in writing executed by both the Owner and Design-Builder.

D. *Cost Model* is the deliverable required of the Design-Builder set forth in Section 1.11.B.2 of Attachment B.

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

F. *Design-Builder's Fee Percentage* is the amount set forth in Section 6.1 of the Contract.

G. *Design-Build Team* is comprised of the Design-Builder, the Design Consultant, and key Subcontractors identified by the Design-Builder.

H. *Design-Builder's Delay Rate* means the daily delay rate set forth in Section 6.6.E.4 of the General Conditions for the Design-Builder if the Design-Builder is entitled to delay pursuant to Section 8.2 of the General Conditions.

I. *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under

DRAFT

contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of the Design Consultant, but is retained by the Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.

J. *Design Log* is a log of Reliable Design Decisions agreed upon by the parties as further described in Section 2.4.C of the General Conditions.

K. *Design Materials* means any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by, or for, the Design-Builder: (1) to the Owner under the Contract Documents; or (2) developed or prepared by or for the Design-Builder specifically to discharge its duties under the Contract Documents.

L. *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 8.3.1 and the submission of all documents set forth in Section 7.5.1.

M. *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

N. *General Conditions Costs* are the costs set forth in Section 6.5.O of the General Conditions.

O. *GMP.* The Guaranteed Maximum Price is the Cost of the Work, Design-Builder's fee and allowances as described in Article 6.

P. *GMP Amendment* is the amendment to the Contract entered into by the parties at the conclusion of Phase 1 that establishes the Basis of Design Documents, the GMP, the Project Schedule and other terms agreed to by the parties.

Q. *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

R. *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

S. *Maximum Allowable Design and Construction Cost ("MADCC")* is the amount set forth in Section 3.1.D of the Contract. The MADCC is the maximum amount that the Design-Builder may receive as compensation for the Project. The MADCC may only be changed through Change Order.

T. *Original GMP or Original Guaranteed Maximum Price* means the Guaranteed Maximum Price that is set forth in the original GMP Amendment entered into by the parties.

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

V. *Reliable Design Decision* is a decision, development, or election that refines the Owner's Project Criteria or the Basis of Design Documents, that is approved by the Owner and that is

DRAFT

set forth in the Design Log. A Reliable Design Decision cannot change the Owner's Project Criteria or Basis of Design Documents but shall instead constitute a further development or refinement of the design for the Project with which all subsequent design, development and Construction Documents shall be consistent.

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

X. *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include design consultants, design subconsultants, design-build subcontractors, materialmen and suppliers.

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

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

AA. *Trend* is an issue identified in the Trend Log.

BB. *Trend Log* is a log of issues that have been identified by the Design-Builder or the Owner during the design process that may cause a change to the Owner's Project Criteria or the Basis of Design Documents, as applicable and/or any Commercial Term and is further described in Section 2.4.D of the General Conditions.

CC. *Work* shall mean the services, design and construction to be completed by the Design-Builder under the terms of this Contract. Work specifically includes the furnishing of all services, labor, materials, equipment, and all incidentals necessary to the successful completion of the services, design and construction, whether expressly required by or reasonably inferable from the Contract Documents, whether they are temporary or permanent, and whether they are incorporated into the finished Work or not. Work also includes all other obligations imposed on the Design-Builder by the Contract. The Work is sometimes generally referred to as the "Project."

## ARTICLE 2 – DESIGN-BUILDER'S SERVICES AND RESPONSIBILITIES

### 2.1 General Services.

A. Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

B. Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; and (iv) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

C. Design-Builder shall prepare and submit, schedules pursuant to Attachment B for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of

the Work and as set forth in Attachment B, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

D. The parties will meet pursuant to the requirements set forth in Attachment B and no less than seven (7) days after execution of the Contract to discuss issues affecting the administration of the Work and to implement the necessary procedures, including but not limited to those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

**2.2 Design Professional Services.**

Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

**2.3 Services for Development of Design.**

A. Design Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim and final Design Materials that Owner may wish to review. Design Materials include both Interim Design Submissions and Milestone Design Submission Materials shall be provided for each Phase of the Project as required in Contract Documents.

1. Design Materials shall be consistent with the Owner Project Criteria as well as the Basis of Design Documents, as the Basis of Design Documents may have been changed or supplemented through the design process set forth in this Section 2.4, including but not limited to changes recorded in the Design Log and through Change Orders. By submitting Design Materials, the Design Builder represents to the Owner that the Work depicted and otherwise shown, contained or reflected in Design Materials may be constructed in compliance with the then current Commercial Terms. Notwithstanding the above, Design Builder may propose Design Materials that may alter either the Basis of Design Documents, or the Commercial Terms; however, Design Builder must provide notice thereof in accordance with Article 10 of the General Conditions and obtain a Change Order before such proposed Design Materials are incorporated into the Construction Documents. Alternatively, if the Owner agrees in writing, the proposed Design Material may be included in the Trend Log pursuant to 2.4.D of the General Conditions.

2 Unless the parties agree in writing otherwise, the Design-Builder shall provide the Milestone Design Submissions set forth in Contract Documents. On or about the time of the scheduled submission of the Milestone Design Submissions set forth in the Contract Documents, Design Builder and Owner shall meet and confer about the Milestone Design Submissions, with Design Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Owner's Project Criteria, the Basis of Design Documents, or, if applicable, previously submitted Design Materials.

3. The Owner shall review and comment on Design Materials, providing any comments and/or concerns about the Design Materials. The Owner shall provide all comments on

DRAFT

the Design Materials within the time provided by the Contract Documents. The Design Builder shall revise the Design Materials (and any other deliverables) in response to the Owner's comments and incorporate said responses into the next submission of Design Materials.

4. If incorporation of the Owner's comments result in a design that is inconsistent with or otherwise give rise to a change in the Owner's Project Criteria, the Basis of Design Documents, or the applicable Commercial Terms, the Design Builder shall provide notice thereof in accordance with Article 10 of the General Conditions. Changes to the Basis of Design Documents or the Commercial Terms, including those that are deemed minor changes, shall be processed in accordance with Article 10 of the General Conditions. Alternatively, if the Owner agrees in writing, the proposed Design Material may be included in the Trend Log pursuant to Section 2.4.D of the General Conditions.

B. The Design Builder shall provide an updated Cost Model for the Project periodically as set forth in the Contract Documents. The Cost Model will be based on a detailed labor and material cost estimate for the GMP and the other Commercial Terms as required in Contract Documents. The Cost Model will be supplemented pursuant to Contract Documents.

C. **Design Log.** A Design Log, including a full listing of Reliable Design Decisions and all changes to the Basis of Design Documents, will be maintained by the Design Builder and provided to the Owner for review.

1. The Design Log shall be updated after every design review meeting, and in any case, on a weekly basis.

2. The purpose of the Design Log is to record design decisions that are consistent with the Owner's Project Criteria, the Commercial Terms, and the Basis of Design Documents, as applicable. Both parties must agree to include a Reliable Design Decision in the Design Log. If a Reliable Design Decision will cause a change in the Basis of Design Decisions, or any of the other Commercial Terms, such changes must be processed pursuant to Article 10 of the General Conditions.

3. Once a Reliable Design Decision is incorporated into the Design Log, it shall be binding on the Design Builder as if set forth in the Owner's Project Criteria and/or the Basis of Design Documents, as applicable.

D. **Trend Log.** If the Design Builder does not know the extent to which the Design Materials might alter a Commercial Term, the Design Builder shall request in writing for the Owner to agree to identify the Trend in the Trend Log.

1. The request to include a Trend in the Trend Log must include the following information:

   a. Identification of the portion of the Design Materials for which the costs are uncertain and may cause any Commercial Term to be exceeded;

   b. The estimated change in the applicable Commercial Term; and

   c. Potential impacts or changes to the Owner's Project Criteria, or the Basis of Design Documents as a result of the Trend.

2. The Design Builder must obtain the Owner's consent to include the Trend in the Trend Log. The Design Builder will track the Trend on the Trend Log, and the Trend Log shall be updated with the most recent information on a weekly basis.

3. The Parties will work collaboratively to resolve Trends in the Trend Log as quickly as possible. When a Trend in the Log is resolved, and the resolution changes the Basis of Design Documents and/or any other Commercial Term, the resolution shall be memorialized in a Change Order.

DRAFT

E. Owner's review and approval of interim and final Design Materials, meeting minutes, the Design Log, the Trend Log, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim or final Design Materials, meeting minutes, the Design Log, the Trend Log and Construction Documents shall be deemed to transfer any design liability from Design Builder to Owner or relieve the Design Builder from its responsibilities under this Contract. The Owner's review of the Construction Documents shall be conducted in accordance with the approved Contract Schedule. Such review shall not be deemed an approval or waiver by the Owner of any deviation from, or of the Design Builder's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been expressly identified as such in writing in the documents submitted by the Design Builder and approved by the Owner.

F. **Construction Documents.**

1. The Construction Documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality, including its phasing and subcontracting mode. The Construction Documents shall include all information required by the building trades to complete the construction of the Project, other than such details customarily developed by others during construction. To the extent not prohibited by the Contract Documents or Applicable Code Requirements, and subject to written approval by the Owner, Design Builder may prepare Construction Documents for approved Construction Packages 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. However, it is acknowledged by the parties hereto that inherent in a design build project, the production and review of Construction Documents may be a continuing process with portions thereof completed at different times. The Design Builder will limit the Construction Packages to a reasonable number, not more than that stipulated in the Supplementary Conditions, unless approved in writing by the Owner. Contract Schedule shall indicate the times for the Owner to review the completion of each such portion of the Construction Documents and a reasonable time for review of same.

G. 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 Legal Requirements.**

A. Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

B. The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Contract Amendment establishing the GMP. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

**2.5 Government Approvals and Permits.**

A. 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.

B. Design-Builder shall provide reasonable assistance to Owner in obtaining those permits,

approvals and licenses that are Owner's responsibility.

**2.6 Design-Builder's Construction Phase Services.**

A. Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

B. Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

**2.7 Subcontracts.**

A. Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder may not substitute Subcontractors identified in the Design-Builder's Proposal or previously approved by Owner without Owner's prior consent; such consent shall not be unreasonably withheld. The Contract Documents shall not be construed to create a contractual relationship of any kind between Owner and any Subcontractor of any tier.

B. Design-Builder shall submit a Subcontracting Procurement Procedure during Phase 1 as required in Attachment B, subject to the approval of the Owner. After approval by the Owner, Design-Builder may only modify the Subcontracting Plan upon obtaining written approval from the Owner. Design-Builder may not award any Subcontract on the basis of a lump sum price without obtaining prior written permission from the Owner, such permission shall not be unreasonably withheld.

C. All subcontracted Work associated with the performance of the construction shall be awarded by Design-Builder in accordance with a Subcontractor Procurement Procedure established during Phase 1. Design-Builder shall identify the scope of subcontracted Work ("Subcontract Package") and shall identify qualified Subcontractors for each Subcontract Package.

D. Design-Builder must obtain prior, written approval from the Owner for the Design-Builder to self-perform construction Work.

1. For each scope of Work for which Design-Builder proposes self-performance, Design-Builder must submit to the Owner a proposal that contains the following minimum information as well as any other information reasonably requested by the Owner:

   a. A detailed description of the scope of Work; and
   b. A detailed explanation of the effect of the self-performed construction Work on the Project, including but not limited to cost savings, benefits to the Project, and risks to the Project;

2. Design-Builder will provide the Owner with an estimate of the costs for all self-performed construction Work on an open book basis. In calculating the costs for self-performed construction Work, the following shall apply:

   a. The costs for self-performed construction Work shall not include costs that are also included in the General Conditions Amount.
   b. Notwithstanding the above, Design-Builder may include in the costs for self-

performed construction Work additional general conditions costs that are directly associated with the self-performed construction Work that Design-Builder would not have incurred but for the self-performed construction Work.

E. Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

F. Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

G. Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

H. Design Builder hereby assigns to Owner all its interest in first-tier subcontracts now or hereafter entered into by Design Builder for performance of any part of the Work. The assignment will be effective upon acceptance by Owner in writing and only as to those subcontracts which the Owner designates in writing. The Owner may accept said assignment at any time during the course of the Work and prior to Final Completion in the event of a suspension or termination of Design Builder's rights under the Contract Documents. Such assignment is part of the consideration to the Owner for entering into the Contract with Design Builder and may not be withdrawn prior to Final Completion.

**2.8 Design-Builder's Responsibility for Project Safety.**

A. Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

B. Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

C. Design-Builder's responsibility for safety under this Section 2.9 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

**2.9 Design-Builder's Warranty.**

Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

**2.10 Correction of Defective Work.**

A. Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.10, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

B. Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

C. The one-year period referenced in Section 2.11.A above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

**2.11 Apprentice Utilization Requirements**

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

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

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

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

B. The Design-Builder shall meet or exceed the apprentice utilization requirements of the Contract Documents on all labor hours on the Project.

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

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

1. The Design-Builder's good faith efforts to use registered apprentices; and/or
2. The lack of availability of registered apprentices; and/or
3. A disproportionately high ratio of material costs to labor hours, which makes infeasible the required minimum level of apprentice participation.

E. The Owner shall evaluate the request, and if appropriate, a change order shall be prepared by the Owner reducing the utilization requirement.

F. With its monthly Application for Payment, the Design-Builder shall submit the Apprentice and Journey Level Worker Utilization Report on the form provided by the Owner.

## 2.12 Prevailing Wages

A. **Prevailing Wages** To the extent that any of the work of this Contract is subject to the payment of prevailing wages, the Design-Builder shall comply with all applicable provisions of RCW 39.12 concerning prevailing wages, shall provide the Owner with all documents required, and shall pay not less than the prevailing rate of wage to such laborers, workers, or mechanics in each trade or occupation required for the work whether performed by the Design-Builder, subcontractor, or other person doing or contracting to do the whole or any part of the work subject to prevailing wages and contemplated by this Contract. The effective date for any prevailing wages required to be paid under this Contract shall be the execution date of this Contract. In any case, the Design-Builder shall not pay any person less than the hourly minimum rate of wage.

1. **Wage Rates**. Before commencing the Work, Design-Builder shall file a statement under oath with Owner and with the Director of Labor and Industries certifying the rate of hourly wage paid and to be paid each classification of laborers, workers, or mechanics employed upon the Work by Design-Builder and all Subcontractors. Such rates of hourly wage shall not be less than the prevailing wage rate.

2. **Disputes**. Disputes regarding prevailing wage rates shall be referred for arbitration to the Director of the Department of Labor and Industries. The arbitration decision shall be final and conclusive and binding on all parties involved in the dispute as provided for by RCW 39.12.060.

3. **Applications for Payment.** Each Application for Payment submitted by Design- Builder shall state that prevailing wages have been paid in accordance with the pre-filed statement(s) of intent, as approved. Copies of the approved intent statement(s) shall be posted on the Site with the address and telephone number of the Industrial Statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.

4. **Fees**. Design-Builder shall pay to the Department of Labor and Industries the currently established fee(s) for each statement of intent and/or affidavit of wages paid submitted to

the Department of Labor and Industries for certification.

5. **Intent to Pay Prevailing Wages**. Copies of approved Intents to Pay Prevailing Wages for Design-Builder and all Subcontractors shall be submitted with Design-Builder's first Application for Payment. As additional Subcontractors perform Work on the Project, their approved Intent forms shall be submitted with Design-Builder's next Application for Payment.
6. **Certified Payroll Copies**. Design-Builder and all Subcontractors shall promptly submit to Owner certified payroll copies if requested by Owner.

B. **Sanctions.** Failure to comply with any of the mandatory requirements of this part of the contract may subject the Design-Builder to sanctions or damages as provided for by RCW 39.19.090, or by other applicable laws.

## ARTICLE 3 – OWNER'S SERVICES AND RESPONSIBILITIES

### 3.1 Timely Reviews.

Owner commits to provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

### 3.2 Owner's Representative.

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

### 3.3 Government Approvals and Permits.

A. Owner shall obtain and pay for all zoning, zoning variances, and land-use permits required for the design and construction of the Work, as may be required by regulatory agencies having jurisdictions over the Project.

B. All other permits, government charges inspection fees, and licenses required to perform and complete the Work, including but not limited to the plan check fees, building permits, occupancy permit, as well as any renewals and penalties, shall be the sole responsibility of Design-Builder. Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

### 3.4 Owner's Separate Contractors.

Owner shall require its separate contractors to cooperate with and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

## 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, 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.

**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 the 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 – INSURANCE AND BONDS

**5.1 Insurance Carried by Design-Builder**

A. **Coverage.** All insurance coverages required in this Article shall cover the interest of Owner, Design-Builder, and any Subcontractors, as their interests may appear.

B. **Owner as Additional Insured.** All insurance coverages in this Article shall be endorsed to include Owner as an additional named insured for Work performed in accordance with the Contract Documents, and all insurance certificates shall evidence Owner as an additional insured.

C. **Design-Builder's Liability Insurance.** Prior to commencement of the Work, Design-Builder shall obtain all the insurance required by the Contract Documents and provide copies of the entire policies and all addendums or other attachments to Owner. Review of Design-Builder's insurance by Owner shall not relieve or decrease the liability of Design-Builder. Companies writing the insurance to be obtained by this part shall be licensed to do business in the State of Washington. The Contract Sum includes the cost of all insurance and bond costs required to complete the Work. Insurance carriers providing insurance in accordance with the Contract Documents shall be acceptable to Owner, and its A. M. Best rating shall be indicated on the insurance certificates.

1. **Insurance Coverage.** Design-Builder shall maintain the following insurance coverage during the Work and for one year after Final Acceptance. Design-Builder shall also maintain the following insurance coverage during the performance of any corrective Work required by Section 2.1, Coverage shall be in the amounts set forth:
   a. Commercial General Liability (CGL) on the ISO 1986 New Occurrence Form or its equivalent such as ISO Form CG 00 01 with limits of no less than $5,000,000 per occurrence for bodily injury, personal injury and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. This coverage shall include:
      (1) Completed operations/products liability;
      (2) Explosion, collapse, and underground; and

   b. Employer's liability coverage - limits no less than One Million dollars $1,000,000 per accident for bodily injury or disease.

c. Automobile Liability – ISO Form Number CA 0001 covering Code 1 (any auto), with limits no less than Five Million dollars ($5,000,000) per accident for bodily injury and property damage (Combined Single Limit).

2. **Scope of Coverage.** All insurance coverages shall protect against claims for damages for personal and bodily injury or death, as well as claims for property damage, which may arise from operations in connection with the Work whether such operations are by Design-Builder or any Subcontractor.

3. **Insurance.** Design-Builder shall furnish a copy of all insurance policies required in this Agreement, and Certificate of Insurance form SF500A, dated July 2, 1992, or ACORD form, prior to commencement of the Work. All insurance policies and certificates shall name Owner as an additional insured and shall denote the Project by contract number(s) and Project title(s.) All insurance policies and certificates shall specifically require forty-five (45) days prior notice to Owner of cancellation or a material change, except thirty (30) days for surplus line insurance.

D. **Builder's Risk or Installation Floater (Course of Construction) Insurance.** Design-Builder shall purchase and maintain builder's risk property insurance in the amount of the Contract Sum on a replacement cost basis until Substantial Completion. There shall be no coinsurance penalty provisions. For projects or portions of project not involving New Building Construction, "Installation Floater" is an acceptable substitute for the Builder's Risk Insurance.

1. **Insurance to be "All Risk".** Design-Builder's property insurance shall be placed on an "all risk" basis and insure against the perils of fire and extended coverage and physical loss or damage including theft, vandalism, malicious mischief, collapse, false work, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Owner's and Owner's consultant's services and expenses required as a result of an insured loss. Design-Builder shall purchase and maintain boiler and machinery insurance covering insured objects during installation and testing until Substantial Completion. Such insurance shall name as additional insured Owner, Design-Builder, and all subcontractors who perform applicable work.

2. **Waiver of Subrogation.** Owner and Design-Builder waive all subrogation rights against each other, any Subcontractors, Owner's Representative, Owner's Design-Build Consultant and Owner's Design-Build Consultant's subconsultants, and Owner's Separate Contractors, if any, and any of their subcontractors, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this section or other 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.

E. **Errors and Omissions Professional Insurance.** Design-Builder shall maintain professional liability insurance for design services errors and omissions with minimum limits of no less than Two Million dollars ($2,000,000) per claim, Four Million dollars ($4,000,000) policy aggregate. The professional liability insurance set forth herein shall be renewed by Design-Builder for a period of no less than five (5) years after Final Completion. The insurance policy shall be endorsed to provide vicarious liability coverage.

F. **Contractor's Pollution Legal Liability and/or Asbestos Legal Liability.** Insurance involving environmental hazards with limits no less than One Million dollars ($1,000,000) per occurrence or claim and Two Million dollars ($2,000,000) policy aggregate. The Contractor's Pollution Liability policy shall not contain lead-based paint or asbestos exclusions.

**5.2 Insurance Carried by Owner.** On and after Substantial Completion, Owner will carry insurance covering the Project in the types and amounts as Owner may from time to time deem prudent.

**5.3 Additional Insurance Provision.** For any claims related to this Project, Design-Builder's insurance coverage shall be primary insurance as respects the Owner, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Owner, its officers, officials, employees or volunteers shall be excess of Design-Builder's insurance and shall not contribute with it.

**5.4 Design-Builder's Performance and Payment Bonds**.

A. Concurrently with execution of the Contract, Design-Builder shall provide Owner the following Surety Bonds: (1) performance bond, and (2) payment bond. The performance and payment bonds shall use the AIA Document A312 form and the principal amount of each bond shall be one hundred percent (100%) of the Contract Sum plus state sales tax. Bonds shall be duly executed by a responsible corporate surety (a) licensed as a surety and qualified to do business in the State of Washington; (b) in good standing on the list maintained by the United States Department of Treasury; and (c) having an A.M. Best rating of "A" or better. The costs for such bonds are included in the Contract Sum. The bonds shall be provided when construction funding is available.

B. **Changes**. Prior to execution of a Change Order that, cumulatively with previous Change Orders, increases the Contract Sum at time of initial bonds by 15% or more, the Design-Builder shall provide either new payment and performance bonds for the revised Contract Sum, or riders to the existing payment and performance bonds increasing the amount of the bonds. The Design-Builder shall likewise provide additional bonds or riders when subsequent Change Orders increase the Contract Sum by 15% or more.

## ARTICLE 6 – CONTRACT PRICE AND TAXES

**6.1 Contract Price.**

The Contract Price shall be the GMP which shall be paid to Design-Builder in accordance with Article 6. The Contract Price shall be complete compensation for all Work to be performed by Design-Builder under the Contract Documents, and is subject to increases or decreases by Change Order only as specifically provided in this Contract.

**6.2 Taxes.**

The Contract Price shall include all taxes imposed by law and properly chargeable to the Project, including: (a) withholding, payroll and any other employee-related taxes on employees of Design-Builder or Subcontractors; (b) taxes based on the income or revenues of Design-Builder or Subcontractors; (c) taxes related to construction consumables; and (d) taxes levied by any Governmental Unit upon the services and labor provided by Design-Builder in connection with the Work, including Washington State Business and Occupation Tax.

**6.3 Washington State Sales Tax.**

Notwithstanding Section 6.2 above, the Contract Price does not include Washington State Sales

Tax (WSST). Owner will include applicable WSST in progress payments, and Design-Builder shall pay the WSST to the Department of Revenue and shall furnish proof of payment to Owner upon Owner's request.

A. WSST on the Phase 1 Contract will not be applied until *GMP Amendment* is executed. Phase 1 is considered professional services such as engineering and design services, and is only subject to WSST once construction is added when the GMP Amendment is executed.

B. Note: Design-Builder must bond for the Contract Sum plus the WSST.

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

A. Design-Builder's Fee shall be established as a percentage of the Cost of the Work as submitted on Price Factor Form with Design-Builder's Proposal and incorporated by reference in this Contract. It is a part of the GMP.

B. Design-Builder's Fee will be adjusted pursuant to Article 9 for any changes in the Work.

**6.5 Cost of the Work.**

The Cost of the Work shall include only the following:

A. The costs for those employees of Design Builder performing design or other services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, the Hourly Rates set forth Attachment D.

B. General Conditions Costs.

1. Wages or salaries of Design-Builder's managerial, supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work, based on payroll records and any employer contribution, unless substituted by an approved rate sheet. Specifically, the following personnel are included in the General Conditions Costs:

   a. Project Executive

   b. Project Manager

   c. Superintendent

   d. Quality Control Manager

   e. Project Engineer

2. Wages or salaries of Design Builder's personnel stationed at Design Builder's principal or branch offices, but only to the extent said personnel are approved in advance of the performance of the Work in writing by the Owner.

3. The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work. Such costs must be approved in writing by Owner in advance. The cost of travel shall not exceed the amount allowed by the State of Washington.

4. Accounting and data processing costs related to the Work.

5. Fees paid by the Design-Builder for the approval of Statements of Intent to Pay Prevailing Wages and certification of Affidavits of Wages Paid by the industrial statistician of the State Department of Labor and Industries. The Design-Builder will remain responsible for the actual submittal of the documents to the industrial statistician. In order to receive this reimbursement, the Design-Builder will be required to submit to Owner, a list of its subcontractors at all tiers and have their Statements of Intent to Pay Prevailing Wages on file with the Owner.

DRAFT

6. Administrative costs not specifically listed above, including but not limited to the following:
    a. Shop Drawing Reproduction
    b. Construction Schedule & Updates
    c. Safety/Security
    d. Field Office Set-up (mobilization/demobilization)
    e. Office Supplies
    f. Telephone System
    g. Telephone Service Charge
    h. Computer Network/System Set-up
    i. Courier Service
    j. Postage (Fed-X, USPS)
    k. Furniture/Equipment
    l. Office Cleaning
    m. Project Superintendent Vehicle
    n. Computers
    o. Copy Machine
    p. Temporary Electric Hook-up/Removal
    q. Temporary Electric Material
    r. Project Signage
    s. Temporary Water Hook-up/Removal
    t. Drinking Water & Supplies
    u. Temporary Fencing
    v. Chemical Toilets
    w. O&M Manuals
    x. Project Record Documents
    y. Field Engineering/Layout Survey

C. Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site, based on certified payroll and any employer contribution, unless substituted by an approved rate sheet.

D. Wages or salaries of Design-Builder's personnel directly involved with the project stationed at Design-Builder's principal or branch offices, unless substituted by an approved rate sheet.

E. 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. Unless otherwise agreed in writing by Owner, the Hourly Rates shall not exceed those set forth in Attachment D.

F. Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming 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.

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

H. Costs (less salvage value) of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the 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.

I. Costs of removal of debris and waste from the Site.

J. The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of communications, postage and express delivery charges, photocopying and miscellaneous charges.

K. 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 the 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.

L. Premiums for insurance and bonds required specifically by the Contract or the performance of the Work by the Design Builder. Payments made by Design-Builder under agreement with Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants.

M. Fuel and utility costs incurred in the performance of the Work.

N. Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work.

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

P. Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner (including 3% of direct labor, as identified in 6.5 A, above for small tools).

**6.6 Non-Reimbursable Costs.**

A. The following shall not be deemed as Cost of the Work:

1. Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 6.5.

2. Overhead and general expenses, except as provided for in Section 6.5, or which may be recoverable for changes to the Work.

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

4. Any costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

**6.7 Guaranteed Maximum Price (GMP).**

A. **GMP Established Upon Execution of the Amendment.**

1. Design-Builder represents, warrants, and guarantees that it shall not exceed the GMP. Design-Builder does not guarantee any specific line item provided as part of the GMP, and has the sole discretion to apply payment due to overruns in one line item to savings due to underruns in any other line item. Design-Builder agrees, however, that it shall be responsible for paying all costs of completing the Work which exceed the GMP, as

adjusted in accordance with the Contract Documents.

2. The GMP includes a Contingency in an agreed amount which is available for Design-Builder's exclusive use for unanticipated costs it may incur 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 defective, damaged or nonconforming Work, design errors or omissions; (e) Subcontractor defaults; or (f) those events under Article 9 of this Contract that result in an extension of the Contract Time but do not result in an increase in the Contract Sum. The Contingency is not available to Owner for any reason, including changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents. Design-Builder shall provide Owner notice of all anticipated charges against the Contingency, and shall provide Owner as part of a monthly status report of the Contract 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.

B. **GMP Adjustments.**

1. **Review and Adjustment to GMP Proposal**. After submission of the GMP Proposal, Design-Builder and Owner shall meet to discuss and review the GMP Proposal. If Owner has any comments regarding the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it promptly shall give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the GMP Proposal.

2. **Acceptance of GMP Proposal.** If Owner accepts the GMP Proposal, as may be amended by Design-Builder, the GMP and its basis shall be set forth in an amendment to this Contract.

3. **Failure to Accept the GMP Proposal.** If Owner rejects the GMP Proposal, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

   a. Owner may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted and the Parties shall proceed in accordance with Section 6.8.2.2; or

   b. Owner may terminate this Contract for convenience in accordance with Article 11; provided, however, in this 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.

## ARTICLE 7 – PAYMENT

### 7.1 Initial Invoice.

Design-Builder shall be entitled to submit to Owner, on or after the Contract Date, an initial invoice. This amount is considered part of the Contract Price and shall be considered full and

complete compensation to Design-Builder for the design services performed prior to the Contract Date and furnished in the Proposal. Payment of the Initial invoice will be processed by Owner and paid in accordance with Section 6.4, provided however, that no retainage will be withheld on such payment.

**7.2 Schedule of Values.**

Before submitting its first Application for Payment, Design-Builder shall submit to Owner for approval a Schedule of Values with breakdown allocating the total Contract Price to each principle category of work, in such detail as requested by Owner and established by the RFP Documents. The Schedule of Values will: (a) subdivide the Work into its respective parts; (b) include values for all items comprising the Work (inclusive of the Initial invoice payment amount); (c) contain appropriate amounts for demobilization, record drawings, and any other requirements for Project close-out; and (d) be used by Owner as the basis for progress payments. Payment for Work shall be made only for and in accordance with those items included in the Schedule of Values.

**7.3 Applications for Payment**

A. **Form of Application.** Design-Builder shall, on or before the twenty-fifth (25th) day of each month, submit to Owner an itemized Application for Payment, completed in accordance with the Contract Documents and the approved Schedule of Values. Each application shall be supported by such substantiating data as Owner may require. When Design-Builder submits its monthly Application for Payment, it shall include, in addition to other requirements a waiver and release of claims and mechanic's liens. Payments will not be considered due and payable by Owner unless these forms are properly completed and timely received by Owner.

B. **Certification.** By submitting an Application for Payment, Design-Builder: (a) certifies that all Subcontractors have been paid, less earned retainage in accordance with RCW 60.28.010, as their interests appeared in the last preceding Application for Payment, if payment for the application has been paid to the Design-Builder more than 10-days prior to the current application; and (b) recertifies that Design-Builder's prior certifications are true and correct, to the best of Design-Builder's knowledge, as of the date of the Application for Payment.

C. **Reconciliation.** At the time it submits an Application for Payment, Design-Builder shall analyze and reconcile, to the satisfaction of Owner, the actual progress of the Work with the Project Schedule.

D. **Stored Materials.** If authorized by Owner, the Application for Payment may include request for payment for material delivered to the Site and suitably stored, or for completed preparatory work. Payment may similarly be requested for material stored off Site, provided Design-Builder complies with or furnishes satisfactory evidence of the following:

1. The material will be placed in a warehouse that is structurally sound, dry, lighted and suitable for the materials to be stored;
2. The warehouse is located within a 10-mile radius of the Project. Other locations may be utilized, if approved in writing, by Owner;
3. Only materials for the Project are stored within the warehouse (or a secure portion of a warehouse set aside for the Project);
4. Design-Builder furnishes Owner a certificate of insurance extending Design- Builder's insurance coverage for damage, fire, and theft to cover the full value of all materials stored, or in transit;
5. The warehouse (or secure portion thereof) is continuously under lock and key, and only Design-Builder's authorized personnel shall have access;

6. Owner shall at all times have the right of access in company of Design-Builder;
7. Design-Builder and its surety assume total responsibility for the stored materials; and
8. Design-Builder furnishes to Owner certified lists of materials stored, bills of lading, invoices, and other information as may be required, and shall also furnish notice to Owner when materials are moved from storage to the Site.

### 7.4 Progress Payments

A. **Payment.** Owner shall make progress payments, in such amounts as Owner determines are properly due, within thirty (30) days after receipt of the Initial invoice or a properly executed Application for Payment. Owner shall notify Design-Builder in accordance with Chapter 39.76 RCW if an Application for Payment does not comply with the requirements of the Contract Documents or if payment will be withheld.

B. **Retainage.** Owner shall retain five percent (5%) of the amount of each progress payment due under an Application for Payment until at least forty-five (45) days after Final Acceptance and receipt of all documents required by Governmental Rule or the Contract Documents, including, at Owner's request, consent of surety to release of the retainage; provided, however, that no amount shall be retained for those portions of the Contract Price that are for professional design services. In accordance with Chapter 60.28 RCW, Design-Builder may request that monies reserved be retained in a fund by Owner, deposited by Owner in a bank or savings and loan, or placed in escrow with a bank or trust company to be converted into bonds and securities to be held in escrow with interest to be paid to Design-Builder. Owner may permit Design-Builder to provide an appropriate bond in lieu of the retained funds. Retainage shall be released in accordance with Governmental Rules.

C. **Title to Work Covered by Progress Payments.** Title to all Work and materials covered by a progress payment shall pass to Owner at the time of such payment free and clear of all liens, claims, security interests, and encumbrances. Passage of title shall not, however, relieve Design-Builder from any of its duties and responsibilities for the Work or materials, or waive any rights of Owner to insist on full compliance by Design-Builder with the Contract Documents.

### 7.5 Final Payment

A. **Application for Final Payment.** Once Owner has issued a Certificate of Final Acceptance, Design-Builder shall be entitled to submit an Application for Final Payment, which application will include the following information:

1. an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner might in any way be responsible have been paid or otherwise satisfied and that there are no claims, obligations, or liens outstanding or unsatisfied for labor, services, Equipment and Material, taxes, or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;
2. a written notice of any outstanding disputes or claims between Design-Builder and any of its Subcontractors, including the amounts and other details thereof;
3. a general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims pending in accordance with Article 10;
4. consent of Design-Builder's surety to final payment;
5. certificates of insurance confirming that required coverages will remain in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to Owner, consistent with the requirements of the Contract Documents; and

DRAFT

6. a written statement that Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents.

B. **Payment.** Within thirty (30) days after receipt of an acceptable Application for Final Payment, Owner shall pay to Design-Builder the unpaid balance of the Contract Price (less any Retainage per Article 6), reduced by any amounts owed by Design-Builder to Owner pursuant to this Contract which have not been paid by Design-Builder. Retainage funds shall be released pursuant to Chapter 60.28 RCW.

C. **Continuing Obligations.** Neither Final Acceptance nor final payment shall release Design-Builder or its sureties from any obligations of these Contract Documents, or any bonds, or constitute a waiver of any claims by Owner arising from Design-Builder's failure to perform the Work in accordance with the Contract Documents.

D. **Waiver and Release.** Acceptance of final payment by Design-Builder or any Subcontractor shall constitute a waiver and release to Owner of all claims by Design-Builder, or any such Subcontractor, for an increase in the Contract Price or Contract Time, and for every act or omission of Owner relating to or arising out of the Work, except for those claims made in accordance with Article 10.

**7.6 Owner's Right to Withhold Payment and Offset**

A. **Withholding of Payment.** Owner may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any payment to such extent as may be necessary to protect Owner from loss or damage for reasons including:

1. Work not in accordance with the Contract Documents;
2. Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
3. Work by Owner to correct defective Work or to complete the Work;
4. Design-Builder's failure to perform in accordance with the Contract Documents; and
5. Costs, claims, or liability that are the result of Design-Builder's failure to perform in accordance with the Contract Documents, including Liquidated Damages.

B. **Owner's Offset Rights.** If, at the time any payment by Owner is due under this Article 6, Design-Builder is liable to Owner for any amounts in accordance with the provisions of the Contract Documents (including Liquidated Damages), Owner may deduct the outstanding amount of such claims against Design-Builder from the amount payable to Design-Builder.

C. **Payment Disputes.** If Design-Builder disputes Owner's determination of payments due hereunder, or disputes any offsets or withholding by Owner, Design-Builder shall have the right to submit the dispute for resolution in accordance with Article 11. Pending resolution of any such dispute, Design-Builder shall continue its performance of the Work in accordance with the Contract Documents. Amounts determined by such resolution process to have been properly due shall be payable by Owner within thirty (30) days after (a) the effective date of the Parties' negotiated settlement or (b) absent such settlement, the arbitration award issued pursuant to Section 10.3.2.

**7.7 Interest.**

Payments due and unpaid in accordance with the Contract Documents shall bear interest as specified in Chapter 39.76 RCW.

**7.8 Record Keeping and Finance Controls.**

A. Design-Builder acknowledges that this Contract 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 Acceptance, Owner, Owner's accountants, and the Washington State Auditor shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, 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 Acceptance. 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. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Contract are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Contract, with the composition of such multiplier or markup not being subject to audit.

B. The audit may be performed by employees of Owner or a representative of Owner. Design-Builder, and its Subcontractors, shall provide adequate facilities acceptable to Owner, for the audit during normal business hours, at no cost to the Owner. Design-Builder, and all Subcontractors, shall make a good faith effort to cooperate with Owner's auditors. Owner may require copies of all documents be provided by Design Builder to Owner in an electronic format at no additional cost to the Owner.

## ARTICLE 8 – TIME

### 8.1 Obligation to Achieve the Contract Times.

Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Contract.

### 8.2 Delays to the Work.

A. If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.

B. In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.A. above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price in accordance with Section 9.7. However, the Contract Price shall not be adjusted for Force Majeure Events.

### 8.3 Substantial Completion.

A. Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment, and (iv) an

acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

B. Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 8.3.1 above, (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

### 8.4 Damages for Failure to Achieve Timely Completion.

A. **Liquidated Damages**

1. **Reason for Liquidated Damages:** Design-Builder understands that if the events for which the parties have established Liquidated Damages occur, Owner will suffer damages which are difficult to determine and accurately specify. To the extent that the parties establish Liquidated Damages, the parties agree that such damages are a reasonable estimate of the Owner's damages for such event and not a penalty. Consequently, provisions for liquidated damages are included in the Contract Documents.

2. **Calculation of Liquidated Damages amount:** The liquidated damage amounts set forth in the Contract Documents will be assessed not as a penalty, but as liquidated damages for breach of the Contract Documents. This amount is fixed and agreed upon by the Owner and the Design-Builder fixing and ascertaining the damages the Owner would sustain. This amount shall be construed as the actual amount of damages sustained by the Owner and may be retained by the Owner and deducted from periodic payments to the Design-Builder.

3. **Design-Builder responsible even if Liquidated Damages assessed:** Assessment of liquidated damages shall not release Design-Builder from any further obligations or liabilities pursuant to the Contract Documents.

B. **Actual Damages**

1. **Calculation of Actual Damages:** Actual damages will be assessed for failure to achieve Final Completion within the time provided. Actual damages will be calculated on the basis of direct administrative and other related costs attributable to the Project from the date when Final Completion should have been achieved, based on the date Substantial Completion is actually achieved, to the date Final Completion is actually achieved. Owner may offset these costs against any payment due Design-Builder.

2. Any liquidated damages assessed pursuant to this Contract for shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature, incurred by Owner which are occasioned by the specific event for which liquidated damages are established.

3. Notwithstanding the establishment of liquidated damages for a specific event, the Owner may recover its actual damages that are the result of other events.

## ARTICLE 9 – CHANGES TO THE CONTRACT PRICE AND TIME

### 9.1 Change Orders.

A. A Change Order is a written instrument issued after execution of the Contract signed by

Owner and Design-Builder, stating their agreement upon all of the following:

1. The scope of the change in the Work;
2. The amount of the adjustment to the Contract Price, if any; and
3. The extent of the adjustment to the Contract Time(s), if any.

B. All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

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

**9.2 Field Authorization.**

A. **Field Authorizations:** The Owner may direct the Design Builder to proceed with a change in the work through a written Field Authorization (FA) when the time required to price and execute a Change Order would impact the Project.

The Field Authorization shall describe and include the following:

a. The scope of work
b. An agreed upon maximum not-to-exceed amount
c. Any estimated change to the Contract Time
d. The method of final cost determination in accordance with the requirements of the General Conditions
e. The supporting cost data to be submitted in accordance with the requirements of the General Conditions

Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work.

Upon satisfactory submittal by the Design Builder and approval by the Owner of supporting cost data, a Change Order will be executed. The Owner will not make payment to the Design Builder for Field Authorization work until that work has been incorporated into an executed Change Order.

**9.3 Minor Changes in the Work.**

Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

**9.4 Contract Price Adjustments.**

A. Adjustments in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

1. Unit prices set forth in the Contract or as subsequently agreed to between the parties;
2. A mutually accepted lump sum, properly itemized and supported by sufficient

substantiating data to permit evaluation by Owner;

3. Costs, fees and any other markups set forth in the Contract; or

B. If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

**9.5 Pricing Components.**

The value of any changed Work that is compensable, of any disputed Work Change Directive and of any other increase or decrease in the Contract Price, including a Claim, may be an agreed lump sum amount. If no such agreement is achieved, the value shall be limited to the following components:

A. **Direct labor costs.** These are the labor costs determined by either the estimated or actual number of additional craft hours and the hourly cost necessary to perform the change in the Work, or the unit labor costs applied to the material quantities and extended, provided the unit labor costs are developed from the above craft hour cost, whichever is applicable, according to industry practice. The hourly cost shall be based upon the following:

1. **Basic wages:** The hourly wage actually paid the laborers, apprentices, journeymen, and foremen performing and/or directly supervising the changed Work on the Site. The premium portion of overtime wages is not included unless pre-approved by Owner.

2. **Fringe benefits:** Fringe benefits paid by Design-Builder as established by the Washington Department of Labor and Industries or contributed to labor trust funds as itemized fringe benefits, whichever is applicable.

3. **Workers' insurances:** Direct contributions to the State of Washington as industrial insurance; medical aid; and supplemental pension by class and rates established by the Washington Department of Labor and Industries.

4. **Federal insurances:** Direct contributions required by the Federal Insurance Compensation Act (FICA), Federal Unemployment Tax Act (FUTA), and State Unemployment Compensation Act (SUCA).

5. **Small tool costs:** 3% of Basic Wages in Clause 6.3.1.1 above.

6. **Travel expenses:** Reasonable expenses of travel, to same extent as can be demonstrated were included in calculating the original Contract Price. Design-Builder's pre-approved off-site travel expenses. Travel expenses shall not exceed the State of Washington Office of Financial Management guidelines for travel costs.

B. **Direct material costs.** This is an itemization, including material invoice, of the quantity and cost of additional materials necessary to perform the change in the Work. These costs shall be by the unit cost applied to the quantity and extended. The unit cost shall not include discounts or rebates so long as Owner was given a reasonable opportunity and declined to provide payment qualifying for such discount or rebate. The material costs may include normal freight costs; Owner must pre-approve express charges or special delivery costs.

C. **Construction equipment usage costs.** This is an itemization of the actual length of time construction equipment, other than small tools described in Clause 6.3.1.5 above, appropriate for the Work will be used solely on the change in the Work at the Site times the applicable rental cost as established by the lower of the prevailing rate published in The Rental Rate Blue Book by Data Quest, San Jose, California, or the actual rate paid as evidenced by rental receipts. Actual, reasonable mobilization costs are permitted if the equipment is brought to the Site solely for the change in the Work.

DRAFT

If more than one rate is applicable, the lowest rate will be utilized. The rates in effect at the time of the performance of the Change work are the maximum rates allowable for equipment of modern design and in good working condition and include full compensation for furnishing all fuel, oil, lubrication, repairs, maintenance, and insurance. Equipment not of modern design and/or not in good working condition will have lower rates. Hourly, weekly, and/or monthly rates, as appropriate, will be applied to yield the lowest total cost. The rate for equipment necessarily standing by for future use on the Work shall be fifty percent (50%) of the rate established above.

If equipment is required for which a rental rate is not established by The Rental Rate Blue Book, an agreed rental rate shall be established for that equipment, which rate and use must be approved by Owner prior to performing the changed Work.

D. **Cost of change in insurance or bond premiums.** This is defined as:

1. **Design-Builders' liability insurance:** The cost (expressed as a percentage) of any changes in Design-Builder's liability (including professional errors and omissions) insurance arising directly from the changed Work; and

2. **Public works bonds:** The cost (expressed as a percentage) of the change in Design-Builder's premium for Design-Builder's bonds arising directly from the changed Work. Upon request, Design-Builder shall provide Owner with supporting documentation from its insurer or surety of any associated cost incurred.

E. **Subcontractor costs.** These are payments Design-Builder makes to Subcontractors for changed or extra Work performed by Subcontractors. The Subcontractors' cost of changed Work shall be determined in the same manner as prescribed in this Subparagraph 6.3.

F. **Design Consultant costs.** These are payments Design-Builder makes to Design Consultants for additional services performed by Design Consultants arising out of a change in the Work.

**9.6 Markups for Changes.**

If the Contract Price requires an adjustment due to changes in the Work, or for any other purpose, including Claims, and a lump sum is not agreed upon, the following markups shall be allowed on such adjustments as an allowance for all combined overhead, profit and other costs, including all office, home office and site overhead (including project manager, project engineer, and superintendent, except for pre-agreed general conditions costs and extra work they perform caused by acceleration or an extension in the Contract Time), taxes (except for sales tax), safety costs, and delay and impact costs of any kind, added to the total cost to Owner of any Change Order, Work Change Directive, Claim or any other claim of any kind on this Project:

A. Design-Builder shall receive the agreed upon Fee Percentage set forth in Section 6.1 of the Contract. Fee is established as a percentage of the added cost of the work for fixed-price costs and time-and-material costs of any materials supplied and/or work properly performed by Design-Builder's own forces.

B. Design-Builder shall receive the agreed upon Fee as submitted on the Price Factor Form with Design-Builder’s Proposal. Fee is established as a percentage of the added cost of the work for fixed-price costs and time-and-material costs owed directly to a Subcontractor for materials supplied and/or Work properly performed by that Subcontractor or owed directly to a Design Consultant for services it properly performs.

C. Each "lump-sum" Subcontractor of any tier shall receive fifteen percent (15%) of fixed-price costs and of the time-and-material costs of any materials properly supplied and/or Work properly performed by its own forces.

DRAFT

D. Each "lump-sum" Subcontractor of any tier shall receive eight percent (8%) of fixed-price costs and of the time-and-material costs owed directly to a lower-tier "lump-sum" Subcontractor for materials supplied and/or Work properly performed by that Subcontractor.

**9.7 Change in the Contract Time**

A. **COP requests for Contract Time:** The Contract Time shall only be changed by a Change Order. Design Builder shall include any request for a change in the Contract Time in its Change Order Proposal.

B. **Time extension permitted if not Design Builder's fault:** If the time of Design Builder's performance is changed due to an act of Force Majeure, or due to the fault or negligence of Owner or anyone for whose acts Owner is responsible, Design Builder shall be entitled to make a request for an equitable adjustment in the Contract Time in accordance with the following procedure. No adjustment in the Contract Time shall be allowed to the extent Design Builder's changed time of performance is due to the fault or negligence of Design Builder or anyone for whose acts Design Builder is responsible.

1. **Notice and record keeping for Contract Time request:** A request for an equitable adjustment in the Contract Time shall be based on written notice delivered within 7 Days of the occurrence of the event giving rise to the request. If Design Builder believes it is entitled to adjustment of Contract Time, Design Builder shall immediately notify Owner and begin to keep and maintain complete, accurate, and specific daily records. Design Builder shall give Owner access to any such record and if requested, shall promptly furnish copies of such record to Owner.

2. **Timing and content of Design Builder's Notice:** Design Builder shall not be entitled to an adjustment in the Contract Time for any events that occurred more than 7 Days before Design Builder's written notice to Owner. The written notice shall set forth, at a minimum, a description of: the event giving rise to the request for an equitable adjustment in the Contract Time; the nature of the impacts to Design Builder and its Subcontractors of any tier, if any; and to the extent possible the amount of the adjustment in Contract Time requested. Failure to properly give such written notice shall, to the extent Owner's interests are prejudiced, constitute a waiver of Design Builder's right to an equitable adjustment.

3. **Design Builder to provide supplemental information:** Within 30 Days of the occurrence of the event giving rise to the request, unless Owner agrees in writing to allow an additional period of time to ascertain more accurate data, Design Builder shall supplement the written notice provided in accordance with subparagraph 9.7 B.2 with additional supporting data. Such additional data shall include, at a minimum: the amount of delay claimed, itemized in accordance with the procedure set forth herein; specific facts, circumstances, and analysis that confirms not only that Design Builder suffered the delay claimed, but that the delay claimed was actually a result of the act, event, or condition complained of, and that the Contract Documents provide entitlement to an equitable adjustment in Contract Time for such act, event, or condition; and supporting documentation sufficiently detailed to permit an informed analysis of the request by Owner. Failure to provide such additional information and documentation within the time allowed or within the format required shall, to the extent Owner's interests are prejudiced, constitute a waiver of Design Builder's right to an equitable adjustment.

4. **Design Builder to proceed with Work as directed:** Pending final resolution of any request in accordance with this paragraph, unless otherwise agreed in writing, Design Builder shall proceed diligently with performance of the Work.

C. **Design Builder to demonstrate impact on critical path of schedule:** Any change in the Contract Time covered by a Change Order, or based on a request for an equitable

adjustment in the Contract Time, shall be limited to the change in the critical path of Design Builder's schedule attributable to the change of Work or event(s) giving rise to the request for equitable adjustment. Any Change Order Proposal or request for an adjustment in the Contract Time shall demonstrate the impact on the critical path of the schedule. Design Builder shall be responsible for showing clearly on the Progress Schedule that the change or event: had a specific impact on the critical path, and except in case of concurrent delay, was the sole cause of such impact; and could not have been avoided by resequencing of the Work or other reasonable alternatives.

D. **Cost of change in Contract Time:** Design Builder may request compensation for the cost of a change in Contract Time in accordance with this paragraph, 9.7D, subject to the following conditions:

1. **Must be solely fault of Owner:** The change in Contract Time shall solely be caused by the fault or negligence of Owner;
2. **Procedures:** Design Builder shall follow the procedure set forth in paragraph 9.7B;
3. **Demonstrate impact on critical path:** Design Builder shall establish the extent of the change in Contract Time in accordance with paragraph 9.7C; and
4. **Limitations on daily costs:** The daily cost of any change in Contract Time shall be limited to the items below, less the amount of any change in the Contract Sum the Design Builder may otherwise be entitled to pursuant to 9.6 for any change in the Work that contributed to this change in Contract Time:
   a. **Non-productive supervision or labor:** cost of nonproductive field supervision or labor extended because of delay;
   b. **Weekly meetings and indirect activities:** cost of weekly meetings or similar indirect activities extended because of the delay;
   c. **Temporary facilities or equipment rental:** cost of temporary facilities or equipment rental extended because of the delay;
   d. **Insurance premiums:** cost of insurance extended because of the delay;
   e. **General and Administrative Overhead:** general and administrative overhead in an amount to be agreed upon, but not to exceed 3% of the Contract Award Amount divided by the originally specified Contract Time for each Day of the delay.

**9.8 If there is Disagreement on Entitlement**

If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed.

**9.9 Emergencies.**

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

## ARTICLE 10 – CONTRACT ADJUSTMENTS AND DISPUTE RESOLUTION

### 10.1 Requests for Contract Adjustments and Relief.

If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed fourteen (14) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

### 10.2 Dispute Avoidance and Resolution.

A. 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.

B. 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.

C. 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 possible, but in no case later than fifteen (15) 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.

### 10.3 Final Offer.

If the Parties fail to reach agreement on the terms of any change in the Work, including any adjustment in the Contract Price or Contract Time, Design-Builder, at any time, may request in writing a final offer from Owner. Owner shall provide its written response within thirty (30) days of Design-Builder's request. Owner also may provide Design-Builder with a final offer at any time. If Design-Builder rejects Owner's final offer, or the Parties are unable to reach agreement, Design-Builder's only remedy shall be to file a Claim in accordance with this Article 10.

### 10.4 Claims Process.

A. **Claim Filing Deadline for Contractor.** Design-Builder shall file its Claim within the earlier of:

1. one hundred twenty (120) days from Owner's final offer (if such an offer has been made), or
2. the date of Final Completion.

B. **Claim Must Cover All Costs and Be Documented.** The Claim shall be deemed to cover all changes in cost and time (including direct, indirect, impact, and consequential) to which Design-Builder may be entitled. It shall be fully substantiated and documented and, at a

minimum, shall contain the following information:

1. A detailed factual statement of the Claim for additional compensation and time, if any, providing all necessary dates, locations, and items of Work affected by the Claim;
2. The date on which facts arose which gave rise to the Claim;
3. The name of each employee, agent or representative of Owner knowledgeable about the Claim;
4. The specific provisions of the Contract Documents which support the Claim;
5. The identification of any documents and the substance of any oral communications that support the Claim;
6. Copies of any identified documents, other than the Contract Documents, that support the Claim;
7. If an adjustment in the Contract Time is sought, then: (a) the specific days and dates for which it is sought; (b) the specific reasons Design-Builder believes an extension in the Contract Time should be granted; and (c) Design-Builder's analysis of its Project Schedule to demonstrate the reason for such an adjustment;
8. If an adjustment in the Contract Price is sought, the exact amount sought and a breakdown of that amount into the categories set forth in, and in the detail required by, Article 9; and
9. A statement certifying, under penalty of perjury, that the Claim is made in good faith, that the supporting cost and pricing data are true and accurate to the best of Design-Builder's knowledge and belief, that the Claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the Contract Price or Contract Time for which Design-Builder believes Owner is liable.

C. **Time for Owner's Response to Claim.** After Design-Builder has submitted a fully documented Claim that complies with all applicable provisions of Section 10.4.2, Owner shall respond in writing to Design-Builder as follows:

1. If the Claim amount is less than $50,000, Owner shall provide a decision within sixty (60) days from the date the Claim is received; or
2. If the Claim amount is $50,000 or more, Owner shall provide a decision within ninety (90) days from the date the Claim is received, or with notice to Design-Builder of the date by which it will render its decision. Owner will then respond with a written decision in such additional time.

D. **Owner's Review of Claim & Finality of Decision.** To assist in the review of any Claim, Design-Builder shall provide any additional information requested by Owner. Design-Builder shall proceed with performance of the Work pending final resolution of any the Claim. Owner's written decision on a Claim shall be final and conclusive as to all matters set forth in the Claim, unless Design-Builder follows the procedures set forth in Section 10.5.

E. **Waiver of Design-Builder Rights for Failure to Comply with this Section.** Any Claim of Design-Builder against Owner for damages, additional compensation, or additional time, shall be conclusively deemed to have been waived by Design-Builder unless timely made in accordance with the requirements of this Section 10.4.

**10.5 Demand for Arbitration.**

If Design-Builder disagrees with Owner's decision rendered in accordance with Section 10.4, Design-Builder shall provide Owner with a written demand for arbitration. No demand for arbitration of any such Claim shall be made later than thirty (30) days after the date of Owner's

decision on such Claim; failure to demand arbitration within said thirty (30) day period shall result in Owner's decision being final and binding upon Design-Builder and all Subcontractors.

A. **Filing of Notice for Arbitration.** Notice of the demand for arbitration shall be filed with the American Arbitration Association (AAA), with a copy provided to Owner. The Parties shall negotiate or mediate under the Construction Industry Arbitration Rules & Mediation Procedures of the AAA ("AAA Rules"), or mutually acceptable service, before seeking arbitration in accordance with the then-applicable AAA Rules.

B. **Arbitration Is the Forum for Resolving Claims.** All Claims arising out of the Work shall be resolved by binding arbitration in accordance with the then-applicable AAA Rules. The judgment upon the arbitration award may be entered, or review of the award may occur, in the superior court having jurisdiction thereof. No independent legal action relating to or arising from the Work shall be maintained.

C. **Owner May Combine Claims Into Same Arbitration.** Claims between Owner and Design-Builder and Design-Builder and its Subcontractors shall, upon demand by Owner, be submitted in the same arbitration or mediation.

D. **Resulting Change Order.** If the Parties resolve the Claim prior to arbitration judgment, the terms of the resolution shall be incorporated in a Change Order. The Change Order shall constitute full payment and final settlement of the Claim, including all claims for time and for direct, indirect, or consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity.

**10.6 Continuation of Work.**

Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder pending final resolution of any dispute or disagreement.

**10.7 Owner May Audit Claims.**

All Claims filed against Owner shall be subject to audit at any time following the filing of the Claim. Failure of Design-Builder, or Subcontractors of any tier, to maintain and retain sufficient records pursuant to Section 7.8 of the General Conditions to allow Owner to verify all or a portion of the Claim or to permit Owner access to the books and records of Design-Builder, or Subcontractors of any tier, shall constitute a waiver of the Claim and shall bar any recovery.

A. **Design-Builder to Make Documents Available.** In support of Owner audit of any Claim, Design-Builder shall, upon request, promptly make available to Owner the following documents:

1. Daily time sheets and supervisor's daily reports;
2. Collective bargaining agreements;
3. Insurance, welfare, and benefits records;
4. Payroll registers;
5. Earnings records;
6. Payroll tax forms;
7. Material invoices, requisitions, and delivery confirmations;
8. Material cost distribution worksheet;
9. Equipment records (list of company equipment, rates, etc.);
10. Vendors', rental agencies', Subcontractors', and agents' invoices;

11. Contracts between Contractor and each of its Subcontractors, and all lower-tier Subcontractor contracts and supplier contracts;
12. Subcontractors' and agents' payment certificates;
13. Cancelled checks (payroll and vendors);
14. Job cost report, including monthly totals;
15. Job payroll ledger;
16. Planned resource loading schedules and summaries;
17. General ledger;
18. Cash disbursements journal;
19. Financial statements for all years reflecting the operations on the Work. In addition, the Owner may require, if it deems it appropriate, additional financial statements for 3 years preceding execution of the Work;
20. Depreciation records on all company equipment whether these records are maintained by the company involved, its accountant, or others;
21. If a source other than depreciation records is used to develop costs for Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents;
22. All nonprivileged documents which relate to each and every Claim together with all documents which support the amount of any adjustment in Contract Price or Contract Time sought by each Claim;
23. Work sheets or software used to prepare the Claim establishing the cost components for items of the Claim including but not limited to labor, benefits and insurance, materials, equipment, Subcontractors, all documents which establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals; and
24. Work sheets, software, and all other documents used by Contractor to prepare its bid.

C. **Design Builder to Provide Facilities for Audit and Shall Cooperate.** The audit may be performed by employees of Owner or a representative of Owner. Design-Builder, and its Subcontractors, shall provide adequate facilities acceptable to Owner, for the audit during normal business hours, at no cost to the Owner. Design-Builder, and all Subcontractors, shall make a good faith effort to cooperate with Owner's auditors. Owner may require copies of all documents be provided by Design Builder to Owner in an electronic format at no additional cost to the Owner. All records shall be maintained for a period of six (6) years after final payment under this Contract.

## ARTICLE 11 – STOP WORK AND TERMINATION

### 11.1 Owner's Right to Stop Work.

A. Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

B. Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of the Work by Owner which is not caused by the acts of the Design Builder or its agents, Consultants or Subcontractors.

DRAFT

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

A. If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.B and 11.2.C below.

B. Upon the occurrence of an event set forth in Section 11.2.A above, Owner may provide written notice to Design-Builder that it intends to terminate the Contract unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence (as determined by the Owner) to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence (as determined by the Owner) to cure, such problem, then Owner may declare the Contract terminated for default by providing written notice to Design-Builder of such declaration.

C. Upon declaring the Contract terminated pursuant to Section 11.2.B above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, and take over the contracts of any Subcontractor or Consultant all of which Design-Builder hereby transfers, assigns and sets over to Owner, if Owner so requests, for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Contract establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the reprocurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages.

D. If Owner improperly terminates the Contract for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Section 11.3.

**11.3 Owner's Right to Terminate for Convenience.**

A. **Owner Notice of Termination for Convenience:** Owner may, upon written notice, terminate (without prejudice to any right or remedy of Owner) the Work, or any part of it, for the convenience of Owner.

B. **Design-Builder response to termination Notice:** Unless Owner directs otherwise, after receipt of a written notice of termination for either cause or convenience, Design-Builder shall promptly:

DRAFT

1. *Cease Work:* Stop performing Work on the date and as specified in the notice of termination;
2. *No further orders or Subcontracts:* Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work as is not terminated;
3. *Cancel orders and Subcontracts:* Cancel all orders and subcontracts, upon terms acceptable to Owner, to the extent that they relate to the performance of Work terminated;
4. *Assign orders and Subcontracts to Owner:* Assign to Owner all of the right, title, and interest of Design-Builder in all orders and subcontracts;
5. *Take action to protect the Work:* Take such action as may be necessary or as directed by Owner to preserve and protect the Work, Project site, and any other property related to this Project in the possession of Design-Builder in which Owner has an interest; and
6. *Continue performance not terminated*: Continue performance only to the extent not terminated

C. **Terms of adjustment in Contract Price if Contract terminated:** If Owner terminates the Work or any portion thereof for convenience, Design-Builder shall be entitled to make a request for an equitable adjustment for its reasonable direct costs incurred prior to the effective date of the termination, plus reasonable allowance for overhead and profit on Work performed prior to termination, plus the reasonable administrative costs of the termination, but shall not be entitled to any other costs or damages, whatsoever, provided however, the total sum payable upon termination shall not exceed the Contract Price reduced by prior payments. Design-Builder shall be required to make its request in accordance with Article 9 of the General Conditions.

D. **Owner to determine whether to adjust Contract Time:** If Owner terminates the Work or any portion thereof for convenience, the Contract Time shall be adjusted as determined by Owner.

**11.4 Design-Builder's Right to Terminate for Cause.**

A. Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Contract for cause for the following reasons:

1. The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.A hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.
2. Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.A hereof.

B. Upon the occurrence of an event set forth in Section 11.4.A above, Design-Builder may provide written notice to Owner that it intends to terminate the Contract unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the

Contract terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Contract for its convenience under Article 8 of the Contract.

**11.5 Bankruptcy of Design-Builder.**

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

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

2. The Design-Builder shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Contract within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

B. If the Design-Builder Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Contract, declare the Contract terminated and pursue any other recourse available to the Design-Builder under this Article 11.

C. The rights and remedies under Section 11.5 above shall not be deemed to limit the ability of the Owner to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code.

## ARTICLE 12 – ELECTRONIC DATA

**12.1 Electronic Data.**

The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

**12.2 Transmission of Electronic Data.**

A. Design-Builder shall comply with the requirements of DES CAD Standards, and Design-Builder and Owner shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

B. 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 Contract, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

C. 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 Contract. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

**12.3 Electronic Data Protocol.**

A. The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

B. Electronic Data will be transmitted in the format agreed upon in Section 12.2.A above, including file conventions and document properties, unless prior arrangements are made in writing.

C. The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

D. The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

## ARTICLE 13 – HAZARDOUS CONDITIONS AND DIFFERING SITE CONDITIONS

### 13.1 Hazardous Conditions.

A. Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

B. Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

C. Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

D. Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of

Hazardous Conditions.

E. To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.

F. Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

### 13.2 Differing Site Conditions.

A. Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Owner's Project Criteria or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Design Builder encounters conditions at the site which are subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then Design Builder shall give written notice to Owner, as described in Article 10 of the General Conditions. Differing Site Conditions shall not be disturbed prior to such notice.

B. Pursuant to Attachment B, Design-Builder is required to submit a Differing Site Conditions Report at the conclusion of Phase 1, included in the GMP Proposal. Notwithstanding the above, provided the parties sign the Phase 2 Amendment, Design-Builder shall not be entitled to a Change Order for Differing Site Conditions pursuant to Section 13.2.A(i) of the General Conditions if the Differing Site Condition could have been discovered, with reasonable diligence, during Phase 1 and was not included in the GMP Proposal, including all information required in Attachment B.

C. If such conditions differ materially and cause a change in Design Builder's cost of, or time required for, performance of any part of the Work, the Design Builder may be entitled to an equitable adjustment in the Contract Time or Contract Price, or both, provided a request for equitable adjustment is made in in accordance with Article 9.

## ARTICLE 14 – DIVERSE BUSINESS INCLUSION

### 14.1 Diverse Business Participation.

In accordance with RCW 39.19.010, the state of Washington encourages participation in all of its contracts by OMWBE certified firms.

In accordance with RCW 43.60A.200 and RCW 39.26.240, the state of Washington encourages participation in contracts that are exempt from competitive bidding under RCW 39.26.125 by firms certified by Department Of Veteran Affairs.

In accordance with RCW 39.26.005, the state of Washington encourages participation in all of its contracts by Washington small businesses.

**14.2 Diverse Business Inclusion Plan.**

All Proposers, including diverse owned firms, must submit a copy of the firm's Diverse Business Inclusion Plan. The Inclusion Plan should demonstrate in detail the specific strategies, approaches, and steps your firm will use in seeking to help meet or exceed the state's aspirational diverse business participation goals.

**14.3 Aspirational Goals.**

The Governor's Office's aspirational goals for diverse business inclusion are:

10% Minority Owned Business certified by the Washington State Office of Minority and Women Business Enterprises

6%, Women Owned Business certified by the Washington State Office of Minority and Women Business Enterprises

5% Veteran Owned Business certified by the Washington State Department of Veterans Affairs

5% Washington Small Businesses self-identified in the Washington Electronic Business Solution http://www.des.wa.gov/services/ContractingPurchasing/Business/Pages/WEBSRegistration.aspx (WEBS).

**14.4 Definitions.**

Diverse Business:

The Diverse Business definition includes Washington small business, micro-business, and mini-business as defined in RCW 39.26.010, Minority and Women Business Enterprises (M/WBEs) as defined in RCW 39.39.19 and WAC 326-20, and Veteran-owned businesses as defined in RCW 43.60A.010. If the proposed subcontractors are self-identified diverse businesses, the Proposer will encourage and support state efforts for their certification with the appropriate Washington state agencies.

Subcontracting:

Subcontracting means direct performance of commercially useful work through subcontracting as part of the proposed project team.

**14.5 Proposal**

The Proposer must prepare and provide a "Diverse Business Inclusion Plan, and may use Attachment 15 as guidance or a template. The Proposer's goals are voluntary. No preference will be included in the evaluation of proposals, no minimum level of MWBE or Veteran Owned or Washington Small Business participation will be required as a condition for receiving an award and proposals will not be rejected or considered non-responsive on that basis (unless a zero (0) goal amount is submitted).

DRAFT

Proposer commits to a genuine effort to achieve the proposed subcontract amounts with diverse business subcontractors by working with the Agency to develop a comprehensive "Outreach Strategy".

**14.6 Reporting.**

The successful Proposer is required to register and create an account in the DES Diversity Compliance program (B2Gnow) at https://des.diversitycompliance.com. (*If assistance is needed, you may contact*

- Charles Wilson at *Charles.Wilson@des.wa.gov*

**14.7 Information certified firms**

Prime Proposers may contact:

- OMWBE at http://www.omwbe.wa.gov/ or (360) 664-9750
- DVA at http://www.dva.wa.gov/BusinessRegistry/Search.aspx or (360) 725-2200.
- Charles Wilson at Charles.Wilson@des.wa.gov or (360) 999-7667

~~**Maintenance of Records.**~~

~~Design-Builder shall maintain, for at least six (6) years after Final Acceptance, relevant records and information necessary to document the level of utilization of Diverse Businesses and other businesses as Subcontractors on this Project, as well as any efforts Design-Builder made to increase the participation of Diverse Businesses. The Design-Builder shall also maintain, for at least six (6) years after Final Completion, a record of all quotes, bids, estimates, or proposals submitted to Design-Builder by all businesses seeking to participate as Subcontractors on this Project. Owner shall have the right to inspect and copy such records. If this Contract involves federal funds, Design-Builder shall comply with all record keeping requirements set forth in any federal Governmental Rules referenced in the Contract Documents.~~

~~**14.8 Advertisements.**~~

~~Design-Builder shall advertise opportunities for Subcontractors in a manner reasonably designed to provide Diverse Businesses capable of performing the work with timely notice of such opportunities, and all advertisements shall include a provision encouraging participation by Diverse Businesses. Advertising may be done through general advertisements (e.g. newspapers, journals, etc.) or by soliciting bids directly from Diverse Businesses. The Design-Builder shall provide Diverse Businesses that express interest with adequate and timely information about plans, specifications, and requirements of the Project.~~

~~**14.9 Non-Discrimination.**~~

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

DRAFT

## ARTICLE 15 – MISCELLANEOUS

### 15.1 Assignment.

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

### 15.2 Successorship.

Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

### 15.3 Governing Law.

The Contract and all Contract Documents shall be governed by the laws of the State of Washington. Venue shall be in the Thurston County Superior Court.

### 15.4 Severability.

If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

### 15.5 No Waiver.

The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

### 15.6 Headings.

The headings used in these General Conditions, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

### 15.7 Notice.

Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the Party's Representative designated in Article 9 of the Contract to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Contract, or (iii) if transmitted by facsimile or email, by the time stated in a machine generated confirmation that notice was received at the facsimile number or email address of the Representative.

### 15.8 Amendments.

The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

### 15.9 Entire Agreement.

The Contract Documents 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 Contract.

## ARTICLE 16 – INDEMNIFICATION

### 16.1 Patent and Copyright Infringement.

A. Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part of the Work, or the operation or use of the Work or any part of the Work, constitutes infringement of any United States patent or copyright, now or later issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

B. If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

C. Sections 16.1.A and 16.1.B above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work.

D. The obligations set forth in this Section 16.1 shall constitute the sole agreement between the parties relating to liability for infringement of violation of any patent or copyright.

**16.2 Payment Claim Indemnification.**

Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

**16.4 Design-Builder's General Indemnification.**

Design-Builder shall defend, indemnify, and hold Owner harmless from and against all claims, demands, losses, damages, or costs, including but not limited to damages arising out of bodily injury or death to persons and damage to property, caused by or resulting from:

A. The sole negligence of Design-Builder or any of its Subcontractors;

B. The concurrent negligence of Design-Builder, or any Subcontractor, but only to the extent of the negligence of Design-Builder or such Subcontractor; and

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

D. In any action against Owner and any other entity indemnified in accordance with this section, by any employee of Design-Builder, its Subcontractors, Sub-subcontractors, agents, or anyone directly or indirectly employed by any of them, the indemnification obligation of this section shall not be limited by a limit on the amount or type of damages, compensation,

or benefits payable by or for Design-Builder or any Subcontractor under RCW Title 51, the Industrial Insurance Act, or any other employee benefit acts. In addition, Design-Builder specifically waives immunity as to Owner and A/E only, in accordance with RCW Title 51.

## ARTICLE 17 – PHASE 1 AND PHASE 2 SCOPE OF DESIGN-BUILD SERVICES

The requirements for management of the Contract are contained in Attachment B and do not supersede any more specific provision in the Contract.

**End of General Conditions of Contract**

DRAFT

Project 2019-271
SCC Maintenance, Operations, and Security Building

# ATTACHMENT 3:

## ATTACHMENT B PHASE 1 AND PHASE 2 SCOPE OF DESIGN-BUILD SERVICES

Contents

**PHASE 1 SCOPE OF SERVICES ..... 2**

PART 1 PROGRAM VALIDATION PERIOD ..... 2

*1.01 SUMMARY OF WORK ..... 2*

*1.02 PHASE 1 SCOPE ..... 2*

*1.03 VALIDATION OF INFORMATION ..... 3*

*1.04 DEVELOPMENT OF BASIS OF DESIGN DOCUMENTS ..... 5*

*1.05 DEVELOPMENT OF GMP ..... 6*

*1.06 DEVELOPMENT OF PROJECT SCHEDULE ..... 6*

PART 2 PHASE 1 DELIVERABLES ..... 6

*2.01 SUBMITTALS ..... 6*

*2.02 SCHEDULES ..... 7*

*2.03 BIM MODEL AND EXECUTION PLAN ..... 8*

*2.04 BASIS OF DESIGN DOCUMENTS ..... 9*

*2.05 DEVELOPMENT OF THE GMP ..... 11*

*2.06 SUBCONTRACTOR PROCUREMENT PROCEDURE ..... 13*

*2.07 PROJECT SPECIFIC SAFETY PLAN ..... 13*

*2.08 PROJECT PHASING /STAGING ANALYSIS ..... 13*

*2.09 PERMITTING STRATEGY PLAN: ..... 13*

*2.10 DIVERSE BUSINESS INCLUSION PLAN UPDATE ..... 14*

*2.11 QA/QC PLANS ..... 14*

*2.12 CONTRACT CLOSEOUT PLAN ..... 14*

*2.13 DIFFERING SITE CONDITIONS REPORT ..... 15*

*2.14 RESPONSIBILITIES MATRIX ..... 15*

DRAFT

**PHASE 2 SCOPE OF SERVICES ..... 15**

PART 3 PHASE 2 SCOPE OF SERVICES ..... 15

*3.01 SUMMARY OF WORK ..... 15*

*3.02 PHASE 2 SCOPE ..... 15*

*3.03 COMPLETION OF DESIGN ..... 15*

*3.04 SCHEDULE OF VALUES AND COST MODEL ..... 16*

*3.05 PROJECT SCHEDULE ..... 16*

*3.06 CONSTRUCTION SERVICES ..... 17*

*3.07 COMMISSIONING, TESTING AND CLOSEOUT ..... 17*

PART 4 PHASE 2 DELIVERABLES ..... 17

*4.01 MILESTONE DESIGN DELIVERABLES ..... 17*

*4.02 DIVERSE BUSINESS INCLUSION PLAN UPDATE ..... 17*

*4.03 OTHER DELIVERABLES ..... 17*

DRAFT

# PHASE 1 SCOPE OF SERVICES

## PART 1 PROGRAM VALIDATION PERIOD

### 1.01 SUMMARY OF WORK

A. This section sets forth the scope of work, the deliverables, and the execution activities for Phase 1.

B. Design-Builder shall provide the services set forth in the Responsibilities Matrix, attached as Appendix A. The Responsibilities Matrix shall be reviewed during Phase 1 of the Contract and an updated Responsibilities Matrix will be provided by Design-Builder with the GMP Proposal.

### 1.02 PHASE 1 SCOPE

A. Design Builder shall review, analyze, and validate the Owner's/DES' Project Criteria, the MADCC, the Project Schedule and any other information provided by the Owner/DES regarding the Project.

B. Design Builder shall conduct such site investigations, environmental assessments, review of regulatory and legal authority and restrictions, and all other actions and review and assess other information as reasonably necessary to verify and validate the Owner's/DES'Owner's/DES'/DES' Project Criteria.

C. Design Builder shall review, analyze and validate the concepts for the Project elements as shown in the Owner's/DES'Owner's/DES'/DES' Project Criteria. In addition, Design Builder shall work collaboratively with the Owner/DES and the Stakeholders to examine whether new concepts will better maximize the Owner's/DES' Project Goals and achieve Design Excellence, and if approved by the Owner/DES, further develop such new concepts and incorporate them into the Project.

D. Design-Builder will study the sustainability objectives as stated in [Owner's/DES' Project Criteria, Capital Budget language, DES Sustainable Design guidelines, etc.]_____ to endeavor to achieve USGBC LEED _____ certification.

E. Design Builder shall engage and work collaboratively with the Owner/DES and the Project Stakeholders to obtain input regarding the Project design and functionality, as well as other major Project elements and to develop the Basis of Design Documents.

F. Design Builder shall engage and work collaboratively with the Owner/DES and the Project Stakeholders to progress the design to a sufficient state to develop the Basis of Design Documents, the Guaranteed Maximum Price, and the Project Schedule. The timing of the GMP Proposal and the percentage complete of the designs and specifications will be jointly determined by the Owner/DES and the Design-Builder.

G. Design Builder shall provide the Deliverables during Phase 1 as set forth in Sections 2.01.A. and B. herein. Deliverables shall be provided in a format acceptable to the Owner/DES. Design Builder must use the specific computer programs or formats, determined by Owner/DES, to be used for submittals.

H. At the conclusion of Phase 1, Design Builder shall prepare a GMP Proposal, including Phase 2 Deliverables and any modifications and/or clarifications to the Owner's/DES' Project Criteria as set forth in Section 2.01.B.

1.03 VALIDATION OF INFORMATION

A. Design builder shall perform such assessments, reviews and investigations of the owner's project criteria, and specifically any prescriptive or design information, as determined by design builder to be reasonably necessary to validate the owner's project criteria, the commercial terms, and the owner's project criteria.

B. Additional reviews, assessments and investigations of the owner's project criteria shall include, if reasonably necessary, the following:

1. Verification that the As-Built drawings and other architectural and engineering drawings, plans and specifications are correct,
2. Constructability, including proposed methods of construction, of the proposed structures in the Owner's/DES' Project Criteria,
3. Verification of the architectural, engineering and other assumptions and calculations in any the Owner's/DES' Project Criteria,
4. Examination and verification of actual site conditions as set forth below,
5. Verification of any surveys,
6. Review and assessment of all applicable legal and regulatory rules and restrictions on the Project,

7. Verification and validation of assumptions regarding the establishment of the Commercial Terms, including but not limited to the GMP, the Project Schedule, and the Basis of Design Documents.

C. Design Builder shall perform site investigations as necessary for Design Builder to verify the Owner's/DES' Project Criteria and to validate the Commercial Terms and the Owner's/DES' Project Requirements. Design Builder shall visit the Site and examine thoroughly and understand the nature and extent of the Work, site, locality, actual conditions, as-built conditions, and all local conditions and federal, state, and local laws and regulations that in any manner may affect cost, time, progress, performance or furnishing of the Work or which relate to any aspect of the design and the means, methods, techniques, sequences or procedures of construction to be employed by Design Builder and its safety precautions and programs. Such additional investigations shall be conducted to sufficiently identify or characterize utility locations, site conditions, contaminated materials, and observable or concealed conditions in the existing facilities, including but not limited to the following:

1. Develop Owner/DES-provided site survey requirements and submit them to the Owner/DES with adequate time prior to the need for the survey results. *[If the Design-Builder needs the owner to do a survey, the DB must request the information needed in time to get meaningful information back to provide the final report. If this section is not applicable, it should be deleted.]*

2. Undertake surveys, investigations and analysis to provide necessary data and information for project design including sufficient information to evaluate design alternatives.

3. Review Owner/DES-provided archaeological site survey and literature and data for potentially archaeologically significant sites and conditions and identify any deficiencies. *[This is whatever has been provided to the design-builder prior to or during Phase 1.]*

4. Perform soils sampling, testing, and analysis to provide necessary data and information for Project design, provide a final Geotechnical Report, test for contamination during this process, and determine best practices for mitigation of contamination (if required).

5. Subsurface investigation work, including the disturbance of existing vegetation, cannot proceed until all required permits have been obtained.

D. Design Builder will conduct or obtain and understand all such examinations, investigations, explorations, tests, reports and studies, in addition to or to supplement those referred to above, that pertain to the subsurface conditions, as-built conditions, underground facilities and all other physical conditions at or contiguous to the Site or otherwise that may affect the cost, time, progress, performance or furnishing of Work, as Design Builder considers necessary for the performance or furnishing of Work for the Commercial Terms and in accordance with the Owner's/DES' Project Requirements as well as other terms and conditions of the Contract Documents; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required from the Owner/DES by Design Builder for such purposes.

E. All reports or analyses generated by Design Builder's testing, inspections, and investigations, including but not limited to geotechnical evaluations and hazardous

DRAFT

materials studies, shall be provided to the Owner/DES promptly, within seven (7) business days, after such reports are analyzed and generated

F. Design Builder shall be responsible for ensuring that its design documents and construction work accurately conforms to, and interfaces with, the existing conditions and shall not request a change or claim for unforeseen or concealed conditions except as provided under the provisions of the contract.

1.04 DEVELOPMENT OF BASIS OF DESIGN DOCUMENTS

A. Design Builder shall manage the design process in a collaborative, efficient, and coordinated manner and conduct design workshops as required. The Basis of Design Documents will establish the scope of the Work and provide the basis for the GMP. The Basis of Design Documents must be consistent with the Owner's/DES' Project Criteria, unless the Owner/DES has consented to modify its requirements in writing through a Change Order, Field Authorization, or other written means allowed by the Contract Documents.

B. Design Builder shall provide for an orderly and timely approval process by the Owner/DES and third parties, document review comments from the Owner/DES and third parties, and take appropriate action.

C. The Owner/DES will review and comment on the Design Materials in a timely fashion. The Design-Builder will allow adequate time for the Owner/DES to review the Design Materials, which shall not be less than ___ business days.

D. Design Builder shall submit a written response to the Owner's/DES' design review comments, describing the action taken for each comment. Design Builder shall, in a timely fashion, bring to the attention of the Owner/DES areas where new technologies, such as BIM or Design-Build processes, may require modifications to these requirements.

E. By submitting Design Materials, Design Builder represents to the Owner/DES that the Design Materials may be designed and constructed within current Commercial Terms and in accordance with the Owner's/DES' Project Criteria. Notwithstanding the above, Design Builder may propose Designs, Plans or other Submissions that may alter a Commercial Term or the Owner's/DES' Project Criteria; however, with any such Design Materials, Design Builder must provide notice pursuant to Article 10 of the General Conditions.

F. Design Builder shall use the collaboratively established project budget as a design tool and design to the budget rather than estimate the cost of the project after the design has been established. Prior to submitting the Design Materials to the Owner/DES, the Design-Build Team will conduct a process that identifies project elements, systems or materials that could be designed and/or constructed more efficiently or less costly in another manner, or that could more effectively achieve the Project Goals if designed and/or constructed in another manner. Design-Builder will not submit Design Materials to the Owner/DES that cannot be constructed as shown in the drawings, are not within the Commercial Terms or the Owner's/DES' Project Criteria, or are discontinued by the Manufacturer. Therefore, prior to submitting Design Materials to Owner/DES, the Design-Build Team shall evaluate the Design Materials to identify such issues.

DRAFT

1.05 DEVELOPMENT OF GMP

A. The forecasting and development of accurate project cost estimates throughout each phase of the Project is vital to the Owner's/DES' financial management strategy. The Owner/DES relies on the Design Builder to provide and validate current and detailed cost estimates and forecasts that will be incorporated into the overall cost controls for the Owner/DES.

B. Throughout the Project, Design Builder will update estimates and forecasts and provide data to the Owner/DES to reflect real time information. Design Builder will provide all pricing, estimates and other data used to develop the Commercial Terms on an open and transparent basis. The project controls system used by the Design Builder shall be acceptable to the Owner/DES and will be capable of being broken down and reported in a number of different work breakdown structures, including but not limited to organizing the financial data by cost element codes, subcontracts, vendors, Construction Document packages, etc.

C. The Design Builder will coordinate the development of the GMP with the development of the Basis of Design Documents as well as the Project Schedule so that the Owner/DES may obtain an accurate GMP within the Project Budget.

1.06 DEVELOPMENT OF PROJECT SCHEDULE

A. The forecasting and development of the Project Schedule, including but not limited to the project phasing and Schedule of Values, is a vital element of the Design Builder's ability to deliver this Project in a timely fashion. The Owner/DES will rely on the Design Builder's scheduling information to coordinate with its Stakeholders, schedule activities in and around the Project, and manage its campus.

B. Design Builder shall provide the Owner/DES with frequent updates to the project schedule in a format acceptable to the Owner/DES.

## PART 2 PHASE 1 DELIVERABLES

2.01 SUBMITTALS

A. Submittals after Phase 1 Notice to Proceed: Design Builder shall provide the following submittals within ___ days after the notice to proceed with Phase 1, unless otherwise noted in the Phase 1 Schedule.

1. Phase 1 Schedule pursuant to Section 2.02.A.
2. BIM Protocol pursuant to 2.03.A.
3. Preliminary Schedule of Values for the Project Budget pursuant to Section 2.05.A.1 and B.1
4. Subcontractor Procurement Procedure pursuant to Section 2.06.A
5. Project Specific Safety Plan for Phase 1 activities pursuant to Section 2.07.A.

B. Submittals During Phase 1: Design Builder shall provide the following submittals during Phase 1.

1. Within ___ weeks of the Notice to Proceed for Phase 1:

a. Preliminary Project Schedule pursuant to Section 2.02.B

DRAFT

b. In collaboration with the Owner/DES, establish communication for design schedule and collaborative meeting frequency, at a minimum of every ____ (one or two) weeks.

2. On a monthly basis:

a. Updates to the Phase 1 Schedule, Schedule of Values and Project Schedule pursuant to Section 2.02.B.2.

b. Preliminary Design Materials Packages pursuant to Section 2.04.A.

c. Preliminary estimating information pursuant to Section 2.05.A.

d. Preliminary Permitting Strategy Plan.

C. GMP Proposal: At the conclusion of Phase 1, Design Builder shall provide a GMP Proposal that includes the following Deliverables.

1. Proposed GMP pursuant to Section 2.05C.

a. List of Assumptions and Clarifications (2.05.C.2.a)

b. Material Changes (2.05.C.2.b)

2. Basis of Design Documents pursuant to Section 2.04.

3. Project Schedule pursuant to Section 2.02.D.

4. Schedule of Values pursuant to Section 2.05.C

5. BIM Model and Execution Plan pursuant to 2.03.B.

6. Subcontractor Procurement Procedure pursuant to Section 2.06

7. Project Specific Safety Plan pursuant to Section 2.07.B.

8. Project Phasing/Staging Analysis pursuant to 2.08.

9. Permitting Strategy Plan pursuant to Section 2.09

10. Diverse Business Inclusion Plan Update pursuant to 2.10.

11. QA/QC Plans pursuant to 2.11.

12. Contract Close-Out Plan pursuant to Section 2.12.

13. Differing Site Conditions Report pursuant to Section 2.13.

14. Updated Responsibilities Matrix pursuant to Section 2.14.

2.02 SCHEDULES

A. Phase 1 Schedule. By the date set forth in Section 2.01.A herein, Design Builder shall provide a Phase 1 Schedule.

1. Phase 1 Schedule shall show the activities of the Owner/DES and Design Builder necessary to meet Phase 1 requirements.

*2.* Phase 1 Schedule shall be updated periodically with the level of detail for each schedule update reflecting the information then available. [*Choose one]*

☐ Design Builder will establish the timing for schedule updates with acceptance from the Owner/DES.

☐ Design Builder shall provide _____ [weekly/bi-weekly] updates.

3. If an update to Phase 1 Schedule indicates that a previously approved milestone will not be met, Design Builder shall submit a corrective action plan and recovery schedule to the Owner/DES pursuant to the Contract Documents.

B. Preliminary Project Schedule. Within the timeframe established in Section 2.01.B, Design Builder shall submit a Preliminary Project Schedule that reflects Design Builder's sequence of design, procurement and construction activities including the interrelationships of the Demolition and Construction Packages.

1. The Preliminary Schedule shall show the activities of the Owner/DES and Design Builder necessary to meet the Project completion requirements.

2. The Preliminary Schedule shall be updated pursuant to the time frame established in Section 2.01.B with the level of detail for each schedule update reflecting the information then available.

a. During Phase 1, Design Builder will establish the timing for schedule Updates with acceptance from the Owner/DES.
b. Design Builder shall also provide updates during the development of the Basis of Design Documents.

3. If an update to the Preliminary Schedule indicates that a previously approved milestone will not be met, Design Builder shall submit a corrective action plan and recovery schedule to the Owner/DES pursuant to the Contract Documents.

C. Design Builder shall meet with the Owner/DES to review the Preliminary Schedule and updates. In the event that the Owner/DES has any comments relative to the Preliminary Schedule or Schedule Updates or finds any inconsistencies or inaccuracies in the information presented, it shall give prompt written notice of such comments or findings to Design Builder, who shall make appropriate adjustments to the Preliminary Schedule, its basis, or both. The parties will work collaboratively to make adjustments in the Basis of Design Document, the Project Schedule, or GMP to fit within the Owner's/DES' objectives.

D. With the GMP Proposal, Design Builder shall provide a Project Schedule that will incorporate the Preliminary Schedule developed collaboratively during Phase 1 along with any updates to the schedule.

2.03 BIM MODEL AND EXECUTION PLAN

A. BIM Protocol

1. Design Builder shall develop an appropriate technology protocol early in the project for BIM and digital information modeling. The protocol shall define the ownership, access and responsibility with respect to project information, in particular with respect to shared BIM. On a more detailed level the protocol shall develop standards for data interfaces, layering and other criteria to be developed during the validation Phase.

2. Design Builder shall provide the BIM Protocol by the date set forth in Section 2.01.A.

B. With the GMP Proposal, Design Builder shall submit for the Owner's/DES' review and approval a BIM Model plus a BIM Execution Plan which shall meet the objectives and requirements set forth in the Owner's/DES' Project Criteria and will include the elements set forth in Appendix C. Appendix C also sets forth the intended uses for the BIM Model.

C. The BIM Execution Plan will provide for BIM Reviews where Design Builder will present the BIM model for review. BIM Reviews will occur in the frequency set forth in Appendix C during the design period and as necessary during Construction. The BIM review will generally consist of a walkthrough of the 3D model showing all systems both individually and integrated, and an identification of any clashes among disciplines. Design Builder will be responsible for administering this process and resolving any clashes in a timely fashion.

D. Design Builder shall meet with the Owner/DES to review the proposed BIM Model and BIM Execution Plan.

1. Design Builder shall highlight any material differences between the proposed BIM Model and BIM Execution Plan and the Owner's/DES' Project Criteria.

2. In the event that the Owner/DES has any comments relative to the proposed BIM Model and BIM Execution Plan or finds any inconsistencies from the Owner's/DES' Project Criteria or inaccuracies in the proposed BIM Model and BIM Execution Plan, it shall give prompt written notice of such comments or findings to Design Builder, who shall make appropriate adjustments to the proposed BIM Model and BIM Execution Plan.

3. The parties will work collaboratively to make adjustments in the proposed BIM Model and BIM Execution Plan, Basis of Design Documents, Project Schedule, or GMP to fit within the Owner's/DES' objectives.

2.04 BASIS OF DESIGN DOCUMENTS

A. Preliminary Design Materials. As Design Builder develops the Basis of Design Documents, Design Builder shall collaborate with the Owner/DES to submit and review the Preliminary Design Materials that will be incorporated into the Basis of Design Documents. The Preliminary Design Materials will be submitted pursuant to the Phase 1 Schedule.

1. Design Builder shall coordinate with the Owner/DES to determine the schedule for submission of preliminary Design Materials Packages to review collaboratively with the Owner/DES. Design Builder shall schedule the review of the Design Materials Packages such that the review of each package submitted is of reasonable scope for prompt and thorough review by the Owner/DES.

2. Design Builder shall highlight any material differences between the Basis of Design Documents as they are being developed and the Owner's/DES' Project Criteria.

3. In the event that the Owner/DES has any comments relative to the Design Materials or finds any inconsistencies from the Owner's/DES' Project Criteria or inaccuracies in the Design Materials, it shall give prompt written notice of such comments or findings to Design Builder, who shall make appropriate adjustments to the proposed Basis of Design Documents.

4. The parties will work collaboratively to make adjustments in the Design Materials and in the proposed Basis of Design Documents to fit within the Owner's/DES' Project Criteria and to achieve the Owner's/DES' Project Goals.

B. Milestone Deliverables.

1. Unless the parties agree in writing otherwise, Design Builder will provide the following Milestone Design Deliverables to the Owner/DES: *[DES to*

*provide guidelines for PMs on when we want these.]*

a. 50% Schematic Design

b. 100% Schematic Design

c. 60% Design Development

d. 100% Design Development (With GMP Proposal)

Design-Builder must have written approval from the Owner/DES to proceed with the project after submission of each of the Milestone Design Deliverables.

2. The Milestone Deliverables shall include major building elements and components as set forth in Appendix B. *[DES will develop a checklist form for projects.]*

3. Design-Builder shall schedule the review of the Design and Construction Packages such that the review of each package submitted is of reasonable scope for prompt and thorough review by the Owner/DES.

4. Design-Builder shall highlight any material differences and developments between the Owner's/DES' Project Criteria, any interim Design Materials, and the Basis of Design Documents as the Basis of Design Documents are being developed.

5. In the event that the Owner/DES has any comments relative to the Design Materials or finds any inconsistencies from the Owner's/DES' Project Criteria or discovers inaccuracies in the Design Materials, the Owner/DES shall give prompt written notice of such comments or findings to Design Builder, who shall make appropriate adjustments to the proposed Basis of Design Documents.

C. The Owner/DES and Design Builder shall work collaboratively to develop the Basis of Design Documents. The Basis of Design Documents submitted with the GMP Proposal shall include, at a minimum, the following documents and set forth the assumptions and clarifications on which the GMP and Project Schedule are based.

1. Project Manual, which shall set forth both the general objectives for the Owner/DES, as well as specific uses for each of the project elements set forth in the Owner's/DES' Project Criteria.

2. Unless the parties agree in writing otherwise, Design Builder will provide the following Milestone Design Deliverables to the Owner/DES in the Basis of Design Documents: *[insert level of design expected for Basis of Design Documents]*

a. 50% Schematic Design

b. 100% Schematic Design

c. 60% Design Development

d. 100% Design Development (With GMP Proposal)

Design-Builder must have written approval from the Owner/DES to proceed with the project after submission of each of the Milestone Design Deliverables.

3. The Milestone Deliverables shall include major building elements and components as set forth in Appendix B:

DRAFT

4. Design Builder shall schedule the review of the Design and Construction Packages such that the review of each package submitted is of reasonable scope for prompt and thorough review by the Owner/DES.

5. Design Builder shall highlight any material differences and developments between the Owner's/DES' Project Criteria, any interim Design Materials, and the Basis of Design Documents as the Basis of Design Documents are being developed.

6. In the event that the Owner/DES has any comments relative to the Design Materials or finds any inconsistencies from the Owner's/DES' Project Criteria or discovers inaccuracies in the Design Materials, the Owner/DES shall give prompt written notice of such comments or findings to Design Builder, who shall make appropriate adjustments to the proposed Basis of Design Documents.

7. The parties will work collaboratively to make adjustments in the Design Materials and in the proposed Basis of Design Documents to fit within the Owner's/DES' Project Goals as well as the MADCC and schedule established in the RFQ/RFP.

8. Performance Specifications, which shall set forth the specific requirements for the project and identification of each major system, including but not limited to the following:

   a. Mechanical, electrical, plumbing, and fire protection systems

   b. Structural capacities and requirements

   c. Warranty obligations

   d. Operations and maintenance requirements

9. Sustainability Requirements and Plan. Design Builder shall manage environmental issues and implement and document sustainability goals set forth in the GMP Amendment. The Project's Leadership in Energy and Environmental Design (LEED) Plan must include but is not limited to the following requirements:

   a) outline Subcontractor requirements for Sustainability in the subcontract bid documents;

   b) monitor the submittal process to ensure compliance with Sustainability goals;

   c) train Subcontractors in Sustainability requirements;

   d) review design changes during construction for Sustainability impacts and inform Owner/DES of impacts;

   e) ensure installed products are compliant with the Sustainability requirements; and

   f) assemble and maintain records to document Sustainability goals compliance.

2.05 DEVELOPMENT OF THE GMP

A. Preliminary Estimates.

1. Within the time frame established in Section 2.01.A, Design Builder shall submit preliminary estimates for the Project in such a form and supported

by such data to substantiate its accuracy in reflecting the breakdown for administrative and payment purposes as the Owner/DES may require.

2. With the submission of Design Materials Packages, Design Builder shall provide preliminary estimates of costs associated with the Design Materials Packages in a format acceptable to the Owner/DES that will be incorporated into the GMP.

3. The preliminary estimates shall be provided on a regular basis and shall be updated with new information as Design Builder develops and finalizes the GMP.

B. Schedule of Values and Cost Model

1. Schedule of Values. Within the time frame established in Section 2.01.B, Design Builder, in collaboration with the Owner/DES, shall prepare a Schedule of Values for the Work in conformance with the General Conditions and in such a form and supported by such data to substantiate its accuracy in reflecting the breakdown for administrative and payment purposes as the Owner/DES may reasonably require. The Schedule of Values shall be further organized to conform to the Construction Specifications Institute (CSI) standard format for divisions and sections.

2. Cost Model. Within the time frame established in Section 2.01.B, Design Builder shall provide a Cost Model, for the Owner's/DES' review and acceptance and shall update the Cost Model in the frequency established in Section 2.01.B.

a. The Cost Model shall, at a minimum, provide the following information:

(1) List for all Design and Construction Packages, organized by CSI;

(2) Estimated base bid amounts for all Construction Packages; and

(3) Construction Package Allowances.

b. Design Builder shall utilize a project controls management system that will be reviewed for acceptance to the Owner/DES.

c. In developing its Construction Packages, Design-Builder shall coordinate with the Owner/DES to determine a packaging strategy deemed advantageous to all parties. The agreed-upon packaging strategy will be incorporated into the Cost Model and Project schedule.

d. On a regular basis, Design-Builder shall update estimates and forecasts as data becomes available to reflect real time information. The Owner/DES will rely on this real-time information for accuracy of overall Owner/DES cost forecasts across all Owner/DES projects.

C. Establishment of the GMP.

1. With the GMP Proposal, Design Builder shall prepare and submit a proposed GMP to the Owner/DES, in a format acceptable to the Owner/DES, reflecting Design Builder's total cost for the Project on an open book basis. The GMP shall include:

DRAFT

a. Design Builder's Fee Percentage as defined in Section 6.1 of the Contract;

b. The Cost of the Work as defined in Section 6.5 of the General Conditions; and

c. Design Builder's Contingency established pursuant to Section 6.7.A of the General Conditions.

2. In support of the proposed GMP, Design Builder shall provide:

a. A list of the assumptions and clarifications made by Design Builder in the preparation of the GMP to supplement the information contained in the Basis of Design Documents;

b. The General Conditions Amount; and

c. All material changes from the Owner's/DES' Project Criteria and Design Builder's Proposal and the costs associated with such changes.

D. Design Builder shall meet with the Owner/DES to review the proposed GMP. In the event that the Owner/DES has any comments relative to the proposed GMP or finds any inconsistencies or inaccuracies in the information presented, it shall give prompt written notice of such comments or findings to Design Builder, who shall make appropriate adjustments to the proposed GMP, its basis, or both. The parties will work collaboratively to make adjustments in the Basis of Design Documents, Project Schedule, or GMP to meet the Owner's/DES' objectives.

2.06 SUBCONTRACTOR PROCUREMENT PROCEDURE

By the date set forth in Section 2.01A herein, Design Builder shall submit for approval the Subcontractor Procurement Procedure as required in Section 2.7.C of the General Conditions.

2.07 PROJECT SPECIFIC SAFETY PLAN

A. By the date set forth in Section 2.01A herein, Design Builder shall submit a Project Specific Safety Plan for the activities associated with Phase 1.

B. With GMP Proposal, Design Builder shall submit a Project Specific Safety Plan addressing all phases of the project after Phase 1.

C. No field investigation or construction activities will be authorized without receipt of safety plans as required for the Work.

2.08 PROJECT PHASING /STAGING ANALYSIS

With the GMP Proposal, Design Builder shall provide a Project Phasing/Staging analysis for all Demolition and Construction Packages that includes detailed plans for the phasing of the Project, including but not limited to, all modifications and all other construction activities including the staging of construction materials and facilities.

2.09 PERMITTING STRATEGY PLAN:

A. With the GMP Proposal, Design Builder shall provide a Permitting Strategy Plan detailing the process for obtaining the building and site development permits for various phases of the project. During Phase 1, Design Builder must meet with the applicable building officials and develop processes and time lines for plan check approvals.

B. Design Builder shall coordinate with all authorities with jurisdiction over the

Project for the approval of environmental mitigation measures.

2.10 DIVERSE BUSINESS INCLUSION PLAN UPDATE

Provide an updated status on the Diverse Business Inclusion Plan with current details.

2.11 QA/QC PLANS

A. Design Quality Management Plan.

1. Design Quality Management Plan: shall be developed in accordance with the requirements outlined in the Contract, and submitted with Phase 1 proposal.
2. Design Quality Audits: Design Quality Assurance Manager shall audit all design packages for compliance with the requirements outlined in the Design Quality Management Plan.
3. Independent Technical Reviews: The Design Quality Assurance Manager will appoint appropriate technical staff to conduct Independent Technical Reviews of each design package. These reviews will occur concurrently with the Inter-Disciplinary Reviews and Constructability Reviews.

B. Construction Quality Management Plan.

1. Construction Quality Management Plan: The Plan shall be developed in accordance with the requirements outlined in the Contract.

2.12 CONTRACT CLOSEOUT PLAN

A. With the GMP Proposal, Design Builder shall provide a Project Closeout Plan that integrates all aspects of project closeout proactively over the life of the project. The Closeout Plan will be a living document that will grow and expand as the design and construction progress. The Project Closeout Plan should include, but not be limited to, mechanisms and procedures for:

1. Closeout provisions included in subcontract procurement documents;
2. Phased completions and early subcontract closeouts;
3. Commissioning;
4. Warranties;
5. Training;
6. O&M Documentation;
7. Record Documents;
8. Cost Reconciliations;
9. Permit and Regulatory Requirements;
10. Closeout meetings to commence no later than 60% construction completion; and
11. Diversity and Apprenticeship final reporting.

DRAFT

2.13 DIFFERING SITE CONDITIONS REPORT

A. With the GMP Proposal, Design Builder shall provide a report of all Differing Site Conditions as defined in Section 13.2 of the General Conditions of the Contract that are discovered during Phase 1.

B. The Differing Site Conditions Report shall include the following information for each of the identified Differing Site Conditions identified in the Report.

1. The location of the Differing Site Condition;
2. A description of the Differing Site Condition that explains why it qualifies as a Differing Site Condition pursuant to Section 13.2 of the General Conditions;
3. The date the Differing Site Condition was discovered and date notice was given to the Owner/DES; and
4. The impact of the Differing Site Condition on the Owner's/DES' Project Criteria, the Basis of Design Documents, and/or any Commercial Term, as applicable.

2.14 RESPONSIBILITIES MATRIX

A. With the GMP Proposal, Design-Builder shall provide an updated Responsibilities Matrix, noting all changes from the Responsibilities Matrix set forth in Appendix A.

B. Design-Builder shall not alter the Responsibilities Matrix without first obtaining Owner's/DES' written consent.

## PHASE 2 SCOPE OF SERVICES

### PART 3 PHASE 2 SCOPE OF SERVICES

3.01 SUMMARY OF WORK

Unless the parties agree otherwise in writing, this Section sets forth the Scope of Work, the Deliverables, and the execution activities for Phase 2.

3.02 PHASE 2 SCOPE

A. Design Builder shall complete the design and construction services as set forth in the GMP Amendment.

B. Design Builder shall provide the deliverables set forth in this Attachment during the course of Phase 2. Deliverables shall be provided in a format acceptable to the Owner/DES. Design Builder must use the programs identified and used in Phase 1, and those listed below, as applicable:

1. Building Information Modeling pursuant to the Owner's/DES' standards.
2. Document management control system
3. _____

3.03 COMPLETION OF DESIGN

A. Design Builder shall provide for an orderly and timely approval process by the Owner/DES and third parties, document review comments from the Owner/DES and third parties, and take appropriate action.

B. The Owner/DES will review and comment on the Construction Documents and

other Design Materials in a timely fashion.

C. Design Builder shall submit a written response to the Owner's/DES' design review comments, describing the action taken for each comment. Design Builder shall, in a timely fashion, bring to the attention of the Owner/DES areas where new technologies, such as BIM or Design-Build processes, may require modifications to these requirements.

D. By submitting Design Materials, including but not limited to the Construction Documents, Design Builder represents to the Owner/DES that the Construction Documents may be constructed for the then current Commercial Terms and in accordance with the Owner's/DES' Project Criteria and the Basis of Design Documents. Notwithstanding the above, Design Builder may propose Designs, Plans or other Submissions that may alter a Commercial Term or the Owner's/DES' Project Criteria; however, with any such Design Materials, Design Builder must provide notice pursuant to Article 10 of the General Conditions. The Construction Documents must be consistent with the Basis of Design Documents, approved Design Materials and the Design Log, unless the Owner/DES has consented to modify its Requirements in writing through a Change Order, Field Directive, or other written means allowed by the Contract Documents.

E. Design-Builder shall continue to use the collaboratively established project budget as a design tool and shall design to the budget rather than estimate the cost of the project after the design has been established. Prior to submitting the Design Materials to the Owner/DES. the Design-Build Team will conduct a process that identifies project elements, systems or materials that could be designed and/or constructed more efficiently or less costly in another manner, or that could more effectively achieve the Project Goals if designed and/or constructed in another manner. Design-Builder will not submit Design Materials to the Owner/DES that cannot be constructed as shown in the drawings, are not within the Commercial Terms or the Owner's/DES' Project Criteria, or are discontinued by the Manufacturer. Therefore, prior to submitting Design Materials to Owner/DES, the Design-Build Team shall evaluate the Design Materials to identify such issues.

3.04 SCHEDULE OF VALUES AND COST MODEL

A. The forecasting and development of accurate project cost estimates throughout each phase of the Project is vital to the Owner's/DES' financial management strategy. The Owner/DES relies on the Design Builder to provide and validate current and detailed cost estimates and forecasts that will be incorporated into the overall cost controls for the Owner/DES.

B. On a regular basis, Design Builder will continue to update estimates and forecasts and provide data to the Owner/DES to reflect real time information. Design Builder will provide all pricing, estimates and other data used to develop the Commercial Terms on an open and transparent basis.

C. The Schedule of Values and Cost Model must be consistent with the GMP Amendment, unless the parties have agreed on a Change to the terms set forth in the GMP Amendment pursuant to Article 10 of the General Conditions.

3.05 PROJECT SCHEDULE

A. The forecasting and development of the project schedule, including but not limited to the project phasing and Schedule of Values, is a vital element of the Design Builder's ability to deliver this Project in a timely fashion. The Owner/DES will rely

on the Design Builder's scheduling information to coordinate with its Stakeholders, schedule activities in and around the Project, and manage its campus.

B. Design Builder shall provide the Owner/DES with frequent updates to the project schedule in a format acceptable to the Owner/DES for a scheduled completion within the GMP established in the GMP Amendment.

3.06 CONSTRUCTION SERVICES

Design-Builder shall provide Construction Services and complete the construction of the Project pursuant to the Contract Documents.

3.07 COMMISSIONING, TESTING AND CLOSEOUT

Design Builder shall provide commissioning, testing, and closeout of the Project pursuant to the Contract Documents, including but not limited to the Responsibilities Matrix between Design Builder and Owner/DES (Appendix A).

## PART 4 PHASE 2 DELIVERABLES

4.01 MILESTONE DESIGN DELIVERABLES

Design Builder shall provide the following Milestone Design Deliverables pursuant to the Project Schedule:

1. 50% Construction Documents for review and approval by the Owner/DES; and
2. 100% Construction Documents for review and approval by the Owner/DES: and

Design Builder shall not proceed with the project after submission of the 100% Construction Documents until it receives the Owner's/DES' written approval.

4.02 DIVERSE BUSINESS INCLUSION PLAN UPDATE

At 100% design, provide an updated status on the Diverse Business Inclusion Plan with current details.

4.03 OTHER DELIVERABLES

Design Builder shall provide such other deliverables as set forth in the Contract Documents to successfully complete the Project.

APPENDICES

| | |
|---|---|
| Appendix A | Responsibilities Matrix |
| Appendix B | Milestone Deliverables Requirements |
| Appendix C | BIM Requirements |

DRAFT

Project 2019-271
SCC Maintenance, Operations, and Security Building

# ATTACHMENT 5:
# PROJECT FINANCIAL QUESTIONNAIRE

SCC Maintenance, Operations, and Security Building
DES Project No. 2019-271
Attachment 5

Washington State Department of Enterprise Services

## Preparation of Project Financial Questionnaire

Together with completion of this document, the applicant must supplement its response. For a firm showing a net worth in excess of $100,000, the applicant must provide, with the questionnaire, a copy of its financial statement as *audited or reviewed* for its last fiscal year, prepared in accordance with the standards of the American Institute of Certified public Accountants. The statement must be prepared by an independent certified public accountant registered and licensed under the laws of any state. Balance sheets, income statement, a statement of retained earnings, supporting schedules and notes, and the opinion of the independent auditor must accompany the financial statement. A compiled Financial Statement is not acceptable.

Additionally, if more than six months time has elapsed since the date of the last project financial questionnaire, to be provided per the preceding paragraph, the applicant must also provide a current internal balance sheet and income statement for its most recent year to date, monthly or quarterly period. Such information does not have to be reported by an independent accountant.

## Project Financial Questionnaire

1. End of Applicant's Fiscal Year: Month: Day:
2. Date of Year-end Financial Statement ____/____/____ (Month Day Year)

   As of the above date, the firm's total assets, liabilities, and net worth are as follows:

| Total Tangible Assets | Total Liabilities | Net Worth |
|---|---|---|
| $ | $ | $ |

3. ADDITIONAL FINANCIAL RESOURCE(S) (i.e., Bank Line of Credit, Parent Firm Guarantee, Personal Pledge of Net Worth, etc.). Any additional financial resources shall have a notarized letter to document the Pledge/Guarantee. The required information within the letter must have the dollar amount, purpose of the Pledge/Guarantee, and a termination date for the Pledge/Guarantee.

   If additional financial resources are used within your Financial Statement above, indicate in the 'Yes" column below. A Parent Firm Form is available upon request.

| Source | $ Amount | Termination Date | Yes | No |
|---|---|---|---|---|
| | | | ☐ | ☐ |
| | | | ☐ | ☐ |
| | | | ☐ | ☐ |
| | | | | |

### Statement of Financial Ability

The firm certifies that its net worth has not substantially changed from that sum shown above in the Financial Statement. The prequalified firm is able to post the deposit (cash, certified check, security bond) (5% of the amount of bid) and secure the performance and payment bonds (full contract amount) as required by RCW 39.10.370 for any project for which it has submitted a bid and is the successful bidder.

The firm's largest bonded, successfully completed project in the last three years is:

| The firm's bond for that project was: $ | Date that project was completed: |
|---|---|

Name of firm (as registered with the Washington Department of Licensing)

| By: (Authorized Signature) | Title: |
|---|---|

**Business Account Numbers (List the following business account numbers for your firm)**

| Unified Business Identifier No. (UBI) | Master License No. | Federal (IRS) Employee Identification No. |
|---|---|---|
| Secretary of State (WA) Corporate No. | Expiration Date: | |

## Type of Organization

☐ Sole Proprietorship ☐ Co-Partnership ☐ Joint Venture ☐ Corporation

| Corporation | | Co-Partnership or Joint Venture | |
|---|---|---|---|
| If your agency is a corporation, complete the following: | | Date of Organization | Status: ☐ General ☐ Limited ☐ Assoc. |
| Date Incorporated: | In What State? | Is there any information on duration of co-partnership or joint venture? Yes No. If Yes, Explain: | |
| President's Name: | Vice President's Name: | | |
| Secretary's Name: | Treasurer's Name: | | |
| If out-of-state corporation, have you complied with Washington's corporation laws? Yes No | | | |

**Other Organization Affiliation:** List those persons within your organization that have business affiliation in any other organization which is involved in construction-oriented projects as contractor, subcontractor, supplier or consultant.

| Name of Individual | Location and Name of Other Organization |
|---|---|
| | |
| | |
| | |
| | |

## Non-Collusion

In order for your application for Prequalification to be considered, it is necessary to furnish the following information:

1. Has your firm ever been indicted, pled guilty, pled nolo contendere (no contest), or been convicted of any offense that has resulted in your firm being barred from being or performing work for any State, Local or Federal Government? Yes No
   If yes, attach a separate sheet(s) to this form giving the details involved, the names of the individuals, and their current employment status with your firm.

2. Has any officer, employee, or other member of your firm ever been indicted, pled guilty, pled nolo contendere, or been convicted of any illegal restraints of trade, including collusive bidding: Yes No
   If yes, attach a separate sheet(s) to this form giving the details involved.

3. Has any officer, employee, or other member of your firm ever been debarred for violation of various Public Contract Acts incorporating Labor Standards Provision? Yes No

4. Is your firm under the protection of the bankruptcy court, have pending any petition in bankruptcy court, or have you made an assignment for the benefit of creditors? Yes No

## Authorized Signature

List the names and titles of those individuals in your organization who are authorized to execute proposals, contracts, bonds, and other documents and/or instruments on behalf of the organization. Specify if more than one signature is required.

| Name (Type or Print) | Signature | Title |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |

# Execution of the Affidavit

| | |
|---|---|
| Sole Proprietorship | Signature of the individual in the firm name under which business is conducted. |
| Co-Partnership | The signature of all partners, general and limited under the firm name, or the signature of their attorney in fact. |
| Corporation | The signature of the authorized officer(s) of the corporation with corporate seal affixed. |
| Joint Venture | Signature of an authorized representative of each party to the joint venture. Corporate members of a joint venture shall also affix the corporate seal (see page ii). |

# Affidavit

The undersigned, being duly sworn, deposes and says that the foregoing is a true statement of facts concerning the sole proprietorship, corporation, co-partnership, or joint venture herein named, as of the date indicated; that the Financial Statement taken from the books of said firm as individual is a true and accurate statement of the financial condition of said firm or individual as of the date thereof; that the answers to the foregoing interrogatories are true; that this statement is for the express purpose of inducing the Department of Enterprise Services to award the said firm or individual a contract; and that any depository, vendor, or other agency herein named is hereby authorized to supply the Department of Enterprise Services or its agent with any information to verify this statement.

Name of Firm (as registered with the Washington State Department of Licensing):

_____

Authorized Signature_____ Authorized Signature _____

Authorized Signature_____ Authorized Signature _____

Subscribed and sworn to me this_____day of_____20_____.

_____

Notary Public in and for the State of _____

residing at _____

Corporate Seal

Notary Seal

Statement Prepared by_____Title_____Date_____

# Proposal Property of Washington State

All materials submitted in response to this procurement become the property of the state of Washington. Proposals received after the submission due date and time will not become the property of DES and will be returned to the Bidder. DES will not own the underlying intellectual property rights (e.g., trademarks, patents or copyright) contained in the Proposals submitted in response to this procurement. DES has the right to use any of the ideas presented in any material offered. Selection or rejection of a Proposal does not affect this right.

# Proprietary or Confidential Information

DES is subject to RCW 42.56, the Public Records Act (PRA). All Proposals received shall remain confidential until announcement of the Apparent Successful Bidder; thereafter, the Proposals shall be deemed public records as defined in the PRA. To the extent consistent with the PRA, DES shall maintain the confidentiality of Bidder's information marked confidential or proprietary. If a request is made to view Bidder's proprietary information, DES will notify Bidder of the request and of the date that the records will be released to the requester unless Bidder obtains a court order enjoining that disclosure or the requester and Bidder reach an agreement on the extent of such disclosure, which agreement will be forwarded to DES by the requester prior to DES's date for the proposed disclosure. If Bidder fails to obtain the requester agreement or the court order enjoining disclosure, DES will release the requested information on the date specified.

Any information contained in the Proposal that is proprietary or confidential must be clearly designated. Each page claimed to be exempt from disclosure must reference the specific basis claimed under the PRA or other state or federal law that provides for the nondisclosure of your Proposal information. Any portion which you claim to be proprietary, confidential or exempt from disclosure must be clearly identified by the word "Confidential" printed on the lower right hand corner of the page. Marking of the entire Proposal or entire Sections of the Proposal as proprietary or confidential will not be accepted nor honored. Marking of the Price/Fee Proposal as proprietary or confidential will not be accepted nor honored. Any attempts to restrict disclosure through use of footers on every page and/or statements restricting disclosure will not be honored and may subject Bidder to disqualification.

DES's sole responsibility with regard to matters in the Proposal marked confidential or proprietary shall be limited to maintaining the information in a secure area and to notify Bidder of any request(s) for disclosure within five (5) years of the announcement of the Apparent Successful Bidder.

Project 2019-271
SCC Maintenance, Operations, and Security Building

# ATTACHMENT 6:
# PROJECT INFORMATION

- **Project Goals**
- **Project Information Report**

**PROJECT GOALS**

The Owner and DES have established the following Goals for the Project:

A. **Produce a project that exceeds the Owner/DES's definition of Design Excellence:** Create an exceptional and distinctive project that meets the programmatic, functional, operational and aesthetic vision for each of the Stakeholder programs as well as the owner's campus. The project design must gracefully and simultaneously facilitate the individual programs while providing a cohesive, collaborative and flexible development.

B. **Execute a successful Progressive Design Build (PDB) Process to produce the envisioned project:** The Design Build team will develop and utilize a collaborative relationship between the Owner/DES, its stakeholders, and the Design-Build Team to achieve Design Excellence within the Owner's/DES's budget and schedule using proficient design and project management while working through the Progressive Design Build process.

C. **Meet or Exceed the Owner/DES's Sustainability Goal:** The Owner/DES's Sustainability project goal is to develop the highest level of sustainability for the project on the proposed project site and within the MADCC.

D. **Maximize Scope within the Guaranteed Maximum Price (GMP).** Achieve the most cost effective, creative, operationally efficient and programmatically balanced project including as much scope as possible under the established GMP and MADCC. The primary project goals are to construct the Project with the best value to the Owner/DES within the stated budget and in the shortest time frame that can reasonably be achieved.

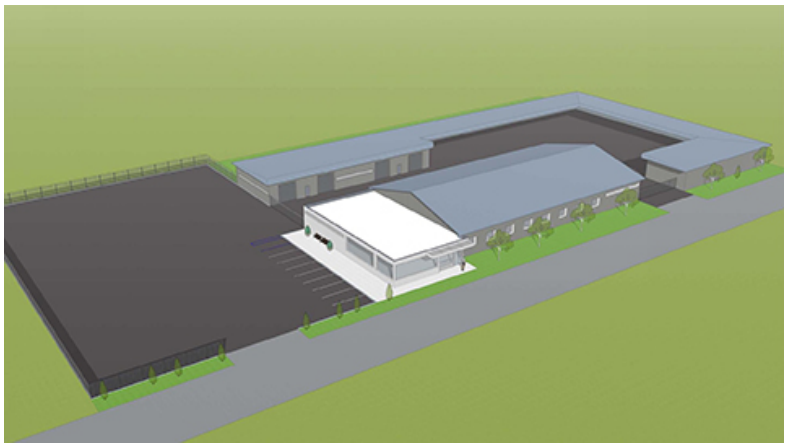
E. **Minimize Environmental Impacts.** Reduce impacts to the environment through use of effective design and construction methods to meet or exceed environmental requirements with no permit violations.

**F.** **Reduced Final Costs.** Design and construction efficiency produce a result of the final costs for the project coming in $1,000,000 under budget. Any reserve funds shall be re-allocated by SCC to other planned campus developments resulting from impacts due to the North Spokane Corridor.

Community Colleges of Spokane

# SPOKANE COMMUNITY COLLEGE

## Maintenance, Operations, & Security Facility (MOS)



Progressive Design Build
Project Information Report
September 13, 2019

# Table of Contents


A: EXECUTIVE SUMMARY: ..... 3

B: PROJECT DESRIPTION: ..... 4

1. SCC FACILITIES - MAINTENANCE AND OPERATIONS: ..... 4
   - 1.1. ADMINISTRATIVE - SPACE TYPES AND REQUIREMENTS: ..... 4
   - 1.2. MAINTENANCE - SPACE TYPES AND REQUIREMENTS: ..... 5
   - 1.3. FLEET - SPACE TYPES AND REQUIREMENTS: ..... 6
   - 1.4. GROUNDS - SPACE TYPES AND REQUIREMENTS: ..... 6
   - 1.5. CUSTODIAL - SPACE TYPES AND REQUIREMENTS: ..... 6
   - 1.6. EXTERIOR / SITE - SPACE TYPES AND REQUIREMENTS: ..... 7
   - 1.7. GENERAL SPACE TYPE NOTES: ..... 7
2. SPOKANE COMMUNITY COLLEGE, OFFICE OF CAMPUS SAFETY: ..... 7
   - 2.1. ADMINISTRATIVE – SPACE TYPES AND REQUIREMENTS: ..... 8
   - 2.2. EXTERIOR / SITE - SPACE TYPES AND REQUIREMENTS: ..... 8
3. DISTRICT SAFETY OFFICE, SCC: ..... 8
   - 3.1. ADMINISTRATIVE - SPACE TYPES AND REQUIREMENTS: ..... 9

C: PROJECT SITE: ..... 9

4. PROJECT SITE MAPS: ..... 9

# A: EXECUTIVE SUMMARY:

The Spokane Community College (SCC) Facilities - Maintenance and Operations (M&O) staff have not been co-located with an independent, functional facility since the former Building 201, Maintenance, was demolished in 2015. The college has housed these essential support functions in different locations across the campus to accommodate the needed space. This has caused custodial and maintenance supply, storage, and office space to occupy valuable academic locations which has inhibited potential modernization and expansion of the programs in close proximity.

With the pending arrival of the North Spokane Corridor freeway construction on campus in June 2020, CCS has been planning the relocation of college departments that occupy space in the agreed upon right-of-way. Among these departments is CCS District Facilities home offices and SCC Maintenance staff. While the District functions will be moving to an off-campus site, M&O will need to be relocated on campus to maintain functional efficiency. This puts further strain on already taxed campus space resources.

SCC Administration and SCC Facilities have come together to develop a project to remedy these space challenges by construction a stand-alone maintenance and operations building. After further review and space planning, it was determined that the SCC Campus of Office Safety and the District Safety Officer for SCC, also being support and service-based functions, could share space in this new facility. Therefore, the concept of the SCC MOS Building was born.

The desired facility is to be approximately 27,000 to 33,000 GSF (including circulation and unassignable spaces) and will be situated on the eastern side of current parking lot P4, located directly east of Rebecca St. and north of Nora St.

A key consideration for this facility is maximizing construction efficiency and minimizing construction schedule. SCC is open to non-conventional building construction methods such as concrete tilt-up, manufactured steel, or a combination of methods. *Schedule is paramount* to this project as planned moves are significantly impacted by the NSC construction schedule. Desired occupation date is December 15, 2020 with a *must* occupy date of February 15, 2021.

Key building elements of the M&O portion will include trades, custodial, and grounds high bay spaces with adequate storage areas; staff offices, locker rooms, restrooms, break area(s), computer lab, conference room(s), laundry area, and visitor's entrance lobby.

Significant elements for the Office of Campus Safety will include individual offices and open space for cubicle work stations; men's and women's locker rooms with lavatory, toilet, and shower facilities; secure and semi-secure storage areas; interview room, reception area, cashier's area, work room, conference room, break room, and public lobby.

The District Safety Officer will require an individual office space and archive storage space but can share other building elements with fellow occupants.

Site elements should include a minimum 18,000 GSF covered parking area for M&O fleet vehicles and equipment, as well as, security vehicles; operations storage and supply yard; general asphalt parking lot (P4); and a relocated truck driver training program practice area. Landscape and general site aesthetics should be considered.

Utilities including sanitary sewer, domestic/irrigation water, fire water, natural gas, power, and data are in relatively close proximity to the building site. The project will be subject to storm water and other environmental standards and requirements (including SEPA) as established by the State of Washington and the City of Spokane. In addition, conservation measures should also be considered, used in reducing energy demands of the facility. The College is amenable to an innovative design that blends aesthetics, efficiency, and functionality.

## B: PROJECT DESRIPTION:

### 1. SCC FACILITIES - MAINTENANCE AND OPERATIONS:

There will be six main areas of consideration for the M&O spaces:

a. *Administrative Space* – the building office areas to include work support and conference areas. Note that Lead offices should be located in close proximity to the associated shop space. Please see Space Types information below.
b. *Maintenance Shop space* – the trades center of operation to include equipment and supply storage, repairs, and carpentry areas.
c. *Fleet Shop Space* – the equipment and automotive repair and maintenance center of operation to include vehicle lifts, non-secure storage, and secure tool storage areas.
d. *Grounds Shop Space* – the grounds and nursery specialists center of operation to include small equipment lifts, exhausted storage, and repairs area.
e. *Custodial Shop Space* – the custodial center of operations to include equipment and supply storage, and equipment repair area.
f. *Exterior Yard and Storage Space* – includes covered parking, storage, vehicle wash station, operational areas such as dumpster pad, compactor pad, fuel tank, and hazmat storage containment.

1.1. ADMINISTRATIVE - SPACE TYPES AND REQUIREMENTS:

Please see the following table for information:

| Space Type | Preferred Size (GSF) | Occup | Space Description / Specialty Requirements |
|---|---|---|---|
| Office, OA3 | 150 | 1 | Requires small waiting area |
| Office, Maintenance Supervisor | 140 | 1 | |
| Office, Maintenance Supervisor | 140 | 1 | |
| Office, Custodian Supervisor | 140 | 1 | |

| Space Type | Preferred Size (GSF) | Occup | Space Description / Specialty Requirements |
|---|---|---|---|
| Office, Grounds Supervisor | 140 | 1 | |
| Office, Director | 200 | 1 | |
| Computer Work Space | 600 | 16-20 | "Touch down" work stations - PC based training, logging time & work; semi-private cubbies/cubicles |
| Conference Lg. | 700 | 30-40 | Requires table & seating; media wall & station for presentations and department meetings |
| Conference Sm. | 250 | 6-10 | |
| Work Room | 150 | | Include key track storage system area (key check out machine for facilities use). |
| File/ Vault/Archive Room | 180 | | includes key vault (safe) |
| Breakroom | 150 | | 7-8 four person tables (?), kitchenette, refrigerator, microwave; lounge space-couch, chairs, tables; filtered water/instant hot water. |
| Locker Room, Men's | 500 | 35 | Men's & women's equitable spaces; currently 9 women and 35 men; half height lockers stacked; dressing area benches; restroom facilities; two showers each. |
| Locker Room, Women's | 500 | 9 | |
| Restroom, Men's | 300 | | |
| Restroom, Women's | 300 | | |
| Restroom, Unisex | 100 | | |
| **Subtotal** | **4640** | | |

1.2. MAINTENANCE - SPACE TYPES AND REQUIREMENTS:

Please see the following table for information:

| Space Type | Preferred Size (GSF) | Occup | Space Description / Specialty Requirements |
|---|---|---|---|
| Office, Lead A | 120 | 1 | |
| Office, Lead B | 120 | 1 | Note Lead offices can be shared spaces with individual work stations; similar to Adjunct offices. |
| Office, Lead C | 120 | 1 | |
| Carpentry Shop | 1400 | | Shop machines and power tools; dust collections, welding booth/exhaust |
| Paint Shop | 400 | | Sinks for clean-up including containment; flammable storage, shelving storage, work bench space. |
| HVAC/ELEC Shop | 1260 | | Filter storage racks; lamp storage; elect & motor storage spaces; work benk space. |
| Utility Shop | 350 | | Tool storage; repair area-work bench space. |
| Plumbing Shop | 300 | | Plumbing storage; tool storage; repair area-work bench space. |
| **Subtotal** | **4070** | | |

1.3. FLEET - SPACE TYPES AND REQUIREMENTS:

Please see the following table for information:

| Space Type | Preferred Size (GSF) | Occup | Space Description / Specialty Requirements |
|---|---|---|---|
| Office, Fleet | 180 | 1 | To include shop library and parts manuals. |
| Fleet Shop | 1400 | | (2) 10x14 coiling doors; 2 lifts; engine exhaust system. |
| Fleet Storage, Supplies | 200 | | Tires; automotive parts and supplies; oil barrels; |
| Fleet Storage, Tools | 200 | | Secure storage; cage, with shelving and racks. |
| **Subtotal** | **1980** | | |

1.4. GROUNDS - SPACE TYPES AND REQUIREMENTS:

Please see the following table for information:

| Space Type | Preferred Size (GSF) | Occup | Space Description / Specialty Requirements |
|---|---|---|---|
| Office, Lead | 120 | 1 | |
| Grounds Shop | 1400 | | Requires small vehicle lift; tool work bench; (1) 10x14, (1) 8x10 coiling doors, secure access. |
| Grounds Storage, Supplies | 250 | | Tools, other supplies. |
| Grounds Storage, Equip. sm. | 250 | | Gas-Powered Equipment and small fuel containers; secondary containment, exhaust. Can be caged. |
| Grounds Storage, Landscaping | 250 | | Irrigation and landscaping supplies, sprinklers, valves, etc. |
| Grounds Storage, Pest./Fert. | 300 | | Haz Mat storage area for pesticides and fertizers; can be secondary structure in yard; need larger access. |
| **Subtotal** | **2570** | | |

1.5. CUSTODIAL - SPACE TYPES AND REQUIREMENTS:

Please see the following table for information:

| Space Type | Preferred Size (GSF) | Occup | Space Description / Specialty Requirements |
|---|---|---|---|
| Supervisor Office | 120 | | |
| Office, Lead A | 120 | | |
| Office, Lead B | 120 | | Note Lead offices can be shared spaces with individual work stations; similar to Adjunct offices. |
| Office, Lead C | 120 | | |
| Custodial Shop | 1500 | | (1) 10x14 coiling door; shelving and secured supply storage. |

| Space Type | Preferred Size (GSF) | Occup | Space Description / Specialty Requirements |
|---|---|---|---|
| Custodial Repair & Eqp. Storage | 600 | | Work bench; tool storage; shelving |
| Custodial Laundry | 200 | | |
| **Subtotal** | **2780** | | |

1.6. EXTERIOR / SITE - SPACE TYPES AND REQUIREMENTS:

Please see the following table for information:

| Space Type | Preferred Size (GSF) | Occup | Space Description / Specialty Requirements |
|---|---|---|---|
| Maint. Fleet Parking | 6000 | | Site – covered, paved preferred |
| Maint. Equip. Parking | 7500 | | Site - covered, paved preferred |
| Grounds Equip. Parking | 2500 | | Site - covered, paved preferred |
| Grounds Mulch/Soil/Gravel | 400 | | Mulch and gravel bins for nursery and deicing storage. |
| Vehicle wash station | 400 | | wash pad with oil/water separator. |
| Dumpster and Compactor Pad | 400 | | include power and space for pick-up and removal. |
| Fuel Tank | 300 | | 40-50 gallon fuel storage tank for small gas-powered equipment; secondary containment. |
| Fleet Tire Storage (?) | 500 | | Site - covered, caged; if challenged for space in interior. |
| **Subtotal** | **18000** | | |

1.7. GENERAL SPACE TYPE NOTES:

All shop spaces will need compressed air as well as overhead and wall power with some areas requiring 220/3 connections. Corridors near shop spaces should be wider than normal office layout dimensions for equipment and supply transport.

Note that all above dimensions and space requirements are approximate at the time of publication of this report. Programming efforts by the design team will need to verify actual space requirements with stakeholders to confirm need. This will be the case throughout these project requirements.

## 2. SPOKANE COMMUNITY COLLEGE, OFFICE OF CAMPUS SAFETY:

The Office of Campus Safety oversees the Security, Emergency Management, and Parking Services for Spokane Community College. The office houses the departments supervisor and lead security officer as well as other full/part-time officers and support personnel. The space will require specific areas unique to the department as well as some opportunities for space sharing with the building.

2.1. ADMINISTRATIVE – SPACE TYPES AND REQUIREMENTS:

Please see the following table for information:

| Space Type | Preferred Size (GSF) | Occup | Space Description / Specialty Requirements |
|---|---|---|---|
| Reception/Desk | 70 | 2 | counter style work stations |
| Office Entrance/Lobby | 200 | | includes service counter to reception area. |
| Cashier | 70 | | Secured area |
| Supplies Closet | 60 | | shelving |
| ` | 100 | | |
| Conference | 350 | 15-17 | |
| Break Room | 280 | | kitchenette, refrigerator, microwave; seating for 8-10. |
| Director | 200 | 1 | |
| Officer stations | 600 | 10 | Officer workstations (cubicles) 50-60 sf each. |
| Uniform Storage | 50 | | Clothes hanging racks and shelving |
| Interview Room | 70 | 2 | |
| Shower Room | 60 | | |
| Locker, Mens | 70 | | 10 half height lockers |
| Locker, Womens | 70 | | 10 half height lockers |
| Restroom, Toilet | 60 | | single, unisex restroom |
| Secure Storage | 150 | | secure access; contains safe and shelving for evidence storage. |
| Records Storage | 100 | | secure access |
| Unassign/Circul./Open Office | 1000 | | variable |
| **Subtotal** | **3560** | | |

2.2. EXTERIOR / SITE - SPACE TYPES AND REQUIREMENTS:

Please see the following table for information:

| Space Type | Preferred Size (GSF) | Occup | Space Description / Specialty Requirements |
|---|---|---|---|
| Parking, Visitor | 1000 | 5 | consider 5 designated parking stalls for visitors |
| Security Fleet Parking | 2000 | | covered parking for 2 suv's and 3 golf cart style vehicles; semi-secured with in yard; paved preferred |
| **Subtotal** | **3000** | | |

## 3. DISTRICT SAFETY OFFICE, SCC:

As a department under the CCS Chief Compliance Officer, the District Safety Office houses the SCC Safety Officer. This is a non-academic service department dedicated to promoting and

supporting CCS's efforts to protect health, safety and the environment. EH&S collaborates with faculty, staff and administrators to develop and implement CCS safety and environmental guidelines and procedures to establish and maintain a safe and healthy educational community. EH&S provides consultation, training and services in the areas of public health, air and water quality, worker health and safety, biohazards, chemical and material use, and hazardous waste designation, disposal, and cleanup.

Space requirements include general office space as well as archive storage.

3.1. ADMINISTRATIVE - SPACE TYPES AND REQUIREMENTS:

Please see the following table for information:

| Space Type | Preferred Size (GSF) | Occup | Space Description / Specialty Requirements |
|---|---|---|---|
| Office | 150 | 1 | |
| Storage Room | 70 | | |
| Archive/Library | 70 | | |
| Meeting Room | 220 | 10 | |
| **Subtotal** | **510** | | |

# C: PROJECT SITE:

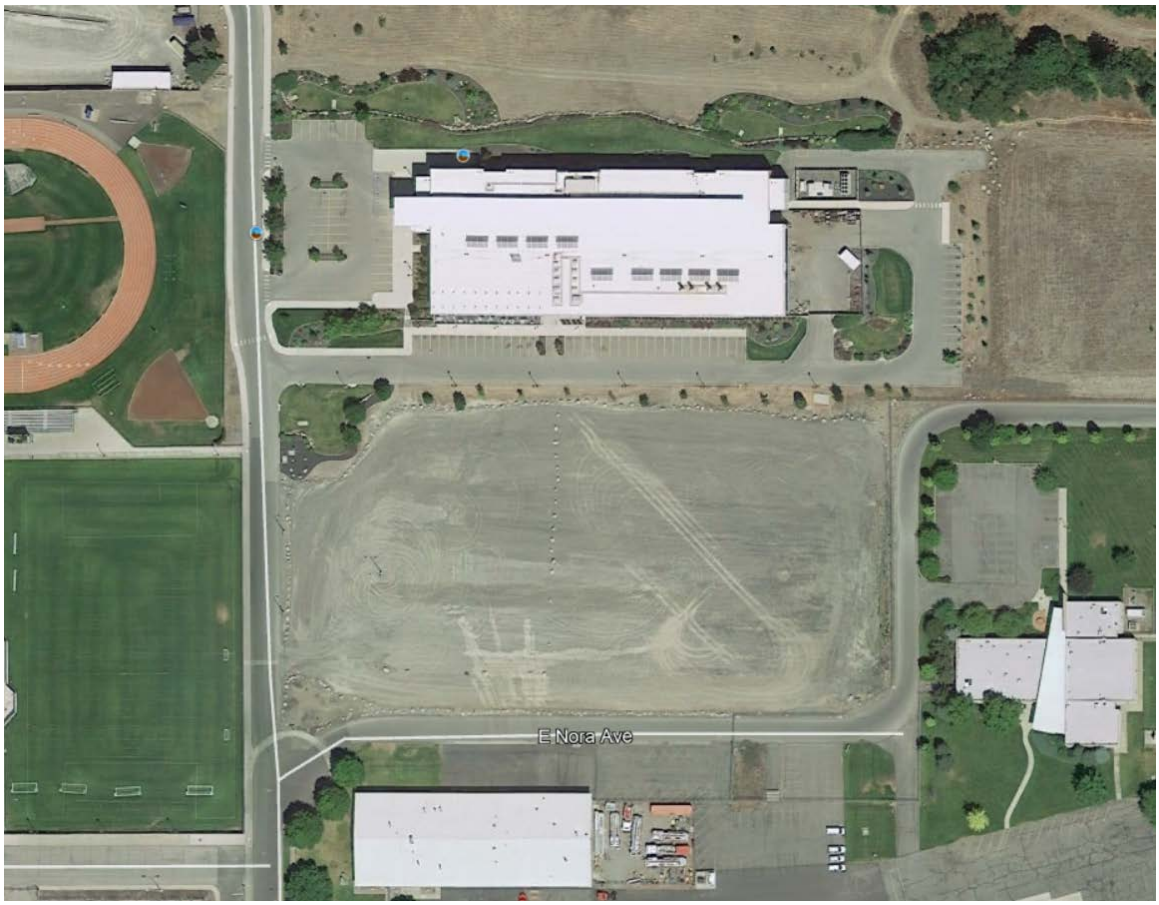
## 4. PROJECT SITE MAPS:

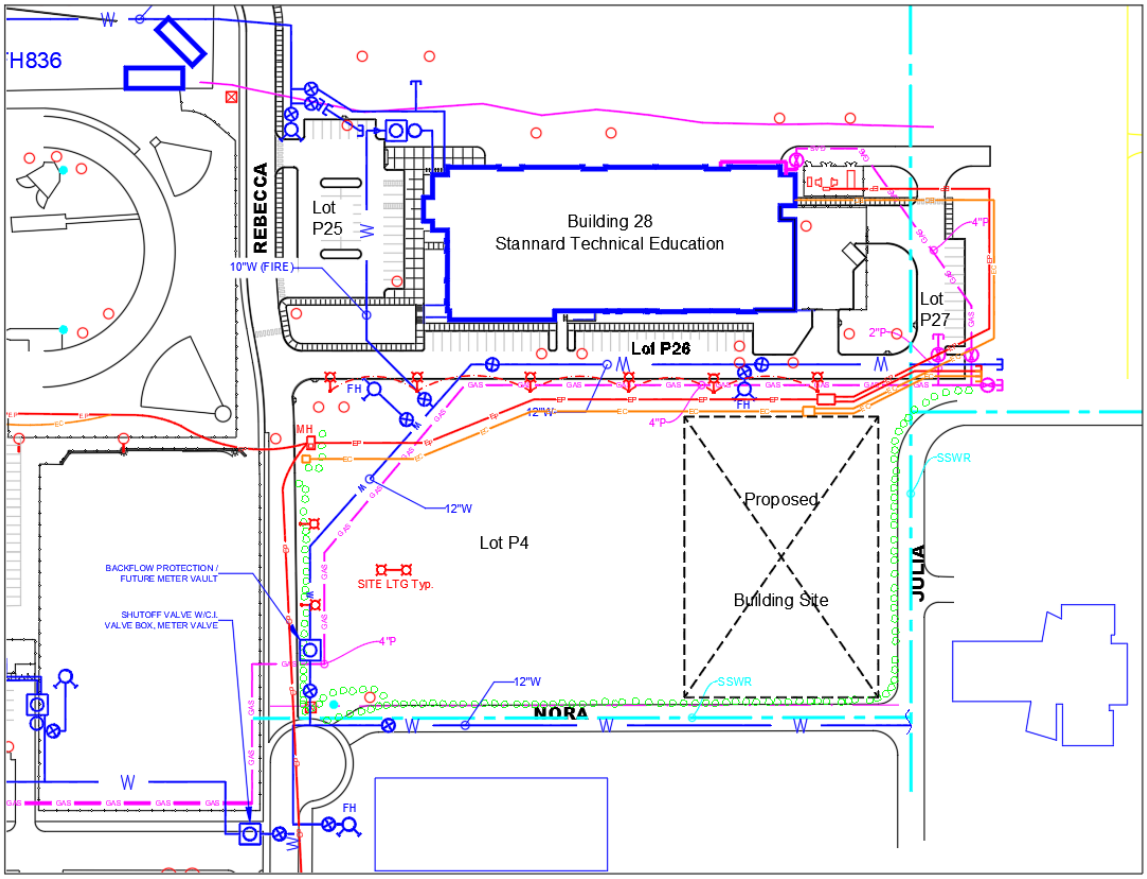
The maps and on the following page show the project site and schematic references to approximate locations of utilities. These locations are based on archive documents from previous campus projects. All locations should be verified by additional research and locating means during design.

Design Building shall be responsible complying with all State and Local agency requirements including historic registry and tribal reviews.

All campus archive information can be used as a resource as well as use of any existing .dwg files that the college has on file.

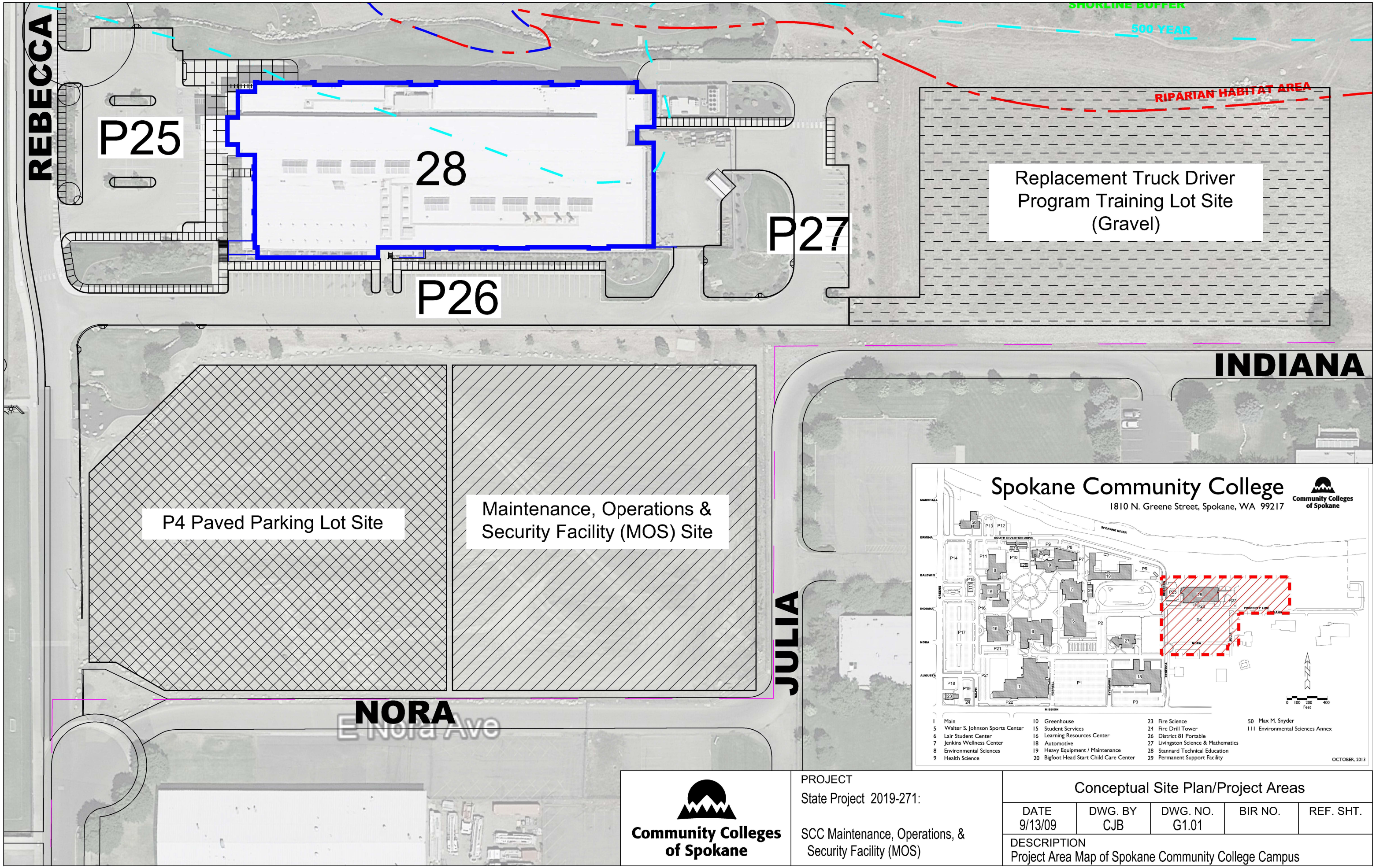
---


E Nora Ave


H836
REBECCA
Lot
P25
Building 28
Stannard Technical Education
10"W (FIRE)
Lot P26
Lot
P27
2"P
4"P
FH
MH
12"W
Lot P4
Proposed
Building Site
SSWR
JULIA
NORA
SITE LTG Typ.
BACKFLOW PROTECTION /
FUTURE METER VAULT
SHUTOFF VALVE W/C.I.
VALVE BOX, METER VALVE
GAS
W

Project 2019-271
SCC Maintenance, Operations, and Security Building

# ATTACHMENT 8:
# CAMPUS/PROJECT MAP




Community Colleges of Spokane

PROJECT

State Project 2019-271:

SCC Maintenance, Operations, & Security Facility (MOS)

Conceptual Site Plan/Project Areas

| DATE | DWG. BY | DWG. NO. | BIR NO. | REF. SHT. |
|---|---|---|---|---|
| 9/13/09 | CJB | G1.01 | | |

DESCRIPTION

Project Area Map of Spokane Community College Campus

Project 2019-271
SCC Maintenance, Operations, and Security Building

# ATTACHMENT 11:
# PRICE FACTOR FORM

# PRICE FACTOR FORM

To: Department of Enterprise Services
Olympia, WA

The undersigned submits the following Price Factor Proposal.

**PRICE FACTOR PROPOSAL:**

Where indicated in the box below, and only for work to be performed under the Contract Between Owner and Design-Builder – Guaranteed Maximum Price (Guaranteed Maximum Price Contract), Proposer shall provide a percentage amount that includes its home office fixed general and administrative costs (G&A costs) together with any profit to be paid to the Proposer which percentage shall be applied to the direct design and construction costs performed under the Guaranteed Maximum Price Contract.

Pursuant to and in compliance with the Request for Proposals, the undersigned certifies, having carefully examined the Contract Documents, and conditions affecting the Work, that the following percentage amount shall constitute full compensation for Design-Builder's G&A costs and profit on all direct design and construction costs performed under the Guaranteed Maximum Price Contract.

| | |
|---|---|
| | Design Build – SCC Maintenance, Operations, and Security Building<br><br>Design-Builder's Fee: _____ |

**SALES TAX:**

The Proposal Amount stated in the final contract shall not include Washington State Sales Tax.

**PROJECT DURATION:**

The Proposer shall assume a Preliminary Contract Award date of January 22, 2018 and a Substantial Completion date for the Project of April 15, 2020.

**CONTRACT AND BONDS:**

If selected based on this solicitation process, the undersigned agrees to execute the contract(s) for the work, and to

**PROPOSER INFORMATION FORM:**

| | | | |
|---|---|---|---|
| Proposer's Business Name: | | | |
| Type of Business:<br>☐ Sole Proprietorship ☐ Partnership ☐ Corporation (State of Inc:_____) Other | | | |
| Physical Business Address (can not be a P.O. Box): | City: | State: | Zip: |
| Business Telephone Number: | Business Fax Number: | Business E-mail Address: | |
| State of Washingon numbers for the following | | | |
| Contractor Registration Number: | UBI Number: | Employment Security Dept. Number: | |
| The following RFP Addenda are hereby acknowledged<br>No._____No._____No._____No._____No._____No._____No._____No._____No. _____ | | | |

**REPRESENTATIVE AUTHORIZED TO SIGN FOR PROPOSER:**

| | |
|---|---|
| "I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct." | |
| Signature: | Date: |
| Print Name and Title: | Location or Place Executed (City, State): |

Project 2019-271
SCC Maintenance, Operations, and Security Building

# ATTACHMENT 12:
# CONFIDENTIALITY AGREEMENT

# Confidentiality Certification

RFP: Project No. 2019-271 – SCC Maintenance, Operations, and Security Building

Confidentiality Certification

I certify that I am an evaluation panel member or a member of the design build team, an advisor to the selection committee, for the design and construction of a SCC Maintenance, Operations, and Security Building. I will not disclose any information about the process, the evaluation, including oral discussions, or any of the proposers unless specifically authorized by the Department of Enterprise Services, or as required by law.

_____
Signature

_____
Print Name

_____
Date