



## **Request for Qualifications (RFQ)**

### **Progressive Design-build**

**for**

## **Mountlake Terrace High School Heating, Ventilation, and Air Conditioning Replacement**

### Submittal Deadline

Time: 12:00 PM

Date: October 26, 2023

Taine Wilton

Director Capital Projects

Edmonds School District (ESD)

20420 68<sup>th</sup> Ave. West

Lynnwood, WA, 98036

**RELEASE DATE: September 29, 2023**

**DISTRICT CONTACT:**

Sharon James, CPO Support Technician

20420 68<sup>th</sup> Ave. West

Lynnwood, WA 98036

[james@edmonds.wednet.edu](mailto:james@edmonds.wednet.edu)

(425) 431-7163

ESD wishes to keep the selection process fair and transparent. Therefore, all questions and communications about the RFQ should flow through the District's designated contact, **Sharon James** . Please do not contact any other employees of the District directly. Answers to questions about the RFQ will be conveyed to all RFQ holders of record via addenda.

## **1.0 GENERAL INFORMATION**

### **1.1 Introduction**

Edmonds School District (ESD or District) is soliciting Request for Qualifications (RFQ) from qualified Design-build Teams (which may include joint ventures) to provide Design-build services for the design and construction of the Mountlake Terrace High School Heating, Ventilation, and Air Conditioning (HVAC) Replacement. The delivery method will be the Progressive Design-build contracting method. The Design-build Team and the selected design team will be tasked with a full range of design services and deliverables to describe the project for purposes of negotiation of a Guaranteed Maximum Price (GMP), permit review, subcontracting, construction, commissioning, performance guarantees, and other aspects of scope and terms sufficient to complete the project as required for use and occupancy by the District.

Overall project design scope for the Design-build Team may include but is not limited to, surveying, evaluating, and verifying existing conditions, design; cost estimating; value analysis; constructability analysis; scheduling/ phasing; submitting for and obtaining required jurisdictional inspections, approvals, and permits; subcontractor buy-out/bidding; materials and equipment procurement; subcontractor & supplier scheduling and coordination; building repairs and renovations; mechanical systems replacement, addition of air conditioning system, obtaining required jurisdictional construction related inspections/approvals and obtaining required jurisdictional approvals for the District's occupancy and use of the facilities.

Construction work required of the Design-build Team may include but is not limited to, Site investigations; demolition of existing facilities and associated finishes; upgrades to existing utilities to support new HVAC System; Mechanical systems including air conditioning; Modifications to existing electrical and plumbing systems to support new HVAC Systems; specialty equipment; interior finishes and repairs and exterior finishes and repairs; start-up, testing adjusting and balancing, and commissioning, operational training and all other work required to complete the HVAC Replacement.

### **1.2 Reasons for Using Design-build Delivery**

The District is utilizing the Design-build alternative public works contracting procedure authorized under chapter 39.10 RCW. This project delivery method is appropriate for this project because it provides greater innovation and efficiency between the designer and the builder. Progressive Design-build delivery also provides significant savings in project delivery time.

### **1.3 Project Description**

The Mountlake Terrace High School Heating, Ventilation, and Air Conditioning Replacement project is located in Lynnwood, Washington. The total building area is approximately 214,800 square feet. The original building was constructed in 1991. A reroofing project occurred in 2012, window upgrades in 2016, Chiller addition in 2017, and field upgrades in 2023. The project will renovate the existing HVAC system while the campus is occupied. It is anticipated that the majority of the work will take place over consecutive summer breaks and outside school hours.

Project site location: 21811 44<sup>th</sup> Ave W., Mountlake Terrace, WA 98043

The intent is to deliver the project by utilizing the Progressive Design-build delivery method as authorized by RCW 39.10. It is the Owner's intent to hire a highly qualified Design-build Team (Contractor and Designer) to collaborate with the District staff and consultants. The project would start with Phase 1 establishing the Design scope, cost estimate, and overall schedule. With the approval of the Phase 1, Phase 2 Design Services would commence, followed by negotiation of the GMP including Final Design, Permitting, and Construction of the Work.

The 2021 Levy funds this project. The preliminary budgeted, combined design and construction cost for the project (Owner's MACC) is approximately \$7,000,000 with a total project budget of approximately \$10,000,000 including sales tax. Edmonds School District reserves the right, at its sole discretion, to increase/decrease the project budget and scope and/or revise the duration/schedule for the contract work.

The District intends to select a highly qualified Design-build Team who will work with the District's project team to program, design, and construct a project that will meet the District's programmatic requirements, available budget, and intended project schedule for the facilities.

Other intended project characteristics include:

- Create a design that provides a safe and secure environment for learning, teaching, working, athletics, and recreation.
- Facilities that are energy/resource efficient, easily maintained, and can provide a minimum of 30 years of serviceability within a reasonable life-cycle cost.
- Facility design that accommodates and encourages public use of the facilities when school is not in session.
- Design that is aligned with the fixed project budget and can be constructed within the schedule identified for the project.

Generally, the District’s team intends to work with the selected Design-build Team to optimize the functionality, efficiency, and value of the facilities for both the District and the community.

**1.4 Project Schedule**

It is anticipated that planning and design will start in January of 2024 with the first construction work beginning in the Summer of 2024, and completing by September of 2025.

Phase	Start	End
ESD Design-build Prep & PRC Process	June 2023	October 2023
Design Builder Procurement	October 2023	January 2024
Programming, Design & Early Procurement	January 2024	May 2024
Summer 1 Construction	June 2024	August 2024
Ongoing Design & occupied construction	June 2024	June 2025
Summer 2 Construction	June 2025	August 2025
Closeout & Warranty	September 2025	September 2026

**1.5 Pre-submittal Project Information Meeting**

The project information meeting will be a Zoom invite to all prospective Design-builders at 3:00 PM on 10/12/2023.

Link:

<https://edmondsschools.zoom.us/j/84328150867?pwd=Rm85NWlzc1ByM29XV FhZeTNIcEE2QT09>

**Passcode: 904170**

Prospective Design-build Teams are strongly encouraged to attend the pre-submittal virtual Project Information Meeting. The intent of the meeting is to provide information about the project and to assist the candidate’s understanding of the requirements of the RFQ and the District. Prospective candidates are encouraged to submit questions prior to the pre-submittal meeting to enable the District to prepare responses. All questions or comments must be submitted to the District’s designated contact, Sharon James, via email.

## **1.6 Qualifications Required**

Design-build Teams desiring to submit their Statement of Qualifications (SOQ) for this project will be required to demonstrate appropriate qualifications in one, or a combination of, the following project types for projects that are of a similar or greater complexity, size, scope and value to this project:

- Design-build project delivery, or a similar alternative delivery method
- K-12 HVAC system Replacements and Installations
- Other Public Facility HVAC Replacements

Design-build Teams must also successfully demonstrate their ability to meet the selection criteria outlined elsewhere in the RFQ/RFP documents.

**The Design-build Team** shall provide competent, experienced staff from design through completion of construction. It is preferred that the proposed staff demonstrate adequate experience in HVAC system design/construction and experience with the Progressive Design-build project delivery method. That staff shall include, but is not limited to, the following key Design-build team members:

- Design-build Project Executive
- Design-build Project Manager
- Construction Superintendent
- Key Mechanical Lead
- Cost Estimator

In addition to the staff listed above, the Design-build Team shall supplement their teams as they believe is necessary to successfully execute the work. These staff members shall be either employees or sub-consultants of either the contractor or design firm. In light of time constraints, it would be beneficial to the project to bring your mechanical team.

## **1.7 Reference Checks**

The District reserves the right to conduct reference checks for the Design-build Team or its team members at any point during the procurement process. In the event that information obtained from the reference checks reveals concerns about the Design-build Team or a team member's past performance or ability to successfully perform the contract to be executed based on this RFQ, the District reserves the right, at its sole discretion, to determine that the firm is not qualified and to remove them from consideration.

In the case that this takes place following the completion of the scoring and prior to an executed Agreement, the District may elect to terminate negotiations and enter into negotiations with the next highest-ranked firm whose reference checks validate the ability of that Design-build Team to successfully perform the Work to be executed based on this RFQ.

In conducting reference checks, the District may include itself as a reference if the firm has performed past work for the District, even if the firm did not identify the District as a reference. Likewise, the District reserves the right to check references for the Design-build Team from others even if they were not identified as references in the submitted proposal.

### **1.8 Anticipated Design-build Procurement, Design & Construction Schedule**

The District intends to complete the Design-build Team selection process and execute an Agreement in a timely manner. The following is the anticipated schedule for the procurement and design related to this project. The dates indicated for design and construction are preliminary and may be adjusted after the project team has evaluated project scheduling.

<b>Phase</b>	<b>Date</b>	<b>Selection Process</b>
PRC	Aug 21, 2023	PRC Application Due
PRC	Sep 28, 2023	PRC Presentation/Approval
Step 1: RFQ	Oct 2-3, 2023	RFQ 1st Advertisement
	Oct 6-9, 2023	RFQ 2nd Advertisement
	Oct 12, 2023	Pre-RFQ Meeting held over zoom
	Oct 13, 2023	Last Day to Submit RFQ Questions
	<b>Oct 24, 2023</b>	<b>Statement of Qualifications Due at 12:00pm</b>
Step 2: RFP	Oct 26, 2023	Notification of Shortlisted Finalists
	Nov 2, 2023	RFP Issued
	<b>Nov 06, 2023</b>	<b>Site-walk with Finalists</b>
	Nov 7, 2023	Last Day to submit RFP questions
	<b>Nov 15, 2023</b>	<b>RFP Submittal Due at 12:00pm</b>
	<b>Nov 15-17, 2023</b>	<b>Interactive Meetings</b>
	<b>Nov 21, 2023</b>	<b>Public Opening of Fee Proposal</b>
	Nov 22, 2023	District Notification of Selected Finalist
Contract	Dec 12, 2023	Board approval of Contract
	Dec 15, 2023	Execute Design-build Contract

#### **1.9.0 Design-build Evaluation and Award Process**

The District intends to contract for Design-build services on the basis of a combination of qualifications, the proposed project approach, the team's ability & capacity to complete the work, and limited pricing criteria using a competitive selection process in accordance with RCW 39.10. All firms submitting proposals

must be registered by the Washington State Department of Labor and Industries in accordance with RCW 18.27.020.

Prospective Design-build Teams are responsible for all costs of preparing and submitting qualifications and participating in the Design-build Team Request for Qualifications process. Submittal and evaluation criteria have been developed to avoid the need for detailed design and cost estimating as a part of the submittal and procurement process SOQs and Proposal documents submitted will remain the property of the District and shall not be returned to the submitters.

The District reserves the right to reject any or all submittals of SOQs and Proposals and to waive informalities or non-material irregularities in the SOQs and Proposals received. The process for selection of the Design-build Team, negotiation of the GMP, award of the design-build contracts, and payment for Pre-construction Services is anticipated to be as follows:

### **1.9.1 Eligibility**

Qualified firms interested in being considered for selection as the Design-build Team may submit their Statement of Qualifications and, if shortlisted as a Finalist, submit a Proposal in accordance with the submittal requirements set forth in the RFQ and RFP.

### **1.9.2 Process Summary**

The solicitation process will be a two-step process. The first step will be the RFQ Stage where interested Design-build Teams will submit their Statement of Qualifications. The second step will be the RFP Stage where shortlisted Design-build Finalists will be invited to, walk the site, submit their Proposal, take part in an Interactive Meeting with the District's selection committee, and Fee Proposal in response to an RFP (to be issued.). The District reserves the right to conduct an additional interview if it so chooses. Design-build Teams submitting a response to the RFQ will be evaluated by a District appointed selection committee, based on the evaluation criteria which is set forth in this RFQ. CPO Leadership, the D-B Consultant, Facilities Leadership, and School Leadership comprise the District's selection committee.

The selection committee will score the qualifications received, based on the evaluation criteria identified in this RFQ, and will shortlist the Design-build Teams with the highest score and invite those teams to advance to the RFP Stage.

During the RFP Stage, after teams submit their Proposals, and each Design-build Finalist will have an opportunity to take part in an Interactive Meeting with the District's selection committee. The purpose of the Interactive meeting is to allow the prospective Design-build Team to interact with the District's team in order to demonstrate collaboration, creativity, and overall knowledge of this project type. Since the selection process emphasizes qualifications, project approach, capacity/ability to complete the work, and limited pricing criteria, finalists are discouraged from presenting detailed,



project-specific design concepts, detailed pricing, 3-D models, renderings, or other design or estimating intensive efforts as part of the Interactive Meeting. ***Such information presented during the Interactive Meeting will be considered inappropriate.***

Just prior to or at the Interactive meeting the District will present a real project challenge to the proposing team(s). The meeting will be an interactive working session where the Proposer and the District work together to resolve the challenge. Teams will be scored on their communication skills, collaboration, coordination, creativity, technical knowledge and overall problem-solving abilities.

Following the Interactive Meeting, the selection committee will score the teams performance in the Interactive meeting and Proposals according to the criteria set forth in the RFP and identify the most highly qualified Design-build Team based on total cumulative scoring. A summary statement of the selection will be provided to Proposers within two business days of the notification per RCW 39.10.330(6).

The responsive Design-build Team with the highest RFP score (Interactive Meeting + Proposal + Fee Proposal), will be identified as the “most highly qualified” and selected to enter into contract negotiations with District for a Phase 1 Design Services Agreement. If the District and the highest scoring Design-build Team cannot agree on terms for this Agreement, the District may, at their sole discretion, terminate negotiations with that Design-build Team and enter into negotiations with the next highest scoring Design-build Team.

In the event that only one responsive Solicitation of Qualifications and/or Proposal is received at the dates and times noted herein, or as modified by subsequent addenda, the District reserves the right, at its sole discretion, to either proceed with the procurement process with the single respondent; cancel the RFQ and/or RFP and procurement process; or reschedule the due date and time for the RFQs and/or Proposals and the procurement process.

The District reserves the right, at its sole discretion, to reject any and all proposals and/or cancel this RFQ and/or RFP at any time for any reason. In the event that the District does so, it shall provide the reasons for rejection or cancelation in accordance with RCW 39.10.

### **1.9.3 Contracting Process and Forms of Agreement**

Project delivery will be a Design-build contracting method utilizing a two-phase Agreement process. Samples of the Agreements and General Conditions documents will be provided.

### **1.9.4 Price Negotiations**

It is anticipated that negotiation of the price to complete (Investigative work, preliminary design of Phase 1 and Procurement of any equipment or long lead items) Design-build Team and District shall come to a mutual agreement that Phase 1 services have progressed to a point where conceptual/schematic

design documents have been developed to a point that they are adequate to negotiate a price to complete the work. The Design-build Team's price proposal to complete the Work shall include an "open book", transparent tabulation for the design fees to complete the design, including a list of deliverables and a schedule for completion of the work that is tied to the required permitting, bidding, construction and close-out schedule of the project. The Design-build Team's price proposal to complete the Work shall also include an "open book", transparent cost estimate for the materials, labor and OH&P to construct the project. The price proposal for construction shall clearly identify any allowances for work that is not yet detailed enough to be estimated in a detailed manner and/or contingencies for latent/unforeseen conditions or other issues that the Design-builder deems appropriate. The price proposal for construction shall include a construction contingency, percentage/amount to be negotiated by District and Design-builder, to be utilized for unforeseen conditions that may arise during construction. The use of this construction contingency must be approved by both the Design-builder and the District. Remaining contingency at the end of the project will be returned, in full, to the District. These items will be reviewed, revised, approved as part of the price negotiation process, and will be attached to the Amendment/Agreement.

If, at any time, the District and the Design-builder are unable to agree on a satisfactory price for completing the project that the District determines to be fair, reasonable and within the available budget, a schedule to complete the project or the scope and character of the project, the District may, at its sole discretion, terminate the Agreement and not proceed to execute the remaining project scope with the Design-builder.

Should the District choose to cancel the negotiations upon failure to achieve an Amendment/Agreement on the budget to complete the Work, such cancellation will be effective upon issuance of written notification to the Design-builder. In such case, the Design-builder will not be reimbursed for time and effort related to the price negotiations.

In the case where the parties are not able to reach an Amendment/Agreement to complete design and construct the project and the contract is terminated, the District will maintain ownership of and has the rights to use the design developed during Phase 1 services and reserves the right, at its sole discretion, to either cancel the project, move forward with the project utilizing the services of another Design-builder or to move forward with the project through a General Contractor/Construction Manager, design-bid-build delivery process or in any other way that it deems appropriate.

#### **1.10 RFQ / RFP Submittal Requirements and Submittal Deadline**

All RFQ and RFP responses shall be submitted to the District's designated contact, Sharon James, via email. Submittals must be submitted prior to the time/date deadline indicated in RFQ Section 1.8. The District will consider the email receipt time stamp as evidence of the actual receipt of the proposal. Confirmation of receipt will be provided.

### 1.10.1 Submittal Delivery

The solicitation process will be a two-step process. The first step being the submittal of Design-build Team Statement of Qualifications (SOQ). The second step will be written proposals and an Interactive Meeting with short-listed Design-build Team Finalists, followed by the submittal of a Fee Proposal. The following items shall be submitted:

#### Step 1 - Statement of Qualifications:

In response to the RFQ, interested Design-build Teams shall send their SOQ to the District's designated contact, Sharon James, via email. Each Design-build Team's SOQ must include a Table of Contents (not included in maximum page count of the SOQ) and be organized by sections corresponding to the numbering, criteria and order identified in the RFQ (Section 2). SOQ's shall be limited to 20 pages in length (minimum 10-point font). The page count does not include the proposal cover sheet, letter of interest, table of contents, Design-build team member resumes, tabs or back cover. Tabs, cover and back cover shall have no substantive written information included, otherwise they will be counted in the page limit. If your submittal prints pages on both sides this will count as two pages. Attachments and exhibits will count towards the page limit.

All information uploaded shall be printable on 8½" x 11" paper including exhibits and graphical information. Submittals not meeting the format and content requirements established herein may be considered non-responsive and, at the discretion of the District, may not be evaluated.

Incomplete submittals and/or submittals that are not received by the time and date noted in Section 1.8 - Anticipated Design-build Procurement, Design & Construction Schedule, will be considered non-responsive and may not be reviewed/evaluated.

#### Step 2 - Proposal:

Shortlisted Design-build Finalists who are invited to submit a Proposal, may submit a Proposal in response to the RFP for Design-build Services. **Proposals received from Design-build Teams who were not invited to submit and RFP as finalists a Proposal will be considered non-responsive and will not be reviewed and scored.**

Proposal shall be submitted to the District's designated contact, Sharon James, via email. Each Finalist's Proposal must include a Table of Contents (not included in maximum page count of the proposal) and be organized by sections corresponding to the numbering, criteria and order identified in the RFP (Section 3). Proposals shall be limited to 10 pages in length (minimum 10-point font). The Use 11 or 12 point font page count does not include the proposal cover sheet, table of contents, letter of interest, tabs, or back cover. Tabs, cover and back cover shall have no substantive written information included, otherwise they will be counted in the page limit. If your submittal prints pages

on both sides this will count as two pages. Attachments and exhibits will count towards the page limit. All information uploaded shall be printable on 8½” x 11” paper exhibits. Submittals not meeting the format and content requirements established herein may be considered non responsive and, at the discretion of the Owner, may not be evaluated.

Incomplete Proposals and/or Proposals that are not received by the time and date noted in Section 1.8 - Anticipated Design-build Procurement, Design & Construction Schedule, will be considered non-responsive and may not be reviewed/evaluated.

Any proposal that fails to meet the deadline or delivery requirements may be rejected and returned to the Design-build Team without having been opened, considered, or evaluated.

Any other contact with District’s staff, or Design-build Consultant regarding this RFQ or the RFP, other than communications identified in Section 1.10.8 is strictly prohibited. Design-build Teams violating this prohibition may be disqualified from competition.

### **Step 3 - Formal opening of Fee Proposal:**

Fee proposal should be submitted on the proper form in person to the Edmonds School District Educational services center 20420 68th Ave. W by 2:00 PM on November 21, 2023. Fee Proposals will be opened and recorded publically immediately following the submittal deadline.

#### **1.10.2 Cancellation of RFQ/P or Postponement of Submittal Due Date and Time**

The District reserves the right to cancel this RFQ and/or RFP at any time. The District also reserves the right to change the date and time for receiving submittals prior to the date and time established for submittal.

#### **1.10.3 Cost and Return of Submittals**

Prospective Design-build Team are responsible for all costs of preparing and submitting a Statement of Qualifications and/or Proposal and participating in the Design-build Team selection process. Submittal documents will remain the property of the District and shall not be returned. ***Shortlisted teams who attend the interactive meeting who are not awarded a contract will be receiving a \$1,500 honorarium per RCW 39.10.330.***

#### **1.10.4 Collusion or Improper Contact**

The pre-submittal conference, and the Interactive Meeting shall be the only opportunity for candidates to speak directly with representatives of the Owner and its Design-build Consultant regarding the Project and the Design-build Team selection process. Any other contact with Owner’s staff, or Design-build Consultant regarding this RFQ or the RFP, other than communications identified in Section 1.10.8 is strictly prohibited. Design-build Teams violating this prohibition may be disqualified from competition.

### **1.10.5 Public Disclosure of Submittals**

Submittals and documents received by the District in response to this RFQ/P and Design-build Team selection are public records subject to Chapter 42.56 RCW, the Public Records Act. Design-build Team should clearly identify in their submittals and documents any specific information that it claims to be confidential or proprietary. After a decision to award the contract has been made, the submittals will be available for inspection by the public.

If the District receives a Public Records Act request to view the information marked confidential or proprietary in a Design-build Team's submittal following an award, the District's sole obligation shall be to endeavor to notify the Design-build Team(1) of the request and (2) of the date upon which such information will be released to the requester unless the Design-build Team obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Design-build Team fails to timely obtain a court order enjoining disclosure, the District will release the requested information on the date specified.

### **1.10.6 Non-Disclosure Obligation**

Any data provided by the District to the Design-builders, either before or after Contract award, shall only be used for its intended purpose. Design-builders and their team members shall not utilize nor distribute District provided data, in any form or for any other purpose, without the express written approval of the District.

### **1.10.7 Addenda**

If at any time, the District revises, deletes, clarifies, or otherwise modifies the RFQ or RFP, the District will issue a written Addendum via email.

It shall be the Design-builder's Team responsibility to obtain, read and address the addenda information in their qualifications or proposal. (Refer to the dates indicated in Section 1.8 for specific related to posting of addenda.) **The Design-build Team shall acknowledge receipt of addenda in the Letter of Interest portion of their SOQs and in the Fee proposal form of their Proposal.**

### **1.10.8 Questions, Comments, and Interpretation of the RFQ or RFP**

All questions and communications should flow through the District's designated contact, Sharon James. Please do not contact the District directly. (Refer to the dates indicated in Section 1.8 for specific deadlines for questions and comments.)

There are generally two types of questions. One involves directing the question to the specific section of the RFQ or RFP where the answer may be found. The second type of question involves clarifying or interpreting parts of the RFQ or RFP. Response to the second type of question will be conveyed to all RFP holders of record via email addenda. (Refer to the dates indicated in Section 1.8 for specifics related to the posting of addenda.)

Any information modifying the RFQ or RFP will be furnished solely by written

addendum. Oral interpretations, explanations, or instructions related to the RFQ or RFP will be avoided. Oral interpretations, explanations, or instructions are not binding.

Communications concerning the RFQ or RFP other than through the process as indicated above may cause a prospective Design-build Team may be disqualified.

### **1.11 Design-builder Team Responsibilities**

The Design-build Team submitting a Proposal shall have the following registrations, approvals, and coverages in effect when submitting the Proposal:

- Registration with the Washington State Department of Labor and Industries in accordance with RCW 18.27.020.
- UBI Number.
- Industrial Insurance (worker's compensation) coverage for the bidder's employees working in Washington as required in RCW Title 51.
- Washington Employment Security Department Number as required in RCW Title 50.
- Washington Department of Revenue State Excise Tax registration number as required in RCW Title 82.
- Eligibility for bidding on any public works contract under RCW 39.06.010 or RCW 39.12.065(3).
- Ability to satisfy the bidder responsibility criteria in RCW 39.26.160(2).

### **1.12 Apprenticeship, OMWBE, SBE, and Local Business Utilization**

**Apprenticeship:** Mandatory apprentice utilization must comply with local, and state requirements and requirements published by the Department of Labor & Industries, Apprenticeship Program at 360-902-5320 to obtain information on apprenticeship programs.

**MWBE, SBE, and Local Business Utilization:** Edmonds School District starts by including students in our projects. Student participation helps pave the way for interest in future careers in design, engineering, and construction. The Capital Projects Office is committed to meeting the District's Strategic Plan of Equity, Engagement, and Excellence for each and every student. The District invests in local businesses in order to give back to the immediate community benefitting voters, bond measures, and local property taxes. The district's current goal is to continue tracking utilization and to increase its outreach. The Design-build Team is expected to be an active participant in strategizing to help the district meet its goals and will be required to track the participation of consultants and subcontractors working on the project.

### **1.13 Proposal Guarantee**

Submittal of a bid bond is not required as part of the response to the RFQ or RFP. However, a letter from Surety is required to be submitted as part of the Design-build Team's Proposal. (Please refer to RFP Section 3.13.) A payment and performance bond will be required at the time that the GMP is negotiated.

### **1.14 Protest Process**

A party protesting, for any reason, the RFQ or RFP documents, RFQ or RFP procedures, selection of Design-build Team Finalists, decisions by the District, or any other aspect arising from or related in any way to the Design-build Team selection process shall cause a written protest to be filed and be delivered, by hand or mail to:

Taine Wilton, Director of Capital Projects  
Re: RFQ Mountlake Terrace High School HVAC  
Replacement Project Protest  
Edmonds School District  
20420 68th Ave. West  
Lynnwood, WA, 98036

The written protest shall include:

- The name, address, telephone number, E-mail address of the protesting party, or the authorized representative.
- A detailed statement of legal and factual grounds for the protest, including a description of the resulting prejudice to the protester.
- Specific grounds for protest and all supporting documentation.
- The specific ruling or relief requested.

Neither the judgment used in the scoring by individual evaluators nor disagreement with the procurement process shall constitute grounds for protest. The District will not consider any protest based on items that could have been or should have been raised prior to the published deadline for submitting questions or requesting addenda.

Protests may only be submitted by prospective Design-build Teams that have submitted an SOQ and/or Proposal and parties showing a substantial financial interest in the solicitation or award of any Design-build Contract.

Protests shall be filed and received by the District no later than four (4) business days following notification of the Proposers of the District's selection decision. In the case of a mailed protest, the timing of receipt shall be based on the postmark date.

In no event shall a protest be considered if all RFQ and Proposals are rejected.

Upon receipt of a properly submitted written protest, the District will consider the protest and shall respond in writing to the protest prior to the award of a Design-build Contract. The decision of the District shall be final.

Failure to comply with these protest procedures will render a protest waived.

### **2.0 RFQ SUBMITTAL EVALUATION CRITERIA (100 total points)**

The RFQ submitted by Design-build Team must include information documenting how the proposed team meets the evaluation criteria below and

will be evaluated based on these criteria and weighted scoring. Each Design-build Team's RFQ must include a Table of Contents (not included in maximum page count of the RFQ) and be organized by sections corresponding to the criteria and order shown below. RFQ submittals will remain the property of the District and will not be returned to the submitters.

## **2.1 Letter of Interest (5 points)**

Provide the following information in a Letter of Interest that does not exceed two pages:

- Introduce your firm.
- Important information about your firm/team that is not provided elsewhere in the Proposal.
- Explain what makes your team unique and the best fit for this design-build project.
- Name, address, telephone number and email address for notifications and addenda.
- Acknowledgement of each addendum issued to RFP.

## **2.2 Team Member Experience and Qualifications (25 points)**

Provide a complete team for the project who will be dedicated to this project should the Design-build Team be successful. Describe the experience and qualifications of your key team members including their experience in Design-build project delivery and K-12 HVAC System design & construction.

For each proposed team member filling the roles identified in the bullet-point list of Section 1.6 above, provide an overview of their qualifications for their proposed role in the project. (Contractor may provide information for other, supplemental staff, but it is not required.) In addition, provide the following information for each:

- Person's name and proposed role for this Project.
- Education and certifications.
- Experience in projects using alternative delivery and/or collaborative design. (Design-build or GC/CM)
- Work history that identifies their employer, type of position(s) held, and time period of employment.
- Following information about the last two (2) projects similar to this one that the individual has worked on:
  - Project name.
  - Project Owner.
  - Project location.
  - Project delivery method (Design/Bid/Build, GC/CM, Design-build or Negotiated).
  - Construction contract value.
  - Completion date.
  - Role of individual on project.
  - Owner's representative name, telephone number and email



- o address.
- o Architect's representative name, telephone number & email address.

### **2.3 Design-build Team Location and Geographic Range of Work (5 points)**

Provide the following information for the Design-build Team's location and geographic range of work:

- Address of firm's headquarters or corporate office.
- Address of local office that will oversee and manage the Project.
- Current geographic range of your entire company's work.
- Current geographic range of work managed by the local office.
- Description of the firm's ability to effectively oversee and manage the pre-construction, design and construction phases of a project constructed in Mountlake Terrace, Washington.

### **2.4 Ability and Capacity to Perform the Work (10 points)**

Describe your team's ability and capacity to perform the pre-construction, design, and construction phases of the project.

In graphical form, provide the following information about your firm:

- Total construction contract value, listed by year, of projects completed in Washington State in 2020, 2021, and 2022.
- Total construction contract value of projects in Washington State in progress or completed for 2023.
- Total construction contract value of projects that will be in progress and/or anticipated to begin construction in 2024, including this project which would begin construction in the summer of 2024.
- The firm's bonding capacity for 2024 and anticipated bonding capacity for 2025.

Provide an organizational chart to show the overall organizational structure of the entire team that you are proposing. Please include the members of the design team (except for those that will be chosen at a later date) and how you anticipate that they will fit into your team's organizational structure. Design team members to be shown generically as discipline and role. (i.e. Architect, Landscape Design - Project Designer, Civil Engineer – Design Engineer, etc.)

Describe how you would propose that the construction resources of your team and the design resources of the design will be integrated into a cohesive Design-build organization, including a description of the management strategies, internal communication protocols, coordination tools, and planning efforts that you propose to employ to ensure an effective project.

### **2.5 Firm Qualifications and Past Performance (25 points)**

Provide the following information:

- The listed information about the last three (3) K-12 HVAC

Replacements and/or Design-build contracts completed by the Design-build Team in Washington State, that were of similar or greater complexity, size and scope to this project.

- o Project name.
  - o Project Owner.
  - o Project location.
  - o Delivery method (D/B/B, GC/CM or D-B).
  - o Original Construction contract value.
  - o Final actual cost of construction.
  - o Reasons for difference in original construction contract value and final actual cost of construction.
  - o Original Substantial Completion date per contract.
  - o Actual Substantial Completion date.
  - o Reasons for difference in Substantial Completion date.
  - o Members of your proposed Design-build team for our project who were involved in this project and their role in this project.
  - o Owner's representative name, telephone number and email address.
  - o Design Team's representative name, telephone number and email address.
- If your firm has not completed at least three (3) K-12 or other HVAC Replacements or Design-build projects of similar or greater complexity, size and scope to this Project, provide the following information about the last three (3) projects completed within the past 8 years by your firm in Washington State that were of similar or greater complexity, size and scope to this Project.
    - o Project name.
    - o Project Owner.
    - o Project location.
    - o Project delivery method (Design/Bid/Build, GC/CM, Design-build, or Negotiated).
    - o Original Construction contract value.
    - o Final actual cost of construction.
    - o Reasons for difference in original construction contract value and final actual cost of construction.
    - o Original Substantial Completion date per contract.
    - o Actual Substantial Completion date.
    - o Reasons for difference in Substantial Completion date.
    - o Members of your proposed Design-build team for our project who were involved in this project and their role in this project.
    - o Owner's representative name, telephone number and email address.
    - o Design Team's representative name, telephone number and email address.

## **2.6 MEP System Performance within Budget and Schedule (5 points)**

Provide at least one example of how your team has improved performance of an existing building's Mechanical (Electrical or Plumbing) System. Provide

specific metrics of the systems performance before, during, and after construction and describe the role of the Design-build team in ensuring performance continues after construction completion. The projects described in this criterion may be included in or in addition to those listed above.

## **2.7 Project Safety Plan and History (5 points)**

Describe the safety and accident prevention program and commitment to safety of Design-build Team member of your team. Submit the Design-build Team member's Accident Prevention Program along with the Design-build Team member's EMR and OSHA (WISHA) Lost Time Accident Rate for each of the past 5 years. If the Design-build Team member is a joint venture, submit the requirements of this section for each member firm of the joint venture.

## **2.8 MWBE/SBE/Local Businesses Utilization (15 points)**

The District is committed to supporting the local community and economy by increasing the participation of small business enterprises and disadvantaged business enterprises. This commitment is designed to invest tax-payer dollars back into the community, as well as help build a strong professional community able to tackle the increased construction projects expected for Washington state.

To demonstrate the proposer's past performance in utilization of disadvantaged business enterprises, please provide the following for your last three (3) projects that had utilization/participation goals:

- A summary of the required or requested MBE, WBE, SBE or other disadvantaged business and local business utilization requirements/goals and the actual participation levels achieved for each project.
- A summary of your efforts to recruit and involve MBE, WBE, SBE or other socially or economically disadvantaged business enterprises and local businesses for each project.
- A summary and examples of past successes encouraging small or disadvantaged business enterprises to participate in a project.
- Based on lessons learned in past projects, provide a summary of how you have aligned project work to offer increased opportunities for small businesses and micro businesses, including facilitating mentor relationships between the prime and relevant subcontractors, or between subcontractors and relevant small and microbusinesses.

Proposers may also submit its performance for projects that did not have explicit utilization/participation goals.

## **2.9 Teams Legal Record (5 points)**

Any lawsuits, claims, charges, or judgements against or involving members of Design-build Team with in the last 5 years (including explanation, if desired).

### **3.0 INTERACTIVE MEETINGS AND RFP (PROPOSAL) EVALUATION CRITERIA (100 points total)**

After evaluation of the RFQs, the District will shortlist qualified Design-build Teams as Finalists for this project and will invite them to submit a Proposal, attend an Interactive Meeting, and Fee Proposal. The RFP submitted by Design-build Team will include two steps as outlined below. RFP submittals will remain the property of the District and will not be returned to the submitters.

#### **3.1 Written Proposal and Interactive Meeting (90 points)**

Draft RFP documents may be issued at a later date prior to final RFP issuance. The District encourages prospective Design-build Teams to comment and provide input on the RFP information during the RFQ process. Copies of the final RFP and Interactive Meeting/RFP Evaluation Criteria will be forwarded to the Finalists following notification of the shortlist. **(Note that only Design-build Finalists who are shortlisted and invited, will be allowed to submit a Proposal. Proposals received from Design-build Teams who were not identified as Finalists and invited to submit a Proposal will be considered non-responsive and will not be reviewed and scored.)** Finalists will be provided with an opportunity to walk the site. Just prior to Interactive Meetings, the Finalists will have the opportunity to submit their Proposals. The District's review team will review and score the Proposals received. RFQ scoring will not be carried forward into the final score. The score of the RFP (Interactive Meeting, Proposal and Fee Proposal) will be used to determine the "Most Qualified Design-build Team."

#### **3.2 Fee Proposal (10 points)**

The fee score will be calculated as follows:

The Design-builder submitting the lowest fee percentage will be awarded 10 points

All other proposing Design-builders will receive a portion of the 10 points reduced by 1 point per full percentage point difference in fee rounded to the nearest hundredth of a percent

Score = 10 - ((High fee %) - (Low fee %))

### **END OF REQUEST FOR QUALIFICATIONS**

#### Attachments

- Draft Contract and General Conditions

## Agreement Between Owner and Design-Builder

This Agreement is made as of the \_\_\_\_ day of \_\_\_\_\_ in the year of Two Thousand and Twenty-Three by and between:

the “Owner”:

**Edmonds School District No. 15**  
20420 68th Avenue West  
Lynnwood, Washington 98036

and the “Design-Builder”:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

for the following design-build project (the “Project”):

**Mountlake Terrace High School HVAC Replacement**  
21801 44th Avenue West  
Mountlake Terrace, Washington 98043

*The Owner and Design-Builder agree as follows:*

### ARTICLE 1 THE DESIGN-BUILD DOCUMENTS

**1.1** The “Design-Build Documents” form the Design-Build Contract or Contract. The Design-Build Documents consist of this Agreement between Owner and Design-Builder (the “Agreement”) and any attached or referenced Exhibits; the General Conditions; any Supplementary Conditions; any Addenda issued by the Owner prior to execution of this Agreement; the Owner’s Request for Qualifications and Request for Proposal; the Owner’s program (“Program”) to be developed by the Owner and the Design-Builder; the Design-Builder’s RFQ and RFP responses to the extent consistent with the Program (“Proposal”); any written modifications to the Proposal accepted by the Owner and Design-Builder, including the Design-Builder’s “Updated Program Narrative” (including the Design-Builder’s scope of work description, estimate, and updated conceptual drawings) upon approval by the Owner; other documents listed in this Agreement; Modifications issued after execution of this Agreement; and, upon execution by the Owner and the Design-Builder, the Guaranteed Maximum Price Amendment (“GMP Amendment”). The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and Design-Builder. An enumeration of the Design-Build Documents, other than Modifications, appears in Article 8.

**1.2** The Design-Build Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations and agreements, whether written or oral.

**1.3** The Design-Build Contract may be amended or modified only by a Modification. A Modification is (1) a written amendment to the Design-Build Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a Minor Change in the Work issued by the Owner.

**1.4** This Design-Build Contract is authorized by and entered into in accordance with the Design-Build requirements of RCW 39.10. The Design-Build Contract shall be interpreted to be consistent with the requirements of those statutory provisions.

## **ARTICLE 2 THE WORK OF THE DESIGN-BUILD CONTRACT**

**2.1** The Design-Builder shall fully execute the entire Work, including designing and constructing the Project, as described in the Design-Build Documents, except to the extent specifically indicated in the Design-Build Documents to be the responsibility of others. The Design-Builder is fully responsible to design and to build the Project as described in the Owner's Program and as the Program is further developed by the Owner and Design-Builder during the Programming Phase.

## **ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

**3.1** The date of commencement of the Work shall be the date established in a notice to proceed issued by the Owner. The Owner may issue separate notices to proceed for the Design-Builder's design and construction services, and may order separate notices to proceed for different phases of construction.

**3.2** The Contract Time shall be measured from the date of commencement to the date of Substantial Completion, subject to adjustments of the Contract Time as provided in the Design-Build Documents.

**3.3** The Design-Builder shall achieve Substantial Completion of the Work by the date identified in the GMP Amendment, subject to adjustments of this Contract Time as provided in the Design-Build Documents, and shall achieve Final Completion not later than sixty days thereafter. The Design-Builder represents to the Owner that the Contract Time is adequate for full performance of the Work. The Design-Builder shall also achieve any interim milestones and phasing requirements set forth in the Design-Build Documents.

**3.4** The Owner will assess, and the Design-Builder will be responsible for, liquidated damages as identified in the GMP Amendment.

The Design-Builder and Owner agree that these liquidated damages amounts are not penalties and are a reasonable estimation of actual damages to the Owner, as of this date of the GMP Amendment, based on the inherent uncertainty and difficulty in calculating and quantifying damages caused by delays in the construction of school district facilities.

## **ARTICLE 4 CONTRACT SUM AND GUARANTEED MAXIMUM PRICE**

**4.1** The Owner shall pay the Contract Sum to the Design-Builder for the Design-Builder's performance of the Design-Build Contract. The Contract Sum is the sum of the Cost of the Work and the Design-Builder's Fee, as long as such amount does not exceed the Guaranteed Maximum Price ("GMP"). The Contract Sum does not include sales tax due on the Contract Sum, which shall be added to progress payments and paid by the Owner throughout design and construction.

**4.1.1 Fee.** The Design-Builder's Fee shall be fixed in the GMP at the percentage listed in its pricing proposal in response to the RFP (\_\_\_\_\_ percent (\_\_\_%)) times the pre-Fee GMP amount and shall also be calculated on any additive or deductive Change Orders. The Fee covers all profit and home office overhead as well as all other costs not reimbursable under this Agreement, including but not limited to costs of administrative staff/office operations and support, principal participation, home office administrative support, risk management, yard operations, all taxes (other than sales tax) including B&O taxes, costs for the payment and performance bond, costs for all insurance required by this Agreement

(except builder's risk insurance), and financing costs. The Fee is not applied to the Preconstruction Service amount.

**4.1.2 Guaranteed Maximum Price.** The sum of the Cost of the Work and the Design-Builder's Fee for the Project, for all design and construction services required by the Design-Build Documents, will be guaranteed by the Design-Builder not to exceed the Guaranteed Maximum Price identified in the GMP Amendment, subject to additions and deductions for Changes in the Work as provided in the Design-Build Documents. The GMP includes by way of example and not limitation all design and construction Costs of the Work; any general conditions expense; all taxes except State and local sales tax due on the Contract Sum; the Design-Builder's Contingency; any approved allowances; any contractually required builder's risk insurance; overhead; and the Design-Builder's Fee. The only taxes excluded from the GMP and separately reimbursable by the Owner are State and local sales taxes to be paid based on the Contract Sum. Costs which would cause the GMP to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

**4.1.3 Savings.** If the final Contract Sum (the sum of the final Cost of the Work plus the Design-Builder's Fee) is less than the GMP, the difference shall be considered "Savings," which shall all accrue to the Owner.

**4.1.4 Contingency.** The GMP shall include the Design-Builder's Contingency, which shall be calculated as a percentage of the estimated Cost of the Work, and at a percentage amount that will be negotiated between the Design-Builder and the Owner as a part of the GMP negotiations. The percentage shall depend upon the level of completion of the Design-Build Documents and certainty of subcontractor pricing at that time, but shall not in any event exceed five percent of the estimated Cost of the Work. The final amount of the Contingency shall be stated in the GMP Amendment and included in the GMP amount. The Contingency is a sum established for the Design-Builder's use to cover costs that are properly reimbursable as a Cost of the Work but not the basis for a Change Order, such as, for example, design errors and omissions, buy-out error or shortfalls, scope gaps, ambiguities in the Construction Documents, damaged Work not covered by insurance (including, to the extent permitted by the Contract Documents, a deductible), unanticipated general conditions expenses, interdisciplinary design coordination, Subcontractor performance, escalation of materials, equipment or labor prices, and unanticipated expediting costs for critical materials. The Design-Builder's Contingency may also be used for issues beyond the Design-Builder's control such as lost time, increases in bid contracts, and Subcontractor performance or failure. The Design-Builder must give the Owner notice and supporting cost backup when applying to use the Design-Builder's Contingency. This Contingency is not available for Owner-directed design or scope changes, or unforeseen or differing site conditions, as those costs entitle the Design-Builder to a Change Order. The Design-Builder shall use the Design-Builder's Contingency only for the items in this Section 4.1.4 and only with the Owner's prior written consent. Each use of Design-Builder's Contingency shall be shown as a separate line item in the schedule of values submitted with Applications for Payment.

**4.1.5 Allowances.** Allowances, if any, shall be identified in the GMP Amendment. Allowances are included in the GMP due to uncertainty in scope, price and/or quantity at the time the GMP Amendment is executed. Whenever actual costs are more or less than the allowance, the GMP will be adjusted appropriately up or down. The Design-Builder must provide the Owner with written notice of its intent to expend an allowance amount (providing the Owner with the opportunity to approve or reject the cost) before expending an allowance amount. Allowances may generally not be included in subcontracts, and any allowance must be approved by the Owner.

**4.1.6 Assumptions.** Assumptions or qualifications, if any, on which the GMP is based, shall be identified in the GMP Amendment.

**4.1.7 Preconstruction Services.** Payment to the Design-Builder for Preconstruction Services performed prior to the execution of the GMP Amendment shall be paid as follows:

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## **4.2 Changes in the Work**

**4.2.1** Adjustments to the GMP and/or Contract Sum on account of Changes in the Work may be determined by any of the methods listed in Article GC-7 of the General Conditions. The Design-Builder's Fee for Changes in the Work shall be calculated on the net increase in the Cost of the Work as a result of the change, using the same percentage identified above in Section 4.1.1.

## **ARTICLE 5 COST OF THE WORK**

### **5.1 Costs to be Reimbursed**

**5.1.1 Definition.** The term Cost of the Work shall mean the actual, net costs reasonably and necessarily incurred by the Design-Builder in the proper performance of the Work, without overhead, profit or fee, and at rates generally accepted at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Section 5.1. Whenever the Design-Build Documents state that the Design-Builder shall perform any Work or incur any expense, it shall be understood to mean, in the absence of language to the contrary, that the cost shall be a Cost of the Work payable by the Owner, not to exceed the GMP.

### **5.1.2 Construction and Management Labor Costs**

**5.1.2.1** Wages of construction workers, including working foremen, directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's approval, at off-site locations in the performance of the Work, at the prevailing rate of wage or under a salary or wage schedule agreed upon by the Owner and the Design-Builder. See WAC 296-127-011 regarding the effective date for prevailing wages.

**5.1.2.2** Wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site for that portion of time directly involving the Project and required for the Work or, when pre-approved in writing by the Owner, when working offsite. The project superintendent, project manager, and estimator are included under this Section, regardless of whether they are or are not working from the field office, for that portion of their time spent working on the Project.

**5.1.2.3** Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits related to such wages that are required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 5.1.2.1 through 5.1.2.2 and not otherwise included in the established wage rate. Costs paid or incurred by the Design-Builder for bonuses, stock options, or discretionary payments to employees are not reimbursable Costs of the Work.

**5.1.2.4** The parties may establish fully burdened wage rates when establishing the GMP, which shall be subject to audit and adjustment to reflect actual charges.



### **5.1.3 Subcontract Costs**

**5.1.3.1** Payments made by the Design-Builder to Subcontractors in accordance with the requirements of their subcontracts. The costs in any cost-plus subcontracts must conform to the requirements of this Article 5. The Design-Builder shall maintain a procedure for the review, processing and payment of Subcontractor payment applications for progress and final payments, all in accordance with the terms and conditions of the Design-Build Documents. The Design-Builder shall verify the completeness of all Subcontractor payment applications and assemble and check all supporting documentation required by the Design-Build Documents or by the subcontracts, including receipt of all lien waivers and releases.

### **5.1.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**5.1.4.1** Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

**5.1.4.2** Costs of materials described in Section 5.1.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, sold or returned to the supplier by the Design-Builder. Any amounts realized from such sales or returns shall be credited to the Owner as a deduction from the Cost of the Work.

### **5.1.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**5.1.5.1** Costs, including transportation, storage, installation, maintenance, dismantling and removal, actually paid for materials, supplies, temporary facilities, machinery, and equipment, that are provided by the Design-Builder at the site and used in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Design-Builder. The basis for the cost of items previously used by the Design-Builder shall mean the fair market value of the items.

**5.1.5.2** Rental charges (not to exceed the local fair market rental costs) actually paid for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site, whether rented from the Design-Builder or others, and the costs of transportation, installation, minor repairs and replacements, dismantling and removal.

Rates and quantities of equipment rented shall be an itemization of the actual length of time that construction equipment necessary and appropriate for the Work is used at the site times the applicable rental cost. The actual rental cost shall be established by the lower of the local prevailing rate published in The Rental Rate Blue Book by EquipmentWatch, Atlanta, Georgia, as modified by the latest edition of the AGC/WSDOT agreement, or the actual rate paid to an unrelated third party as evidenced by rental receipts. 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 Work are the maximum rates allowable for equipment of modern design and in good working condition and include full compensation for providing all fuel, oil, lubrication, repairs, maintenance, and insurance. No gas surcharges shall be charged. 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. Per OSPI regulations, the total cost of rental allowed shall not exceed 70% of the cost of purchasing the equipment outright. The Owner, at its option, may direct Design-Builder to purchase tools and equipment specifically for the Project, which shall become the Owner's property upon completion of the Work. 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 the equipment, which rate and use must be approved by the Owner prior to performing the Work.

**5.1.5.3** Costs of street cleaning, if any, and for removal and disposal of debris and rubbish from the site.

**5.1.5.4** Cost of document reproductions, long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

**5.1.5.5** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the Owner and meeting the other requirements for payment of offsite materials and equipment.

## **5.1.6 Design and Other Consulting Services**

**5.1.6.1** Compensation, including fees and reimbursable expenses, paid by the Design-Builder for design and design-related consulting services required by the Design-Build Documents, both before and after execution of the GMP Amendment, including but not limited to services to program, produce design, architectural, and engineering documents, including Submittals, needed for permitting, final Owner acceptance, Subcontractor bidding purposes, for construction, and as-built record drawings.

## **5.1.7 Miscellaneous Costs**

**5.1.7.1** Use or similar taxes (but not income or B & O taxes which are included in the Fee), imposed by a governmental authority that are related to the Work. Sales tax due on the Contract Sum will be paid by the Owner with each progress payment.

**5.1.7.2** Fees and assessments for permits, license fees, inspections that the Design-Builder is required by the Design-Build Documents to pay, but not for the cost of any permits paid for by the Owner, renewals, reinspection fees, or penalties. See Section GC-3.7.1.

**5.1.7.3** Fees of laboratories for tests required of the Design-Builder by the Design-Build Documents and not paid for by the Owner, except those related to defective or non-conforming Work for which reimbursement is excluded by the Design-Build Documents.

**5.1.7.4** Royalties and license fees paid for the use of a particular design, process or product explicitly required by the Design-Build Documents. The Cost of the Work shall not include, and the Design-Builder shall be responsible for, any costs of defending suits or claims for infringement of patent rights, or payments made resulting from such suits or claims, resulting from any design or other Work provided by the Design-Builder or its Engineer, consultants, or Subcontractors of any tier.

**5.1.7.5** The cost of reasonable legal fees and expenses involved in handling any labor disputes, negotiations, liens or other matters between or among the Design-Builder, Engineer, consultants, Subcontractors of any tier and/or or labor unions and any other legal costs reasonably and properly incurred in the prosecution of the Work, provided the Owner is not a party to any dispute resolution proceeding and is being held harmless by the Design-Builder, the expenditures relate solely and specifically to this Project, and the legal services have not been incurred due to the negligence or failure of the Design-Builder to meet a contractual responsibility. All such costs shall be subject to the Owner's prior written approval, which shall not be unreasonably withheld.

**5.1.7.6** The cost of warehousing pre-approved in writing by the Owner for stored materials or equipment subsequently incorporated into the Work.

**5.1.7.7** Costs incurred by the Design-Builder in preparing and maintaining the Project schedule, scheduling plots, correspondence, and reports, so long as such costs are specific to this Project and were not incurred to submit or prove a Claim.

## **5.1.8 Other Costs and Emergencies**

**5.1.8.1** Other costs reasonably incurred in the performance of the Work if and to the extent approved in advance and in writing by the Owner.

**5.1.8.2** Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

**5.1.8.3** Cost of repairing or correcting, prior to Final Completion, damaged Work executed by the Design-Builder, Subcontractors or suppliers, provided that such damaged Work was not caused by the Design-Builder's negligence or failure to fulfill a specific responsibility of the Design-Build Contract, and only to the extent that the cost of repair or correction is not recoverable by the Design-Builder from insurance, sureties, Subcontractors of any tier or suppliers. The Design-Builder shall take reasonable action to recover and, to the extent it has failed to recover, shall assign its rights to pursue and collect to the Owner upon request.

## **5.2 Costs Not to Be Reimbursed**

The Cost of the Work shall not include the items listed below, as all such items are covered by the Design-Builder's Fee or are at the Design-Builder's risk:

**5.2.1** Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, including all administrative and accounting personnel, except as specifically provided in the Fee and Sections 5.1.2 and 5.1.3.

**5.2.2** Expenses of the Design-Builder's principal office and offices other than the site office.

**5.2.3** Overhead and general expenses, except as may be expressly included in Section 5.1.

**5.2.4** The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work.

**5.2.5** Rental costs of machinery and equipment, except as specifically provided in Section 5.1.5, or costs or losses resulting from lost, damaged or stolen machinery or equipment or negligent or improper use of machinery or equipment.

**5.2.6** Costs due to the negligence or failure of the Design-Builder, Subcontractors and suppliers or anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, to fulfill a specific responsibility of the Design-Build Documents.

**5.2.7** Any cost not specifically and expressly described in Section 5.1.

**5.2.8** Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

**5.2.9** Penalties, extensions, fines, and reinspection fees imposed by governmental entities to the extent caused by the Design-Builder or a Subcontractor of any tier.

**5.2.10** Safety costs expressed as a percentage or as any other calculated expression.

**5.2.11** Legal, consultant, or claims-related expenses except as specifically provided in Section 5.1.

- 5.2.12 Accounting in the Design-Builder's main or home office.
- 5.2.13 Warehousing in Design-Builder's facility, except as approved under Section 5.1.
- 5.2.14 Daily commuting to the jobsite.
- 5.2.15 Business license(s).
- 5.2.16 Testing and inspection of rejected Work.
- 5.2.17 Data processing, software, hardware or computer-related costs.
- 5.2.18 Insurance and bond premiums, except for any contractually required builder's risk insurance.

### **5.3 Discounts, Rebates and Refunds**

5.3.1 Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained. If the Design-Builder is offered discounts and/or rebates based upon prompt payment, the Design-Builder shall offer the Owner the opportunity to take advantage of such discount and/or rebate, and if the Owner makes such a prompt payment then the Owner shall only be charged the price as reduced by the discount and/or rebate. If the Owner declines the opportunity the Design-Builder may keep any such discounts and/or rebates it achieves through its own prompt payment. If the Design-Builder does not provide the Owner the opportunity to participate then the Design-Builder may only charge the net costs after consideration of discounts and rebates. The Design-Builder shall notify the Owner in a timely manner of the availability of such cash discounts, rebates, or refunds.

### **5.4 Accounting Records**

5.4.1 The Design-Builder shall keep full and detailed accounts and exercise such controls satisfactory to the Owner as may be necessary for proper financial management under this Agreement. The Owner and any consultants of the Owner shall be afforded prompt and full access to, and shall be permitted to promptly audit and copy, including electronically copy, the Design-Builder's original records, ledgers, computerized records, books, correspondence, instructions, receipts, contracts, purchase orders, vouchers, memoranda and other data relating to the Project, the Design-Build Contract, or to any Claim, during normal business hours. The Design-Builder shall preserve records for a period of six years after final payment, or for such longer period as may be required by law. The Owner shall have access to the Design-Builder's job cost accounting system for the Project and may make electronic copies therefrom. This Section 5.4 shall also apply to the Engineer and Subcontractors of any tier.

## **ARTICLE 6 PAYMENTS**

### **6.1 Applications for Payment**

6.1.1 Article GC-9.3 details the requirements for Applications for Payment. Based upon Applications for Payment that the Design-Builder submits to the Owner, the Owner shall make progress payments to the Design-Builder on account of the Contract Sum. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

6.1.2 The Design-Builder shall submit with each Application for Payment the current approved schedule of values in accordance with the Design-Build Documents, the Design-Builder's updated job cost report, and any payment records requested by the Owner (see Section GC-9.3). Applications for Payment shall

indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information provided by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid on account of the Agreement.

## **6.2 Progress Payments**

**6.2.1** Prior to the GMP Amendment being executed, the Design-Builder will be reimbursed for preconstruction and design services per the Preconstruction Services fee established in Section 4.1.7. After a GMP is established, and subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed based upon estimated percent complete (while actual costs will be reconciled at the final payment) and as follows:

- .1** Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the GMP allocated to that portion in the schedule of values. Pending final determination of the cost to the Owner of Changes in the Work, amounts not in dispute may be included as provided in the General Conditions unless the Owner requires that actual cost records be provided;
- .2** Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored and insured off site at a location agreed upon in writing);
- .3** Add the Design-Builder's Fee. The Design-Builder's Fee shall be computed upon the Cost of the Work described in the two preceding sections at the rate stated in this Agreement;
- .4** Subtract the aggregate of previous payments made by the Owner;
- .5** Subtract amounts, if any, for which the Owner has withheld payment; and
- .6** Subtract the statutory retainage of five percent (5%) of the above amount as a fund for the protection and payment of the claims of any person or entity arising out of the Work and the State with respect to fees and taxes.

## **6.3 Final Accounting**

**6.3.1** At Final Completion, the Design-Builder shall deliver to the Owner a final accounting of the Cost of the Work.

**6.3.2** The Design-Builder's final application for payment shall reconcile any discrepancies between the total monthly billings, progress payments, and the actual, final costs of the Work. The Owner will review and report in writing any and all specific issues and corresponding amounts disputed on the Design-Builder's final accounting within sixty days after delivery, provided that the Owner is given prompt access to the Design-Builder's records. The Design-Builder shall promptly make available at its office all accounting documents related to the Project. Based upon such Cost of the Work as the Owner reports to be substantiated by the Design-Builder's final accounting, and provided the other conditions of the Design-Build Documents have been met, the Owner will notify the Design-Builder in writing of the Owner's intention to make final payment or to withhold payment. The Owner's final accounting shall not preclude or in any way limit the Owner from exercising its rights of audit under other provisions of the Design-Build Contract. The final accounting for any cost savings to the Owner shall occur only at the time of final payment and not during monthly progress payments.

**6.3.3** If the Owner reports that the Cost of the Work as substantiated by the Design-Builder’s final accounting is less than that claimed by the Design-Builder, the Design-Builder shall be entitled to invoke the dispute resolution procedure of this Agreement with respect to the disputed amount. If the Design-Builder fails to initiate the dispute resolution procedure within thirty days of the Owner’s delivery of the accounting to the Design-Builder, the substantiated amount reported by the Owner shall become final and binding. Pending a final resolution pursuant to the Design-Build Documents, the Owner shall pay the Design-Builder the undisputed amount, if any, determined by the Owner to be due the Design-Builder.

**6.3.4** If, subsequent to final payment and at the Owner’s request, the Design-Builder incurs costs in connection with the correction or completion of Work as described in Section 5.1 and not excluded by Section 5.2, the Owner shall reimburse the Design-Builder such costs and the Design-Builder’s Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, not to exceed the Guaranteed Maximum Price.

**6.4 Final Payment**

**6.4.1** Final payment, constituting the entire unpaid balance of the Contract Sum, less retainage, shall be made by the Owner to the Design-Builder no later than thirty days after the Design-Builder has fully performed the Design-Build Contract and Final Acceptance has occurred (except for the Design-Builder’s responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, that extend beyond final payment), and the Design-Builder has submitted a final Application for Payment.

**6.4.2** The Owner shall release retainage to the Design-Builder in accordance with Chapter 60.28 RCW and the Design-Build Documents.

**ARTICLE 7 MISCELLANEOUS PROVISIONS**

**7.1** The Design-Builder’s Engineer and other design professionals and consultants engaged by the Design-Builder shall be persons or entities duly licensed to practice their profession(s) in the jurisdiction where the Project is located. They are listed below:

Name	Responsibilities to Design-Builder
	Lead Design Consultant (“Engineer”)
	Mechanical Design Consultant
	Electrical Design Consultant
	Structural Design Consultant
	[Other Consultants]

**7.2** Consultants, if any, engaged directly by the Owner, as well as their professions and responsibilities, are listed below:

Name	Responsibilities to Owner
Turner & Townsend Heery	Owner’s Project Manager
Turner & Townsend Heery	Design-Build Consultant
	Commissioning Consultant
	Special Inspection Agency

7.3 Separate contractors, if any, engaged directly by the Owner, as well as their trades and responsibilities, are listed below:

Name	Responsibilities to Owner
See Design-Build Documents for Owner-furnished and Design-Builder-furnished equipment and other requirements	

**7.4 Designated Representatives**

7.4.1 The Owner’s Designated Representative, designated below, shall be authorized to act on the Owner’s behalf with respect to the Project:

Taine Wilton  
 Director, Capital Projects  
 Edmonds School District No. 15  
 20420 68th Avenue West  
 Lynnwood, Washington 98036  
 (425) 431-7172  
 wiltont@edmonds.wednet.edu

All communications shall be directed to the Owner’s Project Manager at the address below. Notices required by this Agreement must be directed to the Designated Representative above.

Marc Bargenda **or** Bill Dobyns **???**

\_\_\_\_\_  
 Turner & Townsend Heery  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_@\_\_\_\_\_

7.4.2 The Design-Builder’s Designated Representative, identified below, shall be authorized to act on the Design-Builder’s behalf with respect to the Project:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

7.4.3 Neither the Owner’s nor the Design-Builder’s Designated Representatives shall be changed without ten days’ written notice being given to the other party. The Design-Builder shall not use personnel that are different from the intended personnel listed in its response to the Owner’s RFQ or RFP (for either Preconstruction Services or for Construction Work) without the Owner’s written approval.

7.5 Payments due and unpaid under the Design-Build Documents shall bear interest as specified by RCW 39.76, not to exceed the Bank of America prime plus two percent (2%) per annum.

**ARTICLE 8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS**

8.1 The Design-Build Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

**8.1.1** This executed Agreement and any attached Exhibits.

**8.1.2** The General Conditions, the Special Conditions, and any Supplementary Conditions of the Contract.

**8.1.3** The Owner's Request for Qualifications and Request for Proposal.

**8.1.4** The Owner's Program.

**8.1.5** The Design-Builder's Proposal, dated \_\_\_\_\_, 2023 (response to RFQ) and \_\_\_\_\_, 2023 (response to RFP), to the extent consistent with the Program.

**8.1.6** The written modifications to the Proposal accepted by the Owner and Design-Builder, including the Design-Builder's scope of work description, estimate, and updated conceptual drawings) (see Exhibits \_\_\_\_\_);

**8.1.7** The Addenda, if any, are as follows:

<b>Number</b>	<b>Date</b>	<b>Pages</b>
---------------	-------------	--------------

**8.1.8** Other documents, if any, forming part of the Design-Build Documents are as follows:

See Design-Build Documents.  
Department of Labor and Industries Prevailing Wage Rates.  
Upon execution by the Owner and the Design-Builder, the GMP Amendment.

**8.1.9** In the event of a conflict or discrepancy among or in the Design-Build Documents, interpretation shall be governed in the following priority, with an Addendum or a revision to a Design-Build Document having precedence over the original document and later Addenda having precedence over earlier:

- .1** Upon execution by the Owner and the Design-Builder, the GMP Amendment (if there is more than one GMP Amendment, later GMP Amendments shall control over earlier GMP Amendments);
- .2** This executed Agreement and any attached Exhibits;
- .3** Any Supplementary Conditions of the Contract;
- .4** The General Conditions;
- .5** The Owner's Program, as supplemented by the Design-Builder's Updated Program Narrative;
- .6** The Design-Builder's Proposal;
- .7** The Owner's Request for Qualifications and Request for Proposal; and
- .8** The Design-Builder's final, Owner-accepted design documents.

If there is any inconsistency within or among the Design-Builder's final, Owner-accepted design documents, the Design-Builder shall provide the better quality of, or the greater quantity of, any Work or materials, as reasonably interpreted by the Owner, at no change in the GMP or Contract Time.

## **ARTICLE 9 INSURANCE**

**9.1 The Design-Builder's Liability Insurance.** The Design-Builder shall maintain an occurrence-based Commercial General Liability Insurance Policy as specified in the Design-Build Documents, with coverages not less than the following:

- .1** \$2,000,000 per occurrence for bodily injury liability including sickness, disease or death and \$2,000,000 bodily injury liability for all occurrences (other than automobiles);



- .2 \$2,000,000 for property damage liability (other than automobiles) because of damage to or destruction of property of others including loss of the use thereof caused by one occurrence and \$2,000,000 property damage liability for all occurrences;
- .3 \$2,000,000 per accident for bodily injury liability including sickness, disease or death and property damage liability because of damage to or destruction of property of others including loss of use thereof arising out of the operation of automobiles;
- .4 \$2,000,000 for claims for damages insured by personal injury liability coverage (included and defined in the Commercial General Liability insurance policy) which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Design-Builder or (2) by another person;
- .5 \$2,000,000 for claims involving damages to a person as a result of an offense directly or indirectly related to employment of such person by the Design-Builder or another employee;
- .6 \$2,000,000 for claims involving blanket contractual liability insurance (included and defined in the Commercial General Liability Insurance Policy) applicable to the Design-Builder's indemnity obligations under the Design-Build Contract, particularly Section GC-3.17;
- .7 Pollution Liability insurance, with policy limits of not less than \$2,000,000 per claim and \$2,000,000 in the aggregate; and
- .8 In addition, the Design-Builder shall maintain an umbrella policy that provides excess limits following form over the primary layer, in an amount not less than \$10,000,000.

**9.2 Liability Insurance for Subcontractors.** The Design-Builder shall ensure and require that Subcontractors of any tier have insurance coverage to cover bodily injury and property damage on all operations and all vehicles owned or operated by such Subcontractors of any tier in the amount of \$1,000,000 per occurrence with a \$2,000,000 aggregate limit. Subcontractors of any tier shall name at least the Design-Builder, the Owner, the Owner's Project Manager, consultants, and any others so identified in the Design-Build Documents as additional insureds on all applicable policies.

**9.3 Professional Liability.** The Design-Builder, the Design-Builder's Engineer, other design consultants, and any design-build Subcontractors of any tier will maintain for at least six years after Substantial Completion Professional Liability/Errors and Omissions Liability insurance in an amount of not less than \$2,000,000 per claim and annual aggregate (deductible of up to \$50,000 permitted). The Design-Builder, the Design-Builder's Engineer, other design consultants, and any design-build Subcontractors of any tier will promptly notify the Owner of any material changes to, interruption of, or termination of this insurance, and will immediately procure replacement coverage. The Design-Builder, the Design-Builder's Engineer, other design consultants, and any design-build Subcontractor of any tier will either maintain active policy coverage, or an extended reporting period, providing coverage for claims first made and reported to the insurance company within six years of Substantial Completion or termination of the Work under this Agreement, whichever occurs first. The Owner may modify these insurance requirements for certain entities, on a case-by-case basis, by providing written agreement of such modifications.

**9.4 Property Insurance.** Unless the Owner elects in writing to procure builder's risk insurance directly, the Design-Builder shall purchase and maintain property insurance written on a builder's risk, "all-risk" or equivalent policy form as specified in the Design-Build Documents. It is the intent of the Owner to get quotes through both the Owner and the Design-Builder, to compare options, and for the Owner to them decide which entity will procure the builder's risk policy.

**9.5 Additional Insureds.** The GMP includes an amount to pay the premium for the insurances required in the Design-Build Documents and to name the Owner, the Owner's Project Manager, consultants, their employees, any required governmental agencies and others identified in the Design-Build Documents as additional insureds on all applicable insurance policies. There shall be no self-insured retention without the prior written approval of the Owner.

**9.6 Costs of Insurance.** The Design-Builder’s costs for all of its insurance are included within the Design-Builder’s Fee, except for any builder’s risk insurance.

**9.7 Payment and Performance Bond.** Upon execution of this Agreement, the Design-Builder shall secure and shall pay for bonds covering the faithful performance of the Design-Build Contract and payment of obligations arising under the Design-Build Documents, each in the full amount of the Preconstruction Services amount in Section 4.1.7, plus sales tax, pursuant to RCW 39.08, “Contractor’s Bond.” Upon execution of a GMP Amendment, the Design-Builder shall secure and shall pay for bonds covering the faithful performance of the Design-Build Contract and payment of obligations arising under the Design-Build Documents, each in the full amount of the GMP plus sales tax, pursuant to RCW 39.08, “Contractor’s Bond.” The Design-Builder’s costs for the payment and performance bonds are included within the Design-Builder’s Fee.

**ARTICLE 10 MISCELLANEOUS PROVISIONS**

**10.1 OMWBE Reporting.** The Design-Builder shall submit plans for inclusion of underutilized firms as Subcontractors of any tier and suppliers including, but not limited to, the Office of Minority and Women's Business Enterprises certified businesses, veteran certified businesses, and small businesses, as allowed by law. The Design-Builder is required to track and report to the Owner and to the Office of Minority and Women's Business Enterprises its utilization of the Office of Minority and Women's Business Enterprises certified businesses and veteran certified businesses.

*This Agreement is entered into as of the day and year first written above. The individuals executing this Design-Build Contract represent and warrant that they are competent and capable of entering into a binding contract, and that they are authorized to execute this Design-Build Contract on behalf of the parties hereto.*

**Edmonds School District No. 15** \_\_\_\_\_

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

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
**DESIGN-BUILDER** (Signature)

\_\_\_\_\_  
(Printed name and title)

**Exhibit A**  
Owner's Program

As described in the RFQ and RFP, and to be developed by the Owner and Design-Builder during the Programming Phase.

DRAFT

**Exhibit B**

Design-Builder's Updated Conceptual Drawings

To be developed by the Owner and Design-Builder during the Programming Phase.

DRAFT

# **General Conditions**

## **ARTICLE GC-1 GENERAL PROVISIONS**

### **GC-1.1 BASIC DEFINITIONS**

#### **GC-1.1.1 DESIGN-BUILDER'S ENGINEER**

The "Design-Builder's Engineer" or "Engineer" is a person(s) or firm(s) lawfully licensed to practice architecture or engineering in the State of Washington who has a direct or sub-tier contract or employment relationship with the Design-Builder to perform design, architecture and/or engineering services for all or a portion of the Work. The Design-Builder's Engineer may be multiple persons or firms although the Engineer is referred throughout the Design-Build Documents as if singular in number. The "Design-Builder's Engineer" means the Design-Builder's Engineer or the Design-Builder's Engineer's authorized representative, and includes any architect or engineer contracted or employed by the Design-Builder to perform design Work for the Project.

#### **GC-1.1.2 THE PROGRAM**

The Owner's Program consists of preliminary engineering and architectural drawings and other information intended to convey the Owner's initial concepts for the Project, the expected programmatic, functional and operational elements of the Project, and the expected net and gross areas of the buildings. Conceptual drawings, specifications, and other information included with the Program are not for construction. The Program will be considered and used by the Design-Builder to prepare the final design for the Project and establish the GMP. The Design-Builder will be the designer of record for the Project and will take full responsibility for and produce final design documents that meet the Program requirements for permit submission, Owner acceptance, Subcontractor procurement, and construction.

#### **GC-1.1.3 THE PROJECT**

The "Project" is the total design and construction of which the Work performed under the Design-Build Documents may be a whole or part, and which may include design and construction by the Owner or by separate contractors. The Design-Builder is responsible to design and construct the entire Project except as specifically identified in the Design-Build Documents as the responsibility of others.

#### **GC-1.1.4 SUBCONTRACTOR**

A "Subcontractor" is a person or entity, other than the Design-Builder's Engineer, with a direct contract with the Design-Builder to perform a portion of the construction Work at the site or to supply materials or equipment. The term "Subcontractor" is referred to throughout the Design-Build Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor, as defined in Section GC-6.1.2, or subcontractors of a separate contractor. A "Subcontractor of any tier" is a Subcontractor or a lower tier Subcontractor with which a Subcontractor directly or indirectly contracts. The designation of terms in this Section is not meant to change or alter any statutory definitions of contractor, subcontractor, supplier, or the like for the purposes of lien claims.

#### **GC-1.1.5 THE WORK**

The term "Work" means the design, construction and services required by the Design-Build Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Design-Builder to fulfill the Design-Builder's obligations. The Work may constitute the whole or a part of the Project.

### **GC-1.2 COMPLIANCE WITH APPLICABLE LAWS**

**GC-1.2.1** The Design-Builder shall review and comply with laws, codes, rules, and regulations in effect at the time the Work is performed that impose obligations on the performance of the Work. The Design-Builder shall respond in the design to requirements imposed by governmental authorities having jurisdiction over the Project. If the Design-Builder performs Work contrary to applicable laws, ordinances, codes, rules and regulations, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction. The Design-Builder shall contractually require that the services of the Design-Builder's Engineer and consultants comply with these laws, codes, rules, regulations and governmental authorities. In the event of a conflict between laws, codes, and regulations of various governmental entities having jurisdiction over the Project, the Design-Builder shall promptly notify the Owner of the nature and impact of the conflict. The Owner agrees to cooperate and work with the Design-Builder in an effort to resolve the conflict.

**GC-1.2.2** Neither the Design-Builder nor any Subcontractor or Design-Builder's Engineer shall be obligated to perform any act that they believe will violate any applicable law, code, ordinance, rule or regulation.

### **GC-1.3 CAPITALIZATION**

**GC-1.3.1** Terms capitalized in these General Conditions include those that are specifically defined or the titles of numbered articles and identified references to sections in the document.

### **GC-1.4 INTERPRETATION**

**GC-1.4.1** In the interest of brevity, the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

**GC-1.4.2** Words that have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings unless otherwise stated or defined in the Design-Build Documents.

**GC-1.4.3** Reference in the singular to an article, device, item or piece of equipment shall include the larger of the number of such articles indicated in the Design-Build Documents or the number required to complete the installation.

**GC-1.4.4** This Contract has had input from and has been mutually agreed to by the parties. As such, the parties agree that neither party shall be considered the author of the Contract, and any ambiguities shall be neutrally construed.

### **GC-1.5 EXECUTION OF THE DESIGN-BUILD CONTRACT**

**GC-1.5.1** By executing the GMP Amendment, the Design-Builder represents and acknowledges that the Design-Builder has visited the site, correlated personal observations with the requirements of the Design-Build Documents, and determined that the Work, including all design and construction required by the Design-Build Documents, can be accomplished for within the GMP. The Design-Builder further represents and acknowledges that it has satisfied itself as to the nature, location, character, quality and quantity of the Work, the labor, materials, equipment, goods, supplies, services and other items to be provided and all other requirements of the Design-Build Documents, as well as the surface conditions and other foreseeable matters that may be encountered at the Project site or affect performance of the Work or the cost or difficulty thereof, including but not limited to those conditions and matters affecting: transportation, access, local regulations, disposal, handling and storage of materials, equipment and other items; availability and quality of labor, water, electric power, utilities, drainage; availability and condition of roads; normal climatic conditions and seasons; physical conditions at the Project site and the surrounding locality; topography and ground surface conditions; and equipment and facilities needed preliminary to and at all times during the performance of the Work.

### **GC-1.6 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA**

**GC-1.6.1** Design documents, materials, models, calculations, renderings, and other documents including those in electronic form, prepared by the Design-Builder's Engineer and/or prepared or provided by the Design-Builder are Instruments of Service. The Instruments of Service are the property of the Owner, and, unless otherwise provided, the Design-Builder, the Design-Builder's Engineer and other providers of professional services individually shall not retain any common law, statutory or other reserved rights in the Instruments of Services, including copyright, except for details, notes, standards, and design elements that were pre-existing this Agreement. Design documents, and other documents and materials and electronic data prepared for use with respect to this Project may be used by the Owner to complete this Project and on future projects. As a condition of Final Completion, the Design-Builder shall deliver three hard copies and one CAD copy of updated as-built drawings to the Owner in the latest version of AutoCAD software. The Owner agrees to indemnify and hold the Design-Builder harmless from any subsequent modification of the Instruments of Service by the Owner and from the Owner's use of the Instruments of Service on other projects. Nothing herein shall cause or hinder the Design-Builder, Design-Builder's Engineer, or other designer's ability to use or reuse details, notes, standards, etc. on future projects.

**GC-1.6.2** Upon the Owner's request, each of the Design-Builder's design professionals, including the Design-Builder's Engineer, shall be contractually required to convey to the Owner in whatever format the Owner may designate that design professional's Instruments of Service for the completion, use, updating, modernizing, and maintenance of the Project, and any future project, conditioned upon the Owner's agreement to indemnify and hold harmless the design professional as set forth above. The Design-Builder shall incorporate the requirements of this Section GC-1.6 in all agreements with design professionals.

**GC-1.6.3** Submission or distribution of the Design-Builder's Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of any rights reserved in this Section.

## **ARTICLE GC-2 OWNER**

### **GC-2.1 GENERAL**

**GC-2.1.1** The "Owner" is the entity identified as such in the Agreement. The "Owner" does not include teachers, school principals, staff, custodians, maintenance or safety workers, or other School District employees or consultants that may contact the Design-Builder or be present at the site. A WAIVER OF ANY PROVISION OF THE DESIGN-BUILD DOCUMENTS CAN ONLY BE MADE IN WRITING AND BY THE SCHOOL DISTRICT'S BOARD OF DIRECTORS OR THE OWNER'S DESIGNATED REPRESENTATIVE IDENTIFIED IN SECTION 7.4.1 OF THE AGREEMENT. No one else is authorized to grant such waivers on behalf of the Owner.

**GC-2.1.2** The Owner, through the designated Owner's Representative and other consultants retained by the Owner, will provide administration of the Design-Build Contract as described in the Design-Build Documents and will be the Owner's on-site representative, but not the Owner's agent, during the design and construction of the Work. The Owner's Representative will have authority to act on behalf of the Owner only to the extent provided in the Design-Build Documents, unless otherwise modified in writing in accordance with other provisions of the Design-Build Contract. Only the Owner's Representative, and not other consultants or employees of the Owner, is authorized to agree on behalf of the Owner to changes in the GMP, Contract Sum or Contract Time, to direct the Design-Builder to take actions that change the GMP, Contract Sum or Contract Time, or to accept notice or Claims on behalf of the Owner.

**GC-2.1.3** Except as otherwise provided in the Design-Build Documents, the Owner and Design-Builder shall endeavor to communicate with each other through the Owner's Designated Representative about matters arising out of or relating to the Design-Builder Contract. The Design-Builder will provide the Owner with a direct copy of all transmittals, notices, requests, Claims regarding potential changes in the GMP, Contract Sum or Contract Time. Communications by and with the Design-Builder's Engineer, Subcontractors and material suppliers shall be through the Design-Builder, except to discuss Claims, potential disputes, and as otherwise provided in the Design-Build Documents. Communications by and with separate contractors shall be through the Owner. Communications may be simultaneously copied to other recipients.

### **GC-2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**GC-2.2.1** The Owner shall provide at its own expense information or services required of it by the Design-Build Documents, and shall render decisions, with reasonable promptness upon written request of the Design-Builder.

**GC-2.2.2** The Owner will provide a survey to describe to physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Design-Builder shall exercise proper precautions to validate the physical characteristics and utility locations identified by the survey to ensure the safe performance of the Work. The Design-Builder should assume that the locations of any underground or hidden utilities, underground tanks, or plumbing or electrical runs indicated in the survey or Design-Build Documents are shown in approximate locations. The Design-Builder is responsible for making all utility location checks.

**GC-2.2.3** The Owner shall provide, upon the Design-Builder's written request and to the extent available to the Owner, the results and reports of prior tests, inspections or investigations conducted for the Project involving hazardous materials, subsurface conditions and information regarding the presence of pollutants at the Project site.

**GC-2.2.4** The Owner may obtain independent review of the Design-Builder's design documents or other Work by separate architect(s), engineer(s), contractor(s) and/or cost estimator(s). This independent review shall be undertaken at the Owner's expense and shall not decrease the Design-Builder's ultimate responsibility for the design, construction, and cost.

**GC-2.2.5** The Owner shall cooperate with the Design-Builder to help the Design-Builder secure permits, licenses and inspections required for completion of the Work. The Design-Builder is responsible to secure and pay, as a Cost of the Work within the GMP, for all licenses and inspections not explicitly designated as the Owner's responsibility in the Design-Build Documents. The Owner will pay all utility connection charges.

**GC-2.2.6** If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder. The Owner's failure to so notify the Design-Builder shall not relieve the Design-Builder of its responsibilities under this Design-Build Contract.

**GC-2.2.7** The Owner shall communicate with the Design-Builder through persons and entities employed or retained by the Design-Builder, unless otherwise agreed.

**GC-2.2.8** Any investigations of hidden or subsurface conditions have been made only for purposes of developing the Owner's Program. The results of these investigations have been made available for the convenience of the Design-Builder but are not a part of the Design-Build Documents. There is no guarantee, express or implied, that the conditions indicated are representative of those existing throughout the site or that unforeseen developments may not occur. The Design-Builder is solely responsible for interpreting the information and extrapolating beyond the testing location, including each individual boring, test pit or other location. The Design-Builder shall undertake any further investigation that the Design-Builder believes necessary for design or construction.

**GC-2.2.9** The Owner shall promptly obtain easements, zoning variances, and legal authorizations regarding site utilization where essential to the execution of the Work.

### **GC-2.3 OWNER REVIEW AND INSPECTION**

**GC-2.3.1** The Owner shall identify to the Design-Builder which submittals the Owner requires to review, and for such submittals, the Owner shall review and take action on the Design-Builder's Submittals, including but not limited to design documents prepared by the Design-Builder, but only for the limited purpose of checking for conformance with information provided and concepts expressed in the Program and other Design-Build Documents. The Owner's action shall be taken with reasonable promptness. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Design-Builder. The Owner's review or acceptance shall not be deemed an approval of the Submittals or an agreement to modify the Design-Build Documents. All submittals shall be available to the Owner and shall be provided to the Owner at the end of the Project or, if requested by the Owner, during the Project.

**GC-2.3.2** Upon review of the design documents and Submittals required by the Design-Build Documents and in conformance with the level of review described above, the Owner shall take no objections, reject, or request additional information concerning the Submittals.

**GC-2.3.3** The Design-Builder shall submit to the Owner for the Owner's review, any proposed change or deviation to previously accepted documents or Submittals. The Owner shall review and take action on proposed changes or deviations with reasonable promptness.

**GC-2.3.4** Notwithstanding the Owner's responsibility above, the Owner's review of the Design-Builder's documents or Submittals shall not relieve the Design-Builder of responsibility for compliance with the Program and other Design-Build Documents unless (1) the Design-Builder has notified the Owner in writing of the deviation and has fully described the deviation prior to review by the Owner and (2) the Owner has approved a Change in the Work reflecting any deviations from the requirements of the Design-Build Documents.



**GC-2.3.5** The Owner will visit the site to stay informed about the progress and quality of the Work completed but will not make exhaustive or continuous on-site inspections. The presence of the Owner at the site shall not be construed as assurance that the Work is being completed in compliance with the Design-Build Documents, nor as evidence that any requirement of the Design-Build Documents of any kind, including notice, has been met or waived. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work.

**GC-2.3.6** The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents or applicable laws. The Owner shall not have control over or charge of and will not be responsible for the acts or omissions of the Design-Builder, Design-Builder's Engineer, Subcontractors of any tier, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

**GC-2.3.7** The Owner may reject Work that does not conform to the Design-Build Documents. Whenever the Owner considers it necessary or advisable, the Owner shall have authority to require inspection or testing of the Work or to perform such inspections or testing on its own, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Design-Builder's Engineer, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**GC-2.3.8** The Owner may appoint on-site Project representatives to observe the Work and to have such other responsibilities as the Owner specifies.

#### **GC-2.4 OWNER'S RIGHT TO STOP WORK**

**GC-2.4.1** If the Design-Builder fails to correct Work that is not in accordance with the requirements of the Design-Build Documents or persistently or materially fails to carry out Work in accordance with the Design-Build Documents, the Owner may, without change to the GMP or the Contract Time, issue a written order to the Design-Builder signed personally or by an agent specifically so empowered by the Owner directing the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity.

#### **GC-2.5 OWNER'S RIGHT TO CARRY OUT THE WORK**

**GC-2.5.1** If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a seven day period after receipt of written notice from the Owner to commence and continue to make reasonable progress toward the correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the additional services and expenses of any Owner consultants made necessary by such default, neglect or failure. The right of the Owner to correct the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of itself or others. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

### **ARTICLE GC-3 DESIGN-BUILDER**

#### **GC-3.1 GENERAL**

**GC-3.1.1** The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The Design-Builder must legally be permitted to do business as a design-builder and be licensed, bonded, and insured as a contractor in the State of Washington. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative, including its Designated Representative, who shall be authorized to act on the Design-Builder's behalf with respect to the Project.

**GC-3.1.2** The Design-Builder shall perform the Work in strict accordance with the Design-Build Documents.

**GC-3.1.3** The Design-Builder shall be and operate as an independent contractor in the performance of the Work and shall have complete control over and responsibility for all personnel performing the Work. In no event shall the Design-Builder be authorized to enter into any agreements or undertakings for or on behalf of the Owner or to act as or be an agent or employee of the Owner. The Design-Builder will cooperate with the Owner to create an environment of mutual respect and focus on the success of the Project.

**GC-3.1.4** As required by RCW 39.10.320(1)(e), the Design-Builder, Subcontractors of any tier, and the Engineer shall submit project information required by the Capital Projects Advisory Review Board.

### **GC-3.2 DESIGN SERVICES AND RESPONSIBILITIES**

**GC-3.2.1** The Design-Builder shall provide design services using qualified persons or entities duly licensed to practice their professions in the State of Washington, including the Design-Builder's Engineer. The services performed by the Design-Builder's design professionals and consultants are undertaken and performed in the sole interest of and for the exclusive benefit of the Design-Builder and the Owner.

**GC-3.2.2** The agreements between the Design-Builder and Design-Builder's Engineer, other design professionals retained by Design-Builder, and Subcontractors shall be in writing. These agreements, including services and financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon the Owner's written request.

**GC-3.2.3** The Design-Builder shall be responsible to the Owner for acts, errors and omissions of the Design-Builder's employees, Design-Builder's Engineer, Subcontractors of any tier, and other persons or entities, including design professionals, as well as their agents and employees, performing any portion of the Design-Builder's obligations under the Design-Build Documents.

**GC-3.2.4** The Design-Builder shall carefully study and compare the Design-Build Documents and the information provided by the Owner pursuant to the Design-Build Documents, shall take field measurements of existing conditions, including all general reference points related to the Work, shall observe any conditions at the site affecting the Work, shall carefully compare such field measurements and conditions and other information known to the Design-Builder with the Design-Build Documents before commencing such activities, and shall report promptly to the Owner any errors, inconsistencies or omissions discovered. The Design-Builder is responsible for ensuring that the Design-Build Documents are in accordance with applicable laws, statutes, ordinances, building codes (including those adopted and modified by local authorities having jurisdiction), rules and regulations, and lawful orders of public authorities, including, but not limited to, the latest applicable versions of:

- .1 Building Code with State of Washington Amendments;
- .2 Plumbing Code with State of Washington Amendments;
- .3 Mechanical Code;
- .4 Electrical Code;
- .5 Washington State Energy Code;
- .6 Washington State Rules and Regulations for Barrier-Free Design;
- .7 Fire Code;
- .8 National Fire Protection Association Requirements;
- .9 Washington Sustainable Schools Protocol (WSSP) to the extent that this Project receives any State of Washington funds;
- .10 Federal and State Codes (including those related to disability accommodation) as adapted and/or modified by State and Local Ordinances; and
- .11 Any applicable municipal code.

**GC-3.2.5** The Design-Builder shall submit the initial design documents, including drawings and other design details, for the Owner's written review and acceptance. The initial documents shall set forth in detail the requirements for construction of the Project, shall establish the quality levels of materials and systems proposed, and shall identify any deviations from the Program and/or Proposal. Following acceptance of the initial documents and after incorporating any changes required by the Owner, the Design-Builder shall provide final design documents for review and written acceptance by the Owner. The final documents shall include

design documents and other information to set forth in detail the requirements for the Work, shall provide information for the use of those in the building trades, and shall also include documents customarily required for regulatory agency approvals.

**GC-3.2.6** The Design-Builder shall meet with the Owner periodically to review progress of the design documents. The Owner, the Design-Builder, and their consultants may participate in a value engineering process prior to completion of the design. The Design-Builder's Engineer will meet with and brief the Owner and/or other consultants and answer their questions to determine the advisability of changes in the design documents. Changes may be proposed to the design documents as a result of these processes. The Design-Builder shall make any changes the Owner requests after consultation and advise the Owner if the Design-Builder believes that additional cost or time will result from the change.

**GC-3.2.7** Upon the Owner's written acceptance, the Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

**GC-3.2.8** The Design-Builder shall obtain from each of its design professionals, including the Design-Builder's Engineer, and shall provide the Owner with certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (i) are consistent with the Program and Proposal (as the Proposal may be modified in writing by the Owner and Design-Builder), (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.

**GC-3.2.9** The Design-Builder's design services will result in a Project design in accordance with the Design-Build Documents, including the Program and the Proposal. At the time of performance, the Design-Builder's design professionals shall be properly licensed, equipped, organized and financed to perform the services. Each person who performs the services shall be experienced and qualified to perform the services he or she performs, and the Owner shall be entitled to rely upon any assistance, guidance, direction, advice or other services provided by any such person. If requested by the Owner, the Design-Builder shall remove from the services, without cost to the Owner or delay to the Project, any person whose removal the Owner reasonably requests.

**GC-3.2.10** The Design-Builder shall, at no cost to the Owner, promptly and satisfactorily correct any design services that are defective or not in conformity with the requirements of this Design-Build Contract. The obligations of the Design-Builder to correct defective or nonconforming design services shall not in any way limit any other obligations of the Design-Builder or other rights and remedies available to the Owner under this Design-Build Contract or otherwise by law.

**GC-3.2.11** Any subcontracting of design services shall not relieve the Design-Builder from its responsibility for the performance of the design services in accordance with the terms of this Design-Build Contract nor from its responsibility for the performance of any of its other obligations under this Design-Build Contract.

**GC-3.2.12** When the Design-Build Documents require that a Subcontractor of any tier provide professional design services or certifications related to systems, materials or equipment, or when the Design-Builder in its discretion provides such design services or certifications itself or through a consultant or Subcontractor of any tier, the Design-Builder shall cause professional design services or certifications to be provided by properly licensed design professionals or shall ensure that all documents bear such design professional's written approval. The Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

### **GC-3.3 CONSTRUCTION**

**GC-3.3.1** The Design-Builder shall be responsible for the supervision and direction of the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for and have control over all design and construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Design-Build Documents. The Design-Builder shall be responsible for the acts

and omissions of the Design-Builder's principals, employees, Subcontractors of any tier, the Design-Builder's Engineer, other design consultants, and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Design-Builder or any of its Subcontractors of any tier.

**GC-3.3.2** The Design-Builder shall perform no construction Work prior to the Owner's review and acceptance of the Design-Builder's final design documents.

**GC-3.3.3** The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require the Owner's review of Submittals until the Owner has accepted and taken action on each required Submittal. The construction Work shall also be in accordance with accepted Submittals except that the Design-Builder shall not be relieved of responsibility for deviations from the Design-Build Documents by the Owner's review or acceptance of Shop Drawings, Product Data, Samples or similar Submittals unless the Design-Builder has specifically informed the Owner in writing of such deviation at the time of submittal and (1) the Owner has given its explicit written approval to the specific deviation as a Minor Change in the Work or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or other Submittals by the Owner's approval, review or acceptance thereof.

**GC-3.3.4** The Design-Builder shall direct specific attention, in writing, on any resubmitted documents, to revisions other than those previously requested or noted by the Owner. In the absence of such written notice, the Owner's acceptance of a resubmission shall not apply to such revisions.

**GC-3.3.5** The Design-Builder shall plan and lay out all Work in advance of operations so as to coordinate all Work without delay or revision. The Design-Builder is responsible for coordination of all design documents related to specific locations. The Design-Builder shall establish and maintain existing lot lines, restrictions, existing survey markers of any kind and benchmarks. The Design-Builder shall establish and maintain all other lines, levels and benchmarks necessary for the execution of the Work.

**GC-3.3.6** The Design-Builder shall keep the Owner informed of the progress and quality of the Work. The Design-Builder shall perform such detailed examination, inspection and quality surveillance of the Work as will ensure that the Work is progressing and being completed in strict accordance with the Design-Build Documents, including the Owner-accepted design documents. The Design-Builder shall be responsible for examination, inspection and quality surveillance of all Work performed by Subcontractors of any tier. The Design-Builder shall determine when it is necessary to perform, and shall perform, tests (in addition to those requested by the Owner or required by the Design-Build Documents) to verify its inspections and ensure that the Work is being completed in strict accordance with the Design-Build Documents.

**GC-3.3.7** The Design-Builder shall be responsible for inspection of portions of the Work already performed to determine that such portions are in proper condition to receive subsequent Work. Under no conditions shall a section of Work proceed prior to preparatory work having been completed and made satisfactory to receive the related Work.

#### **GC-3.4 LABOR AND MATERIALS**

**GC-3.4.1** Unless otherwise explicitly provided in the Design-Build Documents, the Design-Builder shall provide or cause to be provided and shall pay for all design services, labor, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**GC-3.4.2** After the Design-Build Contract has been executed, the Owner may consider the Design-Builder's written request for the substitution of material or products in place of those specified in or permitted by the Design-Build Documents only under the circumstances described in and following the procedures of the Design-Build Documents. The written request must be submitted on the Owner's substitution form and include the specifications for the material or product and any proposed change in the GMP, Contract Sum or Contract Time. When a material is specified in the Design-Build Documents, including the Program or Proposal, the Design-Builder may make substitutions only with the written consent of the Owner and, if appropriate, in accordance with a Change Order or Construction Change Directive. By requesting a substitution, the

Design-Builder represents that it has personally investigated the proposed material or product and determined that it is equal or better in all respects to that specified or permitted (or if not equal or better in all respects, the Design-Builder shall identify such deficiencies), that the same or better warranty will be provided for the substitution, that complete cost data, including all direct and indirect costs of any kind, has been presented, that it waives any other known or unknown Claim for an increase in the GMP, Contract Sum or Contract Time in any way related to the substitution, that it has coordinated with affected Subcontractors, that the substitution will not negatively impact other parts of the Work, and that it will coordinate the installation of the substitute if accepted and make all associated changes in the Work. The Design-Builder shall not proceed with any substitution without the written approval of the Owner. The Design-Builder will be fully responsible for the performance of the substituted product.

**GC-3.4.3** The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work, including observance of any drug testing and all smoking, tobacco, drug, alcohol, parking, safety, weapons, background checks, sexual harassment and other rules governing the conduct of personnel at the Project site. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Design-Builder shall ensure that all persons performing the Work comply with the Owner's policies, and will not and do not engage in inappropriate conduct or inappropriate contact with students or staff. Neither the Design-Builder nor any of its Subcontractors of any tier shall utilize any employee at the site or permit any contact between children at a school site and any employee who has pled guilty to or been convicted of any felony crime involving the physical neglect of a child under Chapter 9A.42 RCW, the physical injury or death of a child under Chapter 9A.32 RCW or Chapter 9A.36 RCW (except motor vehicle violations under Chapter 46.61 RCW), sexual exploitation of a child under Chapter 9A.68A RCW, sexual offenses under Chapter 9A.44 RCW where a minor is a victim, promoting prostitution of a minor under Chapter 9A.88 RCW, the sale or purchase of a minor child under Chapter 9A.64.030 RCW, or violation of similar laws of another jurisdiction. No employees of either the Design-Builder or its Engineer or any of its Subcontractors of any tier shall harass, intimidate, have physical contact with, or engage in other verbal or physical conduct or communication of a sexual, intimidating or harassing nature with students or the Owner's staff, nor create an intimidating, hostile or offensive environment. The Design-Builder shall remove from the Work and Work site any employee or other person who has engaged in such actions or who the Owner reasonably considers objectionable. Without limiting the generality of the foregoing, the Design-Builder shall ensure by appropriate provisions in each subcontract that the Design-Builder may remove from the Work and Work site any Subcontractor or Subcontractor's employee who has engaged in such action. At no change to the GMP or Contract Time, the Design-Builder shall remove from the Work and Work site any employee or other person pursuant to this Section GC-3.4.3. Failure to comply with these requirements is grounds for immediate termination of the Agreement for cause.

**GC-3.4.4** Any employees of the Design-Builder and Subcontractors who may have regularly scheduled unsupervised access to children shall be subject to a record check through the Washington state patrol criminal identification system under RCW 43.43.830 through 834, RCW 10.97.030, and RCW 10.97.050 and through the Federal Bureau of Investigation before the Design-Builder permits them to have such access to children. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card. The Owner shall provide necessary cooperation associated with required record check. When necessary, applicants may be employed on a conditional basis pending completion of the investigation. If the applicant has had a record check within the previous two years, the Owner or the Design-Builder may waive the requirement. The costs associated with the record check shall be included as part of the Contract Sum, not to exceed the GMP. The Design-Builder shall represent to the Owner in writing that it has complied with this requirement.

#### **GC-3.4.5 Prevailing Wages**

- .1** Pursuant to RCW 39.12, "Prevailing Wages on Public Works," no worker, laborer, or mechanic employed in the performance of any part of the Work shall be paid less than the "prevailing rate of wage" (in effect as of the date that bids are due) as determined by the Industrial Statistician of the Department of Labor and Industries. The schedule of the prevailing wage rates for the locality or localities where this contract will be performed is attached to the executed contract and made a part of the Design-Build Documents by reference as though fully set forth herein; if not attached, then the applicable prevailing wages are determined as of the Bid Date for the county in which

the Project is located and are available at <http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp>. A copy is available for viewing at the Owner's office, and a hard copy will be mailed upon request. To the extent that there is any discrepancy between the attached or provided schedule of prevailing wage rates and the published rates applicable under WAC 296-127-011, or if no schedule is attached, the applicable published rates shall apply with no increase in the GMP. It is the Design-Builder's responsibility to ensure that the correct prevailing wage rates are paid. The Design-Builder shall provide the respective Subcontractors with a schedule of the applicable prevailing wage rates. Questions relating to prevailing wage data should be addressed to the Industrial Statistician upon request.

Mailing Department of Labor and Industries  
Address: Prevailing Wage Office  
PO Box 44540  
Olympia, WA 98504  
Telephone: (360) 902-5335  
Facsimile: (360) 902-5300

- .2 Pursuant to RCW 39.12.060, in case any dispute arises as to the prevailing rates of wages for work of a similar nature, and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the director of the Department of Labor and Industries, and his or her decision shall be final, conclusive and binding on all parties to the dispute.
- .3 The Design-Builder shall defend, indemnify and hold the Owner harmless, including attorneys' fees, from any violation or alleged violation by the Design-Builder or any Subcontractor of any tier of Washington's Prevailing Wages Act or Chapter 51 RCW ("Industrial Insurance"), including without limitation RCW 51.12.050.

**GC-3.4.6** The Design-Builder shall comply with all applicable provisions of RCW 49.28 ("Hours of Labor").

**GC-3.4.7** Pursuant to RCW 49.70, "Worker and Community Right to Know Act," and WAC 296-62-054 *et seq.*, the Design-Builder shall provide the Owner copies of and have available at the Project site a workplace survey or material safety data sheets for all "hazardous" chemicals under the control or use of Design-Builder or any Subcontractor of any tier at the Project site. The Design-Builder shall not be entitled to an increase in the GMP, Contract Time or Contract Sum arising from its failure or alleged failure to comply with this statute or regulation.

**GC-3.4.8** Certified Asbestos-Free and Lead-Free Products: All products and materials incorporated into the Project as part of the Work shall be certified as "asbestos-free" and "lead-free" by United States standards. At the completion of the Project, the Design-Builder shall submit Certifications of Asbestos-Free and of Lead-Free Materials certifying that all materials and products incorporated into the Work meet the requirements of this Section.

**GC-3.4.9** The Design-Builder shall be responsible for labor peace on the Project and shall at all times use its best efforts and exercise its best judgment as an experienced contractor and design-builder to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes or strikes where reasonably possible and practical under the circumstances, and shall at all times maintain Project-wide labor harmony.

**GC-3.4.10** Materials shall conform to the manufacturer's standards in effect at the date of execution of the GMP Amendment and shall be installed in strict accordance with the manufacturer's instructions, specifications and directions. The Design-Builder shall, if required in writing by the Owner, provide satisfactory evidence regarding the kind and quality of any materials identifying thereon the source, and warranting their quality and compliance with the Design-Build Documents.

### **GC-3.4.11 Apprenticeship**

- .1 Pursuant to RCW 39.04.320, no less than fifteen percent (15%) of the Labor Hours shall be performed by apprentices, unless a different amount is permitted or otherwise required by law.
- .2 Apprenticeship hours shall be performed by participants in training programs approved by the Washington State Apprenticeship Council.
- .3 “Labor Hours” means the total hours of workers receiving an hourly wage who are directly employed on the site of the public works project. “Labor hours” includes hours performed by workers employed by the Design-Builder and all Subcontractors working on the Project. “Labor hours” does not include hours worked by foremen, superintendents, owners, and workers who are not subject to prevailing wage requirements of RCW 39.12.
- .4 During the term of this Contract, the Owner may adjust the apprenticeship labor hour requirement upon its finding or determination that includes:
  - (1) A demonstration of lack of availability of apprentices in the geographic area of the Project;
  - (2) A disproportionately high ratio of material costs to labor hours that does not make feasible the required minimum levels of apprenticeship participation;
  - (3) Demonstration by participating contractors of a good faith effort to comply with the requirements of RCW 39.04.300, 39.04.310 and 39.04.320;
  - (4) Small contractors or subcontractors (e.g., small or emerging businesses) would be forced to displace regularly employed members of their workforce;
  - (5) The reasonable and necessary requirements of the Contract render apprentice utilization infeasible at the required level (e.g., the number of skilled workers required and/or limitations on the time available to perform the Work preclude utilization of apprentices); or
  - (6) Other criteria the Owner deems appropriate, which are subject to review by the office of the Governor.
- .5 The Design-Builder shall report apprentice participation to the Owner and L&I on a monthly basis, using the L&I on-line portal. In addition, copies of certified payroll records may be requested to document the goal, including copies with any birthdates and social security numbers (and any other sensitive personal information) redacted so as such copies may be used to respond to any public records requests. The reports will include:
  - (1) The name of the Project;
  - (2) The dollar value of the Project;
  - (3) The date of the Design-Builder’s notice to proceed;
  - (4) The name of each apprentice and apprentice registration number;
  - (5) The number of apprentices and labor hours worked by them, categorized by trade or craft;
  - (6) The number of journey level workers and labor hours worked by them, categorized by trade or craft; and
  - (7) The number, type, and rationale for the exceptions granted.
- .6 To comply with the changes to RCW 39.04.320 that are effective as of January 1, 2020, the following provisions also apply:
  - (1) This Section GC-3.4.11 specifies that the 39.04.320 apprenticeship goals should be met;
  - (2) The Owner shall provide a monetary incentive of One Thousand Dollars for meeting these goals;
  - (3) The Design-Builder shall pay a monetary penalty of One Thousand Dollars for not meeting these goals;
  - (4) The Owner is not in a position within existing resources to identify an expected cost value to be included in the bid associated with meeting these goals; and
  - (5) Design-Builder and its Subcontractors are not required to exceed these apprenticeship utilization requirements.

### **GC-3.4.12 Certified Payrolls**

**GC-3.4.12.1** Design-Builder and its Subcontractors of all tiers shall submit certified payrolls in accordance with RCW 39.12.120.

### **GC-3.5 WARRANTY**

**GC-3.5.1** The Design-Builder warrants to the Owner that materials and equipment provided under the Design-Build Contract will be of good quality and new. The Design-Builder further warrants that the Work will be performed in a skillful and workmanlike manner, free from defects not inherent in the quality required, that the Work will comply with all applicable laws, and that the Work will conform to the requirements of the Design-Build Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, is considered defective. The Design-Builder's warranty excludes damage or defect caused by abuse by the Owner, alterations to the Work not executed or supervised by the Design-Builder, improper or insufficient maintenance, or normal wear and tear. If required by the Owner, the Design-Builder shall provide satisfactory evidence as to the kind and quality of materials and equipment. The Design-Builder is not relieved of its general warranty obligations by the specification of a particular product or procedure in the Design-Build Documents. Warranties in the Design-Build Documents shall survive completion, acceptance and final payment.

**GC-3.5.2** The Design-Builder shall collect, assign, and deliver to the Owner any specific written warranties given by others. The Design-Builder shall cause each Subcontractor of any tier to execute and shall countersign, secure and provide directly to the Owner all required, written warranties and guarantees, which shall extend to the Owner all rights, claims, benefits and interests that the Design-Builder may have under express or implied warranties or guarantees against Subcontractors of any tier for defective or non-conforming Work. Prior to providing the Owner with executed guarantees and warranties, the Design-Builder shall provide copies to the Owner for review and approval. These warranties are in addition to the warranty in the prior Section and shall in no manner diminish that warranty.

### **GC-3.6 TAXES**

**GC-3.6.1** The Design-Builder shall pay all taxes, including sales, consumer, use, B&O, income, and similar taxes for the Work provided by the Design-Builder that are legally enacted on the date of the Agreement, whether or not yet effective or merely scheduled to go into effect. The only taxes excluded from the GMP and Contract Sum and separately reimbursable by the Owner are State and local sales taxes that will be calculated and paid based on the Contract Sum. Tariffs are not taxes and shall not increase the GMP.

### **GC-3.7 PERMITS, FEES, AND NOTICES**

**GC-3.7.1** Unless otherwise provided in the GMP Amendment or other Design-Build Documents including this Section GC-3.7.1, the Design-Builder shall secure and pay as a Cost of the Work within the GMP for all permits fees, licenses, and inspections by government agencies necessary for the proper execution and completion of the Work, including without limitation Subcontractor fees, review and application fees for Shop Drawings, inspection and reinspection fees, and renewal fees and penalties, excepting only any permits and fees that the Owner has specifically listed as the Owner's responsibility in the Design-Build Documents. The Design-Builder shall obtain any permit renewals during the course of the Work at no change in the GMP. The Design-Builder will be responsible without reimbursement for any penalties arising from the building permit or any other required permit unless such penalties are caused by the Owner. The Owner shall pay all utility connection fees. The Design-Builder shall also be responsible, as part of its design responsibilities, for preparing and submitting in a timely manner to avoid delay in construction, all permit applications, including any design documents needed for permit applications. The Design-Builder shall submit all documentation needed to secure all permits that are required for the Work.

**GC-3.7.2** The Design-Builder shall coordinate and schedule all Work with permitting agencies, utility companies and other agencies with jurisdictional authority necessary for completion of the Work. The Design-Builder shall be responsible for providing all information, documents, and fees to the permitting agencies, utility companies, and other such agencies determined to have jurisdictional authority in a timely manner and as necessary to obtain and coordinate permits and other connections. The Design-Builder shall keep the Owner informed of communications with these authorities and shall obtain all permit renewals during the course of the Work.

### **GC-3.8 ALLOWANCES**

**GC-3.8.1** With the Owner's explicit approval, the Design-Builder shall include in the GMP any allowances stated in the Design-Build Documents. Allowances may only be used for items that both the Owner and the



Design-Builder agree cannot be accurately priced at the time of the GMP Amendment and for reasons that are not the Design-Builder's fault. Unless otherwise provided in the Design-Build Documents:

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes except sales tax, less applicable trade discounts;
- .2 Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the GMP but not in the allowances; and
- .3 whenever costs are more than or less than an allowance, the GMP shall be adjusted by a Change Order to reconcile the allowance.

**GC-3.8.2** Materials and equipment under an allowance shall be proposed by the Design-Builder and selected by the Owner with reasonable promptness.

### **GC-3.9 DESIGN-BUILDER'S SCHEDULE**

**GC-3.9.1** The Design-Builder will be responsible for planning, scheduling, managing and reporting the progress of the Work in accordance with all of the specific methods and Submittals described in the Design-Build Documents. The Design-Builder shall, within ten days after being awarded the Contract, prepare and submit for the Owner's information a preliminary and overall Project schedule for the design and construction, which shall be consistent with the requirements of the Design-Build Documents. The Owner does not have the responsibility to review the substance of the Design-Builder's Project schedule. This overall Project schedule shall be regularly updated in consultation with the Owner and others. At least thirty days before commencement of construction, and after consultation with its Subcontractors, the Design-Builder shall submit three hard and color copies and an electronic (native) copy of the Design-Builder's updated Project schedule for construction consistent with the requirements of the Design-Build Documents. This CPM schedule shall not exceed the time limits and shall be in such detail as required by the Design-Build Documents, shall be revised at least monthly during construction, shall address the completion dates and milestones required by the Design-Build Documents, shall provide for expeditious and practicable execution of the construction and shall include allowances for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. The Design-Builder shall allocate in the schedule of values a separate line item to cover the initial Project schedule, the updated Project schedule for construction, and all monthly updates. The Design-Builder shall request payment for this line item with each Application for Payment, based upon the overall percentage of completion of the Project. For any month that the Design-Builder fails to submit a satisfactory Project schedule or an accurate schedule update identifying the current status of the Work, the Design-Builder shall not be entitled to any payment for scheduling for that month, and the percentage of the scheduling line item represented by that month's percentage of completion of the Work shall, at the Owner's option, be permanently deducted from the GMP by Change Order.

**GC-3.9.1.1** The Design-Builder's Project schedule shall be prepared by a competent scheduler, and used by the Design-Builder to plan, prosecute, and coordinate the Work in an orderly and expeditious manner. The Design-Builder's Project schedule may be used by the Owner to evaluate progress and status at the various stages of the Project, allocate funds consistent with the schedule of values, determine the impact of any changes to the Contract, and establish the basis for progress payments. Such review shall not constitute an approval or acceptance of the Design-Builder's construction means, methods or sequencing, or its ability to complete the Work in a timely manner.

**GC-3.9.1.2** The Design-Builder's Project schedule shall be based upon a critical path method ("CPM") analysis of construction and related activities and sequence of operations needed for the orderly performance and completion of all separable parts of the Work in accordance with the Contract and within the Contract Time. The schedule shall be in the form of a precedence diagram and activity listing, and shall be time-scaled. It shall include the Notice to Proceed date, the dates of interim milestones such as the completion of design and the commencement of construction, the Date(s) of Substantial Completion, and the Date(s) of Final Completion in accordance with the Design-Build Documents. The Critical Path shall be clearly indicated on the Design-Builder's Project schedule. At the Owner's discretion, the Design-Builder may be required to prepare and submit an electronic spreadsheet (formatted in a manner compatible with MS Excel) that allocates the approved schedule of values to the appropriate schedule activities contained in the Project schedule.

**GC-3.9.1.3** The CPM schedule shall show in detail and in order the sequence of all significant activities, their descriptions, start and finish dates, durations, links, and dependencies, necessary to complete all Work and any separable parts thereof. Predecessor and successor reports identifying links and relationships shall be provided if requested by the Owner. The activity listing shall show the following information for each activity on the network diagram:

- .1 Activity description;
- .2 Duration (not to exceed fifteen working days);
- .3 Start and finish dates;
- .4 Total float time and free float time; and
- .5 Dates that Work must be performed and completed by other contractors to support the Work and the interfaces with such other contractors.

**GC-3.9.1.4** A schedule for the purchase and receipt of items required for performance of the Work, identifying submittal and approval dates and showing lead times between purchase order placement and delivery dates, shall be integrated with the Design-Builder's Project schedule. The Design-Builder shall provide the Owner with copies of all purchase orders and acknowledgments and fabrication, production, and shipping schedules for all major items on the critical path within ten days of Design-Builder's receipt of each purchase order, acknowledgment or schedule. The Owner shall not be deemed to have approved or accepted any such material, or its schedule, nor deemed to have waived this requirement if some or all of the material is not received.

**GC-3.9.1.5** Milestone completion dates shall be clearly defined on the Design-Builder's Project schedule. They shall include, at a minimum:

- .1 Notice to Proceed;
- .2 Design Development Start and End Dates, Final Design Documents Start and End Dates, Subcontractor Selection, and Planned Submission of the Design Documents for Permitting Agency Approval;
- .3 On-Site Start;
- .4 Trade Completions;
- .5 Date of Commissioning;
- .6 Phase(s) Completions;
- .7 Statutory Authorities Occupancy Approvals;
- .8 Substantial Completion (move-in ready);
- .9 Punch list Completion; and
- .10 Final Completion.

If abbreviations are used in the Design-Builder's Project schedule, a legend shall be provided to define all abbreviations.

**GC-3.9.1.6** The Project schedule shall be prepared using a generally accepted and readily available scheduling software acceptable to the Owner; only one scheduling software shall be used. The progress schedules shall be submitted as both a paper copy and in native electronic format on a thumb drive and by email, any of which must include data files that can be loaded onto the Owner's copy of the scheduling software and be capable of being printed.

**GC-3.9.1.7** At least once per month when meeting with the Owner, the Design-Builder shall submit (a) an updated Design-Builder's Project schedule (printed from the CPM and based on the CPM baseline schedule) accurately identifying the current status of the Work and showing the activities planned for the next month and (b) a report showing actual start and finish dates compared to the original CPM baseline from the previous month. The schedule shall show, among other detail, all Work activities numbered according to the CPM baseline schedule, any Submittal or delivery activities with less than five days' float, and any permitting, testing, or inspection activities by others. The updated Design-Builder's Project schedule shall display actual start dates and percent completion or actual finish dates if the activity is one hundred percent (100%) complete. Any changes in logic or duration of the activities contained in the updated Design-Builder's Project schedule, insertion of new activities, or deletion of planned activities, shall be submitted in a separate report describing such changes.

**GC-3.9.1.8** The Design-Builder shall utilize and comply with the Design-Builder's Project schedule. The Design-Builder shall not be entitled to any adjustment in the Contract Time, the Design-Builder's Project schedule, or the GMP, or to any additional payment of any sort by reason of the loss or use of any float time, including time between the Design-Builder's anticipated completion date and end of the Contract Time, whether or not the float time is described as such on the Design-Builder's Project schedule. To ensure that the Owner is substantively aware and effectively able to mitigate any Project delays, the Design-Builder shall not be entitled to any extension of time, compensable or otherwise, for any delay that occurred during any time the Design-Builder has not timely submitted an updated Project schedule as required by the Design-Build Documents.

**GC-3.9.1.9** Should the Design-Builder fail to meet any scheduled date as shown on the current Design-Builder's Project schedule, the Design-Builder shall, if requested, be required at its own expense to submit within ten days of the request an updated Design-Builder's Project schedule at no cost to the Owner. If the Design-Builder's progress indicates to the Owner that the Work will not be Substantially Completed within the Contract Time or will not meet a scheduled date as shown on the Project schedule, the Design-Builder shall, at its own expense, increase its work force and/or working hours to bring the actual completion dates of the activities into conformance with the Design-Builder's Project schedule and Substantial Completion within the Contract Time. The Design-Builder shall reschedule and also submit a revised Design-Builder's Project schedule at its own expense within ten days of notice from the Owner that the sequence of Work varies significantly from that shown on the Design-Builder's Project schedule showing Work to complete on original Contract Time with approved extensions. The Owner may withhold some or all of the progress payments until such time as the Design-Builder has provided a revised Project schedule approved and in a form satisfactory to the Owner. The Owner will not be obligated to review the substance or sequence of the Design-Builder's Project schedule or otherwise determine whether it is correct, appropriate or attainable.

**GC-3.9.1.10 Schedule Float Utilization.** Any float time to activities not on the critical path shall belong to the Project (i.e., the Design-Builder and the Owner), and may be used by the Project to optimize its construction process. Any float time between the end of the final construction activity and the final completion date shall belong to the Owner, and may be used by the Owner in determining if the Contract Time should be extended for changes in the Contract or for delays caused by the Owner. The Design-Builder will not be entitled to any adjustment in the Contract Time, the Project schedule, or the GMP, or to any additional payment of any sort by reason of the Owner's use of float time between the end of the final construction activity and the final completion date or by reason of the loss or use of any float time, including time between the Design-Builder's anticipated completion date and end of the Contract Time, whether or not the float time is described as such on the Design-Builder's Project schedule.

**GC-3.9.2 Submittal Schedule.** The Design-Builder shall prepare, for the Owner's acceptance, a Submittal schedule coordinated with the Project schedule promptly after being awarded the Contract, and update it regularly thereafter. The Submittal schedule shall allow the Owner reasonable time to review Submittals in accordance with the Design-Build Documents. The Design-Builder should expect a response time of at least fourteen days for the Owner's review. Complex, inter-related or multiple Submittals may take longer. The Owner cannot guarantee response times from governmental authorities, such as permitting agencies. If the Design-Builder fails to submit a Submittal schedule acceptable to the Owner, the Design-Builder shall not be entitled to any increase in the GMP or Contract Sum or any extension of the Contract Time based on the time required to review Submittals or any resulting delay in the procurement of material.

**GC-3.9.3 Notice of Delays.** The Design-Builder shall notify the Owner in writing of any actual or anticipated event that is delaying or is likely to delay achievement of any milestone or performance of any critical path activity of the design or Work. Such notice shall be promptly issued, and in no event later than fourteen days after the event causing the delay. The Design-Builder shall indicate the expected duration of the delay, the anticipated effect of the delay on the Project schedule, and the action being or to be taken to correct the problem. Provision of such notice does not relieve the Design-Builder of its obligation to complete the Work within the Contract Time. If the Design-Builder believes that the delay entitles it to an increase in the GMP, Contract Sum or Contract Time, then the Design-Builder shall also submit a Claim as provided in the Design-Build Documents.

### **GC-3.10 DOCUMENTS AND SAMPLES AT THE SITE**

**GC-3.10.1** The Design-Builder shall maintain at the site for the Owner, and update at least weekly, one record copy of the design documents, Addenda, Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of accepted Submittals. These documents, including all as-built drawings, whether changes occur or not, shall be available to the Owner during the Project and shall be delivered to the Owner upon completion of the Work as a record of the Work as constructed. The Design-Builder shall review and follow the as-built drawing standards referenced in the Design-Build Documents. The location of all new and existing piping, valves, conduit, cabling and utilities, as located during the course of construction, shall be appropriately marked until the actual field location dimensions and coordinates are incorporated on the as-built drawings, and all mechanical and electrical deviations and changes shall be included. As-built documents shall include all Architectural, Mechanical, Electrical, Structural, Landscape, and Civil as-built drawings. These documents, as well as the permit set of plans, shall be available to the Owner at the site and reviewed with them on a monthly basis. Upon Final Completion of the Work, the Design-Builder shall transfer all record information in a clear and legible manner as described in the Design-Build Documents and in compliance with all requirements of local governmental entities, shall certify in writing that these documents reflect complete and accurate “as-built” conditions and shall deliver the following in a clear, clean and legible manner and in compliance with all requirements of local governmental entities: (i) complete integrated copies of the documents in both paper form in good condition and in electronic format, (ii) the permit set of plans, and (iii) full-size record documents, Shop Drawings, Addenda, maintenance manuals and warranties to the Owner in accordance with the provisions of the Design-Build Documents. Satisfactory maintenance of up to date as-built drawings on a monthly basis will be a requirement for approval of progress payments.

### **GC-3.11 SUBMITTALS**

**GC-3.11.1** Shop Drawings are Submittals consisting of drawings, diagrams, schedules and other data specially prepared for the Work by the Design-Builder or a Subcontractor of any tier, manufacturer, supplier or distributor to illustrate some portion of the Work.

**GC-3.11.2** Product Data are Submittals consisting of illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information provided by the Design-Builder to illustrate materials or equipment for some portion of the Work.

**GC-3.11.3** Samples are Submittals consisting of physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

**GC-3.11.4** Submittals are not Design-Build Documents. The purpose of their submission is to demonstrate for those portions of the Work for which Submittals are required the way that the Design-Builder proposes to conform to the Design-Build Documents. Review and acceptance of Submittals by the Owner is subject to the limitations of the Design-Build Documents and shall not constitute an approval of the Design-Builder’s means and methods or a waiver or modification of any requirement of the Design-Build Documents. Informational Submittals upon which the Owner is not expected to take responsive action may be so identified in the Design-Build Documents. Submittals that are not required by the Design-Build Documents may be (but are not required to be) returned by the Owner without action.

**GC-3.11.5** The Design-Builder shall review for compliance with the Design-Build Documents, note any deviations, and approve in writing and submit to the Owner required Submittals with reasonable promptness and in such sequence to not delay the Work or in the activities of the Owner or of separate contractors. At the time of submission, the Design-Builder shall inform the Owner in writing of any deviation in the Submittals from the requirements of the Design-Build Documents. So far as practicable, each Submittal shall bear a cross reference note referring to the drawing and, if applicable, the detail to which it relates, in order to facilitate checking of the Submittal and its prompt return to the Design-Builder. Shop Drawings for interrelated Work shall be submitted at approximately the same time. The Design-Builder shall stamp and initial its approval on all Submittals prior to submitting them to the Owner indicating that the Design-Builder has satisfied its responsibilities under the Design-Build Documents for review of the Submittal. The Design-Builder shall keep accurate records of the receipt, review and delivery of all Submittals and shall submit to the Owner reports when requested on the status of their review.

**GC-3.11.6** By approving and submitting Submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

- .1 Each Submittal shall bear a stamp or specific written indication that Design-Builder has satisfied Design-Builder's responsibilities under the Design-Build Documents with respect to the review of the submission.
- .2 Each Submittal shall be accompanied by a completed Submittal Cover Sheet, as approved by the Owner, which shall clearly identifies the section of Work, any material and supplier information, as well as other pertinent data.
- .3 The Design-Builder will track all Submittals on the Submittal schedule coordinated with the Project schedule and will submit complete Submittal packages together for approval. Partial Submittal packages are unacceptable without the prior approval of the Owner. Submittals requiring resubmission shall be resubmitted as a complete package to provide a complete Submittal package for review and acceptance.

**GC-3.11.7** Regardless of how a Submittal is marked, the Design-Builder should not presume that the Owner has reviewed a Submittal in every aspect. Any corrections or modifications to a Submittal made by the Owner shall be deemed accepted by the Design-Builder, without change in GMP or Contract Time, unless the Design-Builder provides the Owner with written notice no later than seven days after delivery of a Submittal to the Owner and at least three working days before commencing any Work from such Submittal, whichever occurs earlier. The Design-Builder shall make all corrections requested by the Owner and, when requested by the Owner, provide a corrected Submittal without change in the GMP or Contract Time.

### **GC-3.12 USE OF SITE**

**GC-3.12.1** The Design-Builder shall confine operations at the site to areas permitted by law, ordinances, covenants, codes and restrictions, permits and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

**GC-3.12.2** Portions of the site may be occupied and in use during construction and the Design-Build Documents may identify specific phasing, sequencing, and safety measures beyond those specified in these revised General Conditions. The Design-Builder is responsible to coordinate its Work with any occupation or use at no increase to the Contact Sum or Contract Time and at no disruption to the occupancy or use.

### **GC-3.13 CUTTING AND PATCHING**

**GC-3.13.1** The Design-Builder shall be responsible for cutting, fitting or patching as required to complete the Work and make parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Design-Build Documents.

**GC-3.13.2** The Design-Builder shall not damage or endanger a portion of the Work or any fully or partially completed construction of the Owner or others by cutting, patching or otherwise altering such construction or by excavation. The Design-Builder shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

**GC-3.13.3** Existing structures and facilities, including but not limited to buildings, landscaping, utilities, topography, streets, curbs, and walks, that are damaged or removed due to excavations or other construction operations of the Design-Builder, shall be patched, repaired or replaced by the Design-Builder to the satisfaction of the Owner, the owner of such structures and facilities, and governmental authorities having jurisdiction. In the event the governmental authorities require that the repairing and patching be done with their own labor and/or materials, the Design-Builder shall abide by such regulations and it shall pay for such Work at no additional cost to the Owner.

### **GC-3.14 CLEANING UP**

**GC-3.14.1** The Design-Builder shall keep the premises and surrounding area, including roads, free from accumulation of waste materials or rubbish caused by operations under the Design-Build Documents. The Design-Builder shall furnish portable garbage and recycling containers on site for use by all trades. At the Owner's request and, in any event, at the completion of the Work, the Design-Builder shall remove from and about the Project waste materials, recycled materials, rubbish, the tools, construction equipment, machinery and surplus materials.

**GC-3.14.2** If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so, and the cost thereof shall be charged to the Design-Builder.

### **GC-3.15 ACCESS TO WORK**

**GC-3.15.1** The Design-Builder shall provide the Owner access to the Work in preparation and progress wherever located.

### **GC-3.16 ROYALTIES, PATENTS AND COPYRIGHTS**

**GC-3.16.1** The Design-Builder shall pay all royalties and license fees. The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall defend, indemnify, and hold the Owner harmless from loss on account thereof, including any expenses incurred in proving the right to indemnification and for any damages awarded. If the Owner is enjoined from the operation or use of the Work, or any part thereof, as a result of any patent or copyright suit, the Design-Builder shall at its sole cost take all steps as are necessary to procure the right to operate or use the Work, or shall modify or replace the Work at its own cost to avoid the infringement.

### **GC-3.17 INDEMNIFICATION**

**GC-3.17.1** To the fullest extent permitted by law and subject to the following conditions in this Section GC-3.17 including the subparagraphs below, the Design-Builder shall defend, indemnify and hold harmless the Owner, the Owner's Representative, the Owner's Project Manager, their board members, officials, employees, consultants, students, and volunteers, the consultants, and the agents and employees, successors and assigns of any of them (collectively, the "Indemnified Parties"), from and against claims, damages, losses (including loss of use) and expenses, direct and indirect, or consequential, including but not limited to costs, design professional and consultant fees, and attorneys' fees incurred on such claims and in proving the right to indemnification, arising out of or resulting from or connected to performance of the Work or the acts or omissions of the Design-Builder, the Design-Builder's Engineer or other design professional, a Subcontractor of any tier, their agents or anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable ("Indemnitor"). Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section.

**GC-3.17.1.1** The Design-Builder will fully defend, indemnify and hold harmless the Indemnified Parties for the sole negligence or willful misconduct of the Indemnitor.

**GC-3.17.1.2** If such claims are caused by or are resulting from the sole negligence of the Indemnified Parties, their agents or employees, then the Design-Builder shall have no duty to defend, indemnify, and hold harmless the Indemnified Parties.

**GC-3.17.1.3** If such claims are caused by or are resulting from the concurrent negligence of (i) the Indemnified Parties or the Indemnified Parties' agents or employees, and (ii) the Design-Builder or the Design-Builder's agents or employees, then the Design-Builder shall be obligated to defend, indemnify, and hold harmless the Indemnified only to the extent of the Indemnitor's negligence.

**GC-3.17.2** The Design-Builder agrees to being added by the Owner as a party to any arbitration or litigation with third parties in which the Owner alleges indemnification or contribution from the Design-Builder, any of its Subcontractors of any tier, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. The Design-Builder agrees that all of its Subcontractors of any tier will, in their subcontracts, similarly stipulate; in the event any does not, the Design-Builder shall be liable in place of such Subcontractor(s) of any tier. To the extent that any portion of this Section GC-3.17 is stricken by a court or arbitrator for any reason, all remaining provisions shall retain their vitality and effect. The obligations of the

Design-Builder under this Section GC-3.17 shall not be construed to negate, abridge, or otherwise reduce any other right or obligations of indemnity which otherwise exist as to any party or person described in this Section GC-3.17. To the extent the wording of this Section GC-3.17 would reduce or eliminate an available insurance coverage, this Section GC-3.17 shall be considered modified to the extent that such insurance coverage is not affected. This Section GC-3.17 shall survive completion, acceptance, final payment and termination of the Contract.

**GC-3.17.3** In claims against any person or entity indemnified under this Section GC-3.17 by an employee of the Design-Builder, the Design-Builder's Engineer or other design professional, a Subcontractor of any tier, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section GC-3.17 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design-Builder, the Design-Builder's Engineer or other design professional or a Subcontractor of any tier under workers' compensation acts, disability benefit acts or other employee benefit acts. After mutual negotiation of the parties, the Design-Builder waives immunity, but only as to the Owner and its employees, agents, and consultants, under Title 51 RCW, "Industrial Insurance." IF THE DESIGN-BUILDER DOES NOT AGREE WITH THIS WAIVER, IT MUST STRIKE THIS PROVISION, AND SUCH STRIKE MUST BE INITIALLY AS ACCEPTED BY THE OWNER, OR THE DESIGN-BUILDER WILL BE DEEMED TO HAVE NEGOTIATED AND WAIVED THIS IMMUNITY. The Design-Builder shall discuss, negotiate and require in each of its subcontracts a waiver of immunity under the Industrial Insurance Act, Title 51, RCW.

### **GC-3.18 PROJECT MANAGEMENT**

**GC-3.18.1** The Design-Builder shall employ a competent, experienced project manager, project engineer, superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Design-Builder, and communications given by or to the superintendent shall be as binding as if given by or to the Design-Builder. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

**GC-3.18.2** The superintendent, project manager and project engineer shall be employees of the Design-Builder. The superintendent and project engineer, as well as appropriate Subcontractor supervisory personnel (foreman level or above), shall remain on the Project site whenever Subcontractors of any tier are present and not less than eight hours per day, five days per week, unless the job is closed down due to a legal holiday, a general strike, conditions beyond the control of the Design-Builder, termination of the Design-Build Contract in accordance with the Design-Build Documents, or Substantial Completion is attained. After Substantial Completion, a qualified, experienced representative of the Design-Builder with authority to bind the Design-Builder shall remain on site full-time until Final Completion is attained. Similarly, appropriate Subcontractor supervisory personnel (foreman level or above) shall also be present at the Project site whenever Subcontractor Work of any tier is being performed whether before or after Substantial Completion. Neither the superintendent nor the Design-Builder's project manager or project engineer shall be changed without the approval of the Owner, which shall not be unreasonably withheld. Further, the Owner shall have the absolute right, in its discretion and at any time, to require the Design-Builder to replace the project manager, superintendent, and/or any of the various assistants at no change in the GMP or Contract Time. The Design-Builder's superintendent shall not be employed on any other project during the course of the Work.

**GC-3.18.3** Within seven days after award of the Contract, the Design-Builder shall provide to the Owner:

- .1 A chain-of-command organizational chart which includes all supervisory personnel, including the Design-Builder's Engineer, the project manager, the project engineer and the superintendent, assistant superintendent and lead foreman, that the Design-Builder intends to use on the Work. The chart shall specify any limits of authority for each person, including any limitation on his or her ability to speak for and bind the Design-Builder, as well as any limits on decision-making authority with respect to specific dollar values, Contract Time, and issues affecting quality of the Work.
- .2 A list of telephone numbers for all key personnel of the Design-Builder and its principal Subcontractors for purposes of contacting personnel after hours in the event of an emergency. The list shall be periodically updated as necessary to ensure the Owner has the most current information.

This chart and list shall be updated as personnel and Subcontractors are added to the Project.

**GC-3.18.4** The Design-Builder shall not employ an Engineer, superintendent, project manager, or project engineer to whom the Owner objects, regardless of when such objection is raised. If the Engineer, superintendent, project manager, or project engineer is replaced during the Project at the Owner's request, the replacement shall not impact the Contract Sum or Contract Time. The Design-Builder shall not change the Engineer, superintendent, project manager, or project engineer without the Owner's consent, which shall not unreasonably be withheld or delayed. The Design-Builder shall have available for Work on site experienced, skilled workers such as carpenters, laborers, and erection specialists, to perform Work as needed.

### **GC-3.19 PROJECT MEETINGS**

**GC-3.19.1** During the period commencing with the issuance of Notice to Proceed and ending with the date of Final Completion of the Work, the Design-Builder shall attend and participate in and ensure applicable design consultants and Subcontractors of any tier and suppliers attend and participate in:

1. A pre-design or "kickoff" meeting;
2. A preconstruction meeting;
3. Regular weekly Project status meetings during design and construction to discuss the Design-Builder's progress, to obtain necessary approvals, and generally to keep the Owner informed and involved in the progress of the Project;
4. During construction, monthly scheduling meetings, which shall occur by the twentieth day of each month and be attended by the Design-Builder and the Design-Builder's scheduler (the individual responsible for preparing the Design-Builder's CPM Project schedule and updates), shall be conducted to discuss (1) the current progress of the Work as compared to the most recent Project schedule, (2) necessary updates to the Project schedule to conform to the Design-Build Contract and the current status of the Work, all of which shall be required prior to the Design-Builder submitting its next Application for Payment to the Owner, and (3) other scheduling related issues; and
5. Other meetings scheduled from time to time by the Owner to review progress of the design and construction Work and other pertinent matters.

If requested, the Design-Builder shall prepare and submit three-week look-ahead schedules that relate to the overall Project schedule and show actual starts and finishes as compared to planned progress at the weekly Project meetings. At the monthly scheduling meeting, the Design-Builder shall submit an updated Design-Builder's Project schedule based on the baseline CPM schedule, which shall identify accurately the current status of the Work. As necessary, the Owner will maintain minutes of all meetings.

## **ARTICLE GC-4 DISPUTE RESOLUTION**

### **GC-4.1 CLAIMS AND DISPUTES**

**GC-4.1.1 Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of the requirements of the Design-Build Document, payment of money, extension of time, or other relief with respect to the Design-Build Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Design-Build Documents. Claims must be initiated in writing and include the information and substantiation required by the Design-Build Documents. The responsibility to substantiate a Claim shall rest with the party making the Claim. Neither a Request for Information, nor a Construction Change Directive, nor a Change Order, nor a Change Order proposal, nor a reservation of rights, nor minutes of a meeting, nor an Owner's request for or the Design-Builder's response to a Change Order proposal, nor a notice of a potential or future Claim shall constitute a Claim.

**GC-4.1.2 Continuing Performance.** Pending final resolution of a Claim, including the contractual dispute resolution process, the Design-Builder shall proceed diligently with performance of the Design-Build Contract and shall maintain the Design-Builder's Project schedule. The Owner shall also continue to make payments of undisputed amounts in accordance with the Design-Build Documents.

**GC-4.1.3 Claims for Concealed or Unknown Conditions.** If conditions are encountered at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in any soils reports or other reports available to the Design-Builder or otherwise known or available to the Design-Builder prior to commencement of construction or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of



the character provided for in the Design-Build Documents, then the Design-Builder shall give written notice to the Owner promptly before conditions are disturbed and in no event later than three days after first observance of the conditions. The Owner will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Design-Builder's cost or time of performance of any part of the Work, will propose an equitable adjustment in the GMP or Contract Time, or both, consistent with the requirements of the Design-Build Documents. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall so notify the Design-Builder in writing, stating the reasons. Any Claim of the Design-Builder arising from the Owner's determination shall be made in accordance with the dispute resolution procedure of the Design-Build Documents.

**GC-4.1.4 Claims for Additional Cost.** If the Design-Builder wishes to make a Claim for an increase in the GMP or Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work and must be made in accordance with this Article GC-4, or it will be waived. Prior notice is not required for Claims relating to an emergency endangering life or property.

**GC-4.1.5** If the Design-Builder believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Owner, (2) an order by the Owner to stop the Work where the Design-Builder was not at fault, (3) a written order for a Minor Change in the Work issued by the Owner, (4) failure of payment by the Owner, (5) termination or suspension of the Design-Build Contract by the Owner, or (6) any other cause that the Design-Builder believes to be the responsibility of the Owner, a Claim shall be filed in accordance with this Article GC-4.

**GC-4.1.6 Claims for Additional Time**

**GC-4.1.6.1** If the Design-Builder wishes to make Claim for an increase in the Contract Time, a written notice as provided herein shall be given and a written Claim as specified in the Design-Build Documents shall be submitted. The Design-Builder's Claim shall include an estimate of any time and its effect on the progress of the Work. In the case of a continuing delay, only one Claim is necessary. If the delay was not caused by the Owner, the Design-Builder, or a Subcontractor of any tier, or anyone acting on behalf of any of them, the Design-Builder is entitled only to an increase in the Contract Time in accordance with the Design-Build Documents but not a change in the GMP. If the delay was caused by the Design-Builder, a Subcontractor of any tier, or anyone acting on behalf of any of them, the Design-Builder is not entitled to an increase in the Contract Time or in the GMP or Contract Sum. The Design-Builder is only entitled to an increase in the GMP for material delays that affect the critical path and are caused by the Owner; any adjustment in the Contract Time shall be limited to the change in the actual critical path of the Project directly caused thereby. The Claim shall include any proposed changes in the Design-Builder's Project schedule or the Contract Time, a description of any event that could delay performance or supplying of any item of the Work, the expected duration of the delay, the anticipated effect of the delay on the Design-Builder's Project schedule, and the action being taken to address the delay.

**GC-4.1.7 Injury or Damage to Person or Property.** If the Design-Builder suffers injury or damage to person or property because of an alleged act or omission of the Owner or of others for whose acts the Owner may be legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the Owner within a reasonable time not exceeding twenty-one days after discovery. The notice shall provide sufficient detail to enable the Owner to investigate the matter. This Section GC-4.1.7 does not apply to Claims, damages for additional costs, acceleration or delay.

**GC-4.1.8 Unit Prices.** If unit prices are stated in the Design-Build Documents or subsequently agreed upon, they shall be complete and include all materials, equipment, labor, delivery, installations, any overhead and profit in excess of the Fee set forth in the Agreement, and any other costs or expenses in connection with, or incidental to, the performance of that portion of the Work to which such unit prices apply. If quantities originally contemplated by a unit price are materially changed (e.g., more than fifty percent (50%)) in a Change Order or Construction Change Directive so that application of the unit price to quantities of Work will cause substantial inequity to the Owner or Design-Builder, the applicable unit price but not the Contract Time may be equitably adjusted.

**GC-4.1.9 Claims for Consequential Damages.** The Design-Builder and the Owner waive Claims against each other for incidental, punitive, special and consequential damages arising out of or relating to the Design-Build Contract. This mutual waiver includes:

- .1 damages incurred by the Owner for rental expenses, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal and home office overhead and expenses, including without limitation the compensation of personnel stationed there, for losses of financing, business and reputation, for losses on other projects, for loss of profit, and for interest or financing costs.

This mutual waiver is also applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article GC-14. This waiver does not, however, limit the Design-Builder's obligation to indemnify the Owner for direct, indirect or consequential damages alleged by a third party.

Notwithstanding the forgoing, the Design-Builder shall be liable to the Owner for any liquidated damages specified in the Design-Build Contract.

**GC-4.1.9 False Claims.** The Design-Builder shall not make any negligent or fraudulent misrepresentations, concealments, errors, omissions, or inducements to the Owner in the formation or performance of this Agreement. If the Design-Builder or a Subcontractor or Sub-subcontractor submits a false or frivolous Claim to the Owner, which for purposes of this Section GC-4.1.9 is defined as a Claim based in whole or in part upon a materially incorrect fact, statement, representation, assertion, or record, the Owner shall be entitled to collect from the Design-Builder by offset or otherwise (without prejudice to any right or remedy of the Owner) any and all costs and expenses, including investigation and consultant costs, incurred by the Owner in investigating, responding to, and defending against such false or frivolous Claim.

#### **GC-4.2 RESOLUTION OF CLAIMS AND DISPUTES**

**GC-4.2.1** In an effort to reduce the incidence and costs to all parties of extended disputes, all Claims, direct or indirect, arising out of, or relating to, the Design-Build Contract or the breach thereof, except claims which have been waived under the terms of the Design-Build Contract, shall be decided exclusively by the following alternative dispute resolution procedure unless the parties mutually agree in writing otherwise. To the extent that the Owner and Design-Builder agree to a partnering process to help resolve disputes, such process shall be in addition to, and not in place of, the mandatory dispute resolution procedures in the Design-Build Documents.

**GC-4.2.2** Except for Claims requiring notice before proceeding with the affected Work as otherwise described in the Design-Build Documents, the Design-Builder shall submit a written notice of any Claim to the Owner within fourteen days after the occurrence of the event giving rise to such Claim and shall include a clear description of the event and an estimate of the probable effects, if any, on the GMP, Contract Sum, and Contract Time. The Design-Builder shall then submit a written Claim as provided herein within thirty days of submitting the notice. Claims shall include a clear description of the Claim, any proposed change to the GMP, Contract Sum (showing all components and calculations) and/or Contract Time (showing cause and analysis of the resultant delay in the critical path), and all data supporting the Claim, including without limitation a complete explanation as to why the relief sought is not within the scope of the Design-Build Documents. The Design-Builder may delay submitting data by fourteen days if it notifies the Owner in its Claim that substantial data must be assembled. Failure to properly submit the notice or Claim shall constitute waiver of the Claim. The Claim shall be deemed to include all changes, direct and indirect, in cost and in time to which the Design-Builder (and Subcontractors of any tier) is entitled and may not contain reservations of rights without the Owner's written approval; any such unapproved reservations of rights shall be without effect. Any claim of a Subcontractor of any tier may be brought only through, and after review by, the Design-Builder. For the purposes of calculating such time periods, an "event giving rise to a Claim," among other things, is not a Request for Information but rather is a response that the Design-Builder believes would change the GMP, Contract Sum and/or Contract Time. An "event giving rise to a Claim" is not the date that a Subcontractor of any tier submits a notice of Claim to the Design-Builder or to a Subcontractor, but is the occurrence of the event which gave rise to that particular claim.

**GC-4.2.3** All notices and Claims shall be made in writing as required by the Contract, and shall be addressed to the Owner's Designated Representative.

**GC-4.2.4** All notices and Claims shall be made in writing as required by the Design-Build Contract. Any notice of a Claim of the Design-Builder against the Owner and any Claim of the Design-Builder, whether under the Design-Build Contract or otherwise, must be made pursuant to and in strict accordance with the applicable provisions of the Design-Build Contract. No act, omission, or knowledge, actual or constructive, of the Owner shall in any way be deemed to be a waiver of the requirement for timely written notice and a timely written Claim unless the Owner and the Design-Builder sign an explicit, unequivocal written waiver approved by the Owner's Board of Directors. The fact that the Owner and the Design-Builder may consider, discuss, or negotiate a Claim that has or may have been defective or untimely under the Design-Build Contract shall not constitute a waiver of the provisions of the Design-Build Documents. The Design-Builder expressly acknowledges and agrees that the Design-Builder's failure to timely submit required notices and/or timely submit Claims has a substantial impact upon and prejudices the Owner, including but not limited to the inability to fully investigate or verify the Claim, mitigate damages, choose alternative options, adjust the budget, delete or modify the impacted Work, and/or monitor time, cost and quantities. For these and other reasons, the Design-Builder and Owner agree that the Owner is prejudiced by the Design-Builder's failure to timely submit notices and/or Claims and the Owner shall not be required to prove or establish actual prejudice to enforce the notice or Claim provisions of the Design-Build Contract.

**GC-4.2.5** At any time following the Owner's receipt of the written Claim, the Owner may require that an officer of the Design-Builder and the Owner's Designated Representative (both with authority to settle) meet, confer, and attempt to resolve the Claim. If the Claim is not resolved during such meeting, the Design-Builder may bring no litigation against the Owner unless the Claim is first subject to nonbinding mediation as described in this Article. This requirement cannot be waived except by an explicit written waiver signed by the Owner and the Design-Builder.

**GC-4.2.6** In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**GC-4.2.7** In the event that Design-Builder disagrees with anything required by any written order provided by the Owner, including any direction, instruction, or determination by the Owner, then the Design-Builder must provide a signed written notice of protest to the Owner's Designated Representative within seven days of the written order and shall supplement the written protest within fourteen days with a written statement and supporting documents describing the Design-Builder's reason for its disagreement. By not timely protesting and providing the supplement, the Design-Builder completely waives any claims for additional entitlement regarding the written order and completely waives any right to dispute the written order.

### **GC-4.3 MEDIATION**

**GC-4.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Design-Build Contract, except those waived, shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party. This requirement cannot be waived except by an explicit written waiver by both parties. If legal or equitable proceedings are improperly filed before the mediation, it shall be dismissed without prejudice unless the litigation is to perfect lien rights or protect against a statute of limitations or a statute of repose, in which case the litigation shall be stayed pending completion of the mediation plus another thirty days, unless stayed for a longer period by agreement of the parties or court order. If a Claim relates to or is the subject of a lien, the party asserting the Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to the mediation.

**GC-4.3.2** The parties shall endeavor to resolve any Claims by mediation. A request for mediation shall be filed in writing with the other party to the Design-Build Contract, and the parties shall promptly attempt to mutually agree upon a mediator. If the parties have not reached agreement on a mediator within thirty days of the request, either party may file the request with the American Arbitration Association or such other alternative dispute resolution service to which the parties mutually agree, with a copy to the other party, and the mediation shall then be administered by the American Arbitration Association (or other agreed service) in accordance with

its Construction Industry Mediation Procedures then currently in effect. A request for mediation shall be made in writing and delivered to the other party to the Design-Build Contract. Mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending the completion of mediation, unless stayed for a longer period by agreement of the parties or court order.

**GC-4.3.3** The parties to the mediation shall share the mediator's fee and any filing fees equally. The mediation shall be held in Seattle, Washington, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**GC-4.3.4** An officer of the Design-Builder and the Owner must attend the mediation session with authority to settle the Claim. To the extent there are other parties in interest, such as the Design-Builder's Engineer or Subcontractors of any tier, their representatives, also with authority to settle the Claim, shall also attend the mediation session. Unless the Owner and the Design-Builder mutually agree in writing otherwise, all unresolved Claims shall be considered at a single mediation session that shall occur after Substantial Completion but prior to Final Acceptance by the Owner.

#### **GC-4.4 LITIGATION**

**GC-4.4.1 Litigation.** The Design-Builder may bring no litigation on Claims unless such Claims have been properly raised and considered in the procedures of this Article GC-4. The Design-Builder shall have the burden to demonstrate in any litigation that it has complied with all requirements of this Article GC-4. All unresolved Claims of the Design-Builder shall be waived and released unless the Design-Builder has complied with the time limits of the Design-Build Documents, and litigation is served and filed within the earlier of (a) one hundred and twenty days after the Date of Substantial Completion approved in writing by the Owner or (b) sixty days after Final Acceptance. This requirement cannot be waived except by an explicit written waiver signed by the Owner and the Design-Builder. The pendency of mediation (the time period between receipt by the non-requesting party of a written mediation request and the date of mediation) shall toll these deadlines until the earlier of the mediator providing written notice to the parties of impasse or thirty days after the date of the mediation session. Neither the Design-Builder nor a Subcontractor of any tier, whether claiming under a bond or lien statute or otherwise, shall be entitled to attorneys' fees directly or indirectly from the Owner (but may recover attorneys' fees from the bond or statutory retainage fund to the extent allowable under law).

**GC-4.4.2** The Owner may join the Design-Builder as a party to any litigation or arbitration involving the alleged fault, responsibility, or breach of contract of the Design-Builder, Engineer, or a Subcontractor of any tier.

#### **ARTICLE GC-5 SUBCONTRACTORS**

**GC-5.1** By appropriate agreement, written where legally required for validity, the Design-Builder shall require the Design-Builder's Engineer and each Subcontractor, to the extent of the Work to be performed by the Engineer or Subcontractor, to be bound to the Design-Builder by the terms of the Design-Build Documents, and to assume toward the Design-Builder all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Design-Builder, by this Agreement, assumes toward the Owner. The Design-Builder shall provide to the Owner copies of the written agreements between the Design-Builder and the Engineer and any Subcontractor on request.

**GC-5.2** The Design-Builder shall schedule, supervise and coordinate the operations of all Subcontractors of any tier, including any suppliers of early procurement items and any assigned Subcontractors. No subcontracting of any of the Work shall relieve the Design-Builder from its responsibility for the performance of the Work in accordance with the Design-Build Documents or from its responsibility for full performance of the obligations of the Design-Build Documents. The Design-Builder is responsible for the timely, accurate and appropriate coordination by Subcontractors of the Work of lower-tier Subcontractors in accordance with the overall Work, including communications, meetings, drawings, illustrations, and other necessary activities required for the successful coordination of all trades, schedules, materials and workmanship.

**GC-5.3** The Design-Builder agrees to diligently, and using its best efforts, cause each Subcontractor of any tier to correct, at that Subcontractor's own expense, all Work performed by the Subcontractor of any tier that is defective in material or workmanship or that otherwise fails to conform to the Design-Build Documents, including all necessary removal, replacement and/or repair of any other portion of the Project which may be

damaged in removing, replacing or repairing any portion of the Project. If a Subcontractor of any tier defaults in its obligation promptly to correct any such deficiency, the Design-Builder shall remain responsible for correcting the deficiency.

**GC-5.4** The Design-Builder shall, and shall cause its Subcontractors of any tier to, give all required notices and comply with all applicable health and safety laws, rules, regulations, codes and lawful orders of public authorities and of quasi-governmental authorities relating to the Work, including without limitation all OSHA and State requirements, and the Design-Builder shall, and shall cause applicable Subcontractors of any tier to, indemnify, defend and hold harmless the Owner from and against any and all claims, liabilities, fines and attorneys' fees arising from any failure of the Design-Builder or a Subcontractor of any tier to have complied with any such requirements in any respect.

#### **GC-5.5 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

**GC-5.5.1** The Design-Builder assigns each agreement for a portion of the Work to the Owner, provided that the assignment is effective only after termination of the Design-Build Contract by the Owner for cause and only for those agreements which the Owner accepts by notifying the Design-Builder in writing. The assignment is also subject to the prior rights of the surety obligated under any bond relating to the Design-Build Documents. The Design-Builder shall remain responsible for payments to Subcontractors for Work and events occurring prior to the termination by the Owner and the Owner's acceptance of the assignment.

#### **GC-5.6 LIENS**

**GC-5.6.1** The Design-Builder shall promptly pay (and secure the discharge of any liens asserted by) all persons properly furnishing labor, equipment, materials or other items in connection with the performance of the Work (including, but not limited to, Subcontractors of any tier) to the extent that the Owner has paid the Design-Builder for such. The Design-Builder shall provide to the Owner such releases of liens and claims and other documents as the Owner may request from time to time to evidence such payment (and discharge). The Owner may, at its option, withhold payment, in whole or in part, to the Design-Builder until such documents are provided. The Design-Builder may provide other security acceptable to the Owner, such as a bond, in lieu of paying disputed liens or claims.

**GC-5.6.2** The Design-Builder shall defend, indemnify, and hold harmless the Owner from any liens, including all expenses and attorneys' fees, except to the extent a lien has been filed because of failure of payment by the Owner for the Work in any such lien.

#### **GC-5.7 REPLACEMENT OR SUBSTITUTIONS OF SUBCONTRACTORS OF ANY TIER**

**GC-5.7.1** Unless otherwise stated in the Design-Build Documents or the Program requirements, the Design-Builder will, prior to execution of the GMP Amendment, provide in writing to the Owner the names of all additional persons or entities not originally included in the Design-Builder's Proposal or substitutes for a person or entity (including those who are to provide design services or materials or equipment fabricated to a special design) proposed for each principal portion of the Work (i.e., at least two percent of the GMP), as well as the proprietary names and suppliers of principal items or systems of the Work. The Design-Builder shall state the Work category followed by the name of the Subcontractor and/or fabricator (or "Design-Builder" where the portion of the Work is by the Design-Builder's own forces). The list shall be updated promptly as part of the payment process if additional Subcontractors of any tier are engaged. No progress payment will become due until this information is provided. The Owner will promptly reply to the Design-Builder in writing stating whether or not the Owner has reasonable objection to any such proposed Subcontractor or other proposed person or entity. If the Owner makes a "reasonable objection" (as defined in Section 5.7.2), the Design-Builder shall replace the proposed Subcontractor or other proposed person or entity without change to the GMP or Contract Time. Such replacement shall not relieve the Design-Builder of its responsibility for the performance of the Work and compliance with the other requirements of the Design-Build Contract.

**GC-5.7.2** The Design-Builder shall not be required to contract with any person or entity to whom the Design-Builder objects. The Design-Builder shall also not contract with a proposed person or entity to which the Owner has made a reasonable and timely objection. As used in this Section GC-5.7, "reasonable objection" shall include but not be limited to:

- .1 a proposed Subcontractor of any tier differing from the person or entity listed with the Proposal,

- .2 lack of “responsibility” of the proposed Subcontractor, as defined in RCW 39.04.350, RCW 39.26.160(2), and/or the Design-Build Documents,
- .3 lack of qualification as required by the Design-Build Documents, or
- .4 material failure to perform (such as causing a material delay or submitting a claim that the Owner considers inappropriate) on one or more projects for the Owner within five years of execution of the Design-Build Contract.

**GC-5.7.3** If the Owner has an objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected person or entity was qualified, responsible and reasonably capable of performing the Work, the GMP and Contract Time shall be increased or decreased by the difference, if any, occasioned by the replacement, and an appropriate Change Order shall be issued before commencement of the Work by the substitute person or entity. No increase in the GMP or Contract Time shall be allowed for such change unless the Design-Builder acted promptly and responsively in submitting qualified names as required, and no increase in the GMP or Contract Time shall be allowed for such change if the Owner reasonably objects. A replacement shall not relieve the Design-Builder of its responsibility for the performance of the Work or compliance the other requirements of the Contract.

**GC-5.7.4** If the Owner reasonably concludes that any portion of the Work contracted by the Design-Builder is not being prosecuted in accordance with the Design-Build Documents, the Design-Builder shall, upon request of the Owner, remove the Subcontractor of any tier performing such Work. This removal shall not relieve the Design-Builder of its responsibility for the performance of the Work or complying with the other requirements of the Contract. The Owner shall not be obligated to request such a substitution.

## **ARTICLE GC-6 CONSTRUCTION BY THE OWNER OR BY SEPARATE CONTRACTORS**

### **GC-6.1 THE OWNER’S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

**GC-6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner’s own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. The Design-Builder shall cooperate with the Owner and separate contractors whose work might interfere with the Design-Builder’s Work. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner or separate contractor, the Design-Builder shall make such Claim as provided in Article GC-4, except that the Design-Builder shall have no claim for construction or operations to the extent disclosed in the Design-Build Documents.

**GC-6.1.2** The term “separate contractor” shall mean any contractor retained by the Owner pursuant to this Article.

**GC-6.1.3** The Owner shall provide for coordination of the activities of the Owner’s own forces and of each separate contractor with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing and coordinating their schedules. The Design-Builder shall make any revisions to the Project schedule deemed necessary after a joint review and mutual agreement. The schedule shall then constitute the schedule to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

### **GC-6.2 MUTUAL RESPONSIBILITY**

**GC-6.2.1** The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder’s construction and operations with theirs as required by the Design-Build Documents. If the Design-Builder receives items from a separate contractor or from the Owner for storage, erection or installation, the Design-Builder shall acknowledge receipt for items delivered, and thereafter will be held responsible for the care, storage and any necessary replacement of items received.

**GC-6.2.2** If part of the Design-Builder’s Work depends for proper execution or results upon design, construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, promptly report to the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the

Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

**GC-6.2.3** The Owner shall be reimbursed and indemnified by the Design-Builder for costs incurred by the Owner that are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Design-Builder. The Owner shall be responsible to the Design-Builder for costs incurred by the Design-Builder because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor. If such a separate contractor sues or initiates any proceeding against the Owner on account of any damages or delays alleged to have been caused by the Design-Builder, the Owner shall notify the Design-Builder. The Design-Builder shall defend all such proceedings at its own expense, and shall defend, indemnify and hold the Owner harmless from any damages awarded on such claims, including all attorneys' fees and other costs incurred by the Owner.

**GC-6.2.4** The Design-Builder shall promptly remedy damage caused by the Design-Builder to completed or partially completed construction or to property of the Owner or separate contractors.

**GC-6.2.5** The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Design-Builder in Article GC-3.

**GC-6.2.6** Should the Design-Builder or any of its Subcontractors of any tier cause loss or damage of any kind, or cause any delay, to any other contractor on the Project, the Design-Builder shall, upon due notice, promptly attempt to settle with such other contractor by agreement or otherwise to resolve the dispute.

### **GC-6.3 OWNER'S RIGHT TO CLEAN UP**

**GC-6.3.1** If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and allocate the cost among those responsible.

## **ARTICLE GC-7 CHANGES IN THE WORK**

### **GC-7.1 GENERAL**

**GC-7.1.1** Changes in the Work may be accomplished after execution of the Design-Build Contract, and without invalidating the Design-Build Contract, solely by Change Order (including Change Order proposals accepted in writing by the Owner), or Construction Change Directive or order for a Minor Change in the Work, subject to the limitations stated in this Article and elsewhere in the Design-Build Documents. A Change in the Work is a change in the scope of the Work described in the Design-Build Documents, which may involve a change in the GMP, Contract Sum and/or Contract Time if it is directed or approved by the Owner. A Minor Change in the Work does not involve adjustment in the GMP or Contract Sum, or an extension of the Contract Time, and is not inconsistent with the intent of the Design-Build Documents.

**GC-7.1.2** Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order, accepted Change Order proposal, order for a Minor Change in the Work, or Construction Change Directive.

### **GC-7.2 CHANGE ORDERS**

**GC-7.2.1** A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 the scope of a Change in the Work;
- .2 the amount of the adjustment, if any, in the GMP and/or Contract Sum; and
- .3 the extent of the adjustment, if any, in the Contract Time.

**GC-7.2.2** A Change Order shall be based upon agreement between the Owner and Design-Builder. A Construction Change Directive may be issued by the Owner with or without agreement by the Design-Builder.

### **GC-7.3 CHANGE ORDER PROPOSALS**

**GC-7.3.1** Before effectuating a Change in the Work, the Owner may request that the Design-Builder, through a Change Order proposal, propose the amount of change in the GMP and/or Contract Sum, if any, and the extent

of change in the Contract Time, if any, arising from the proposed Change in the Work. The Design-Builder shall submit its responsive proposal as soon as possible, and within seven days of the Owner's request, and shall in good faith specify the components and amounts by which the GMP, Contract Sum and/or Contract Time would change. Labor, materials and equipment shall be limited to and itemized in the manner described in Section GC-7.6 for the Design-Builder and major Subcontractors. If the Design-Builder fails to respond within this time, the Owner may withhold some or all of a progress payment otherwise due until the tardy proposal is received.

**GC-7.3.2** The Owner shall promptly review Change Order proposals. If the Owner explicitly accepts the proposal in writing, the Owner and the Design-Builder will be immediately bound to the terms of the proposal, the change will be included promptly in a future Change Order, and the change in the Work described in the proposal shall commence expeditiously. If the Owner does not agree with the proposed change in the GMP, Contract Sum and/or Contract Time, the parties shall attempt to seek agreement, and the Design-Builder shall resubmit the proposal in the agreed amount. If the proposed changed Work has not yet been performed, the Owner may at any time direct that the change not be performed. If the parties are unable to agree on the change in the GMP, Contract Sum and/or Contract Time but the Owner directs the Design-Builder to continue with the changed Work (or if the changed Work is already complete), then the Design-Builder may submit a notice and Claim pursuant to Article GC-4 and the changed Work shall be priced pursuant to Section GC-7.6. The Owner may confer directly with Subcontractors of any tier concerning any item proposed to the Owner under this Article.

**GC-7.3.3** The Design-Builder may initiate a Change Order proposal to document a proposed modification in the scope of the Work. A Change Order proposal is only to be utilized for proposed changes in the Work to be performed, not as a substitute for submitting a Claim or to track costs for Work already performed that the Design-Builder believes to be a change.

**GC-7.3.4** The Design-Builder shall control and maintain the Change Order proposal numbering system and keep a log of issued proposals with related description and status information. A Change Order proposal may or may not result in a change in the GMP, Contract Sum and/or Contract Time.

#### **GC-7.4 CONSTRUCTION CHANGE DIRECTIVES**

**GC-7.4.1** A Construction Change Directive is a written order signed by the Owner directing a Change in the Work prior to agreement on adjustment, if any, in the GMP, Contract Sum and/or Contract Time. The Owner may by Construction Change Directive, without invalidating the Design-Build Contract, order Changes in the Work within the general scope of the Design-Build Documents consisting of additions, deletions or other revisions, the GMP, Contract Sum, and/or Contract Time being adjusted accordingly. The Owner's use of Construction Change Directive does not constitute the Owner's agreement that the directive constitutes a change in the Work, the GMP, Contract Sum, and/or Contract Time.

**GC-7.4.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**GC-7.4.3** If the Construction Change Directive provides for an adjustment to the GMP or Contract Sum, the adjustment shall be based on one of the following methods or as mutually agreed by the Owner and Design-Builder:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Design-Build Documents or subsequently agreed upon, or equitably adjusted as provided in Section GC-4.1.8;
- .3 cost to be proposed by the Owner and determined in a manner agreed upon by the parties (with or without a cost limitation) and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Section GC-7.4.6.

**GC-7.4.4** Upon receipt of a Construction Change Directive, the Design-Builder shall promptly proceed with the Change in the Work involved. As soon as possible, and within seven days of receipt, the Design-Builder shall advise the Owner in writing of the Design-Builder's agreement or disagreement with the proposed adjustment or the method, if any, provided in the Construction Change Directive for determining the proposed adjustment



in the GMP, Contract Sum and/or Contract Time. The Design-Builder's response shall reasonably specify the reasons for its disagreement and the adjustment or other terms that it proposes. Without such timely written response, the Design-Builder shall conclusively be deemed to have accepted the Owner's adjustment. The Design-Builder's disagreement shall not relieve the Design-Builder of its obligation to comply promptly with any written notice issued by the Owner. The adjustment shall then be determined by the Owner in accordance with the provisions of the Design-Build Documents.

**GC-7.4.5** A Construction Change Directive signed by the Design-Builder indicates the agreement of the Design-Builder therewith, including any adjustment in the GMP, Contract Sum and/or Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be incorporated into a Change Order.

**GC-7.4.6** If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the GMP and/or Contract Sum, or if the cost is to be determined under Section GC-7.4.3.3, the Design-Builder shall keep and present, itemized in the categories of Section GC-7.6 and in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. In order to facilitate checking of such quotations, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by complete itemization of costs, including labor, equipment, material and subcontract costs, which shall be itemized in the manner described in Section GC-7.6. When major cost items arise from Subcontractors of any tier, these items shall also be similarly itemized. Approval may not be given without such itemization. Failure to provide data within twenty-one days of the Owner's request shall constitute waiver of any Claim for changes in the Contract Time, GMP, or Contract Sum. The total cost of any change, including a Claim under Article GC-4, shall be limited to the reasonable value, as determined by the Owner (subject to appeal through the dispute resolution procedure of Article GC-4), of the items in Section GC-7.6. Unless otherwise agreed in writing by the Owner, the cost shall not exceed the lower of the prevailing cost for the work in the locality of the Project or the cost of the work in the current edition of R.S. Means Company, Inc., Building Construction Cost Data as adjusted to local costs and conditions. The Owner may communicate directly with Subcontractors of any tier concerning costs of any Work included in a Construction Change Directive.

**GC-7.4.7** The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the GMP shall be the larger of (i) the reasonable and prevailing value of the deletion or change, (ii) the line item value in the schedule of values, or (iii) the actual net cost as confirmed by the Owner. When both additions and credits covering Work or substitutions are involved in a change, the fee for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**GC-7.4.8** Pending final determination of the total cost to the Owner of a Construction Change Directive, and provided that the Work to be performed under the Construction Change Directive is complete and any reservations of rights regarding the Construction Change Directive have been approved in writing by the Owner, the Design-Builder may request payment for amounts not in dispute in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs.

**GC-7.4.9** If the Design-Builder disagrees with the method or the adjustment in the Contract Time, the adjustment or method shall be referred to the Owner for determination, and any adjustment shall be limited to the change in the actual critical path of the Design-Builder's Project schedule directly caused thereby. Any adjustment in the Contract Time arising from a Change or a Claim shall be limited to the change in the actual critical path of the Design-Builder's Project schedule directly caused thereby.

**GC-7.4.10** When the Owner and Design-Builder reach agreement concerning the adjustments in the GMP, Contract Sum and/or Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

#### **GC-7.5 MINOR CHANGES IN THE WORK**

**GC-7.5.1** The Owner shall be entitled to order Minor Changes in the Work (sometimes called a Design Clarification) not involving adjustment in the GMP or Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Design-Builder Documents. Such changes will be effected by written order such as a Design Clarification or a Field Authorization and shall be binding on the Design-Builder. The

Design-Builder shall carry out such written orders promptly. If the Design-Builder believes that such order causes an increase in the GMP, Contract Sum and/or Contract Time, the Design-Builder must properly submit a notice and Claim.

#### **GC-7.6 PRICING COMPONENTS**

For the Design-Builder, the value of any changed Work or of any Claim for an increase or decrease in the GMP or Contract Sum shall be limited to the Cost of the Work and the Fee set forth in the Agreement. For Subcontractors of any tier, the total cost of any changed Work or of any other increase or decrease in the GMP or Contract Sum, including a Claim, shall be limited to the following components:

**GC-7.6.1 Direct labor costs:** These are the actual labor costs determined by the number of additional craft hours and the hourly costs necessary for the Subcontractor to perform the Change in the Work. The hourly cost shall be based upon the following:

- .1 Basic wages and fringe benefits: The hourly wage (without markup or labor burden) and fringe benefits paid by the 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, not to exceed that specified in the applicable "Intent to Pay Prevailing Wage" for the laborers, apprentices, journeymen, and foremen performing and/or directly supervising the Change in the Work on the site. The premium portion of overtime wages is not included unless pre-approved in writing by the Owner. Costs paid or incurred by the Design-Builder for vacations, per diem, subsistence, housing, travel, bonuses, stock options, or discretionary payments to employees are not separately reimbursable. The Subcontractors shall provide to the Owner copies of payroll records, including certified payroll statements upon the Owner's request.
- .2 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.
- .3 Federal insurances: Direct contributions required by the Federal Insurance Compensation Act (FICA); Federal Unemployment Tax Act (FUTA); and State Unemployment Compensation Act (SUCA).

**GC-7.6.2 Direct material costs:** This is an itemization, including material invoice, of the quantity and cost of additional materials reasonable and necessary to perform the Change in the Work. The unit cost shall be based upon the net cost after all discounts or rebates, freight costs, express charges, or special delivery costs, when applicable. No lump sum costs will be allowed except when approved in advance by the Owner. Discounts and rebates based on prompt payment need not be included, however, if the Design-Builder offered but the Owner declined the opportunity to take advantage of such discount or rebate.

**GC-7.6.3 Construction equipment usage costs:** This is an itemization of the actual length of time that construction equipment necessary and appropriate for the Work is used solely on the change at the site times the applicable rental cost as established by the lower of the local prevailing rate published in The Rental Rate Blue Book by EquipmentWatch, Atlanta, Georgia, as modified by the latest edition of the AGC/WSDOT agreement, or the actual rate paid to an unrelated third party 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. Mobilization and standby costs shall not be charged for equipment already present on the site. 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 are the maximum rates allowable for equipment of modern design and in good working condition and include full compensation for providing all fuel, oil, lubrication, repairs, maintenance, and insurance. No gas surcharges shall be charged. 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 (and standing by for longer than one week) on the changed Work shall be fifty percent (50%) of the rate established above. The total cost of rental allowed shall not exceed the cost of purchasing the equipment outright. 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 the equipment, which rate and use must be approved by the Owner prior to performing the Work.

**GC-7.6.4 Costs of Lower-Tier Subcontractors:** These are payments a Subcontractor makes to lower-tier Subcontractors for changed Work performed by such lower-tier Subcontractors. Such Subcontractors' cost of changed Work shall be determined in the same manner as prescribed in this Section GC-7.6.

**GC-7.6.5 Subcontractor's Fee:** This is the allowance for all combined overhead, profit and other costs, including all office, home office and site overhead (including project manager, project engineer, other engineers, project foreman, estimator, superintendent and their vehicles and clerical assistants), taxes (except for sales tax), employee per diem, subsistence and travel costs, warranty, safety costs, printing and copying, layout and control, quality control/assurance, purchasing, small or hand tool (a tool that costs \$500 or less and is normally provided by the performing contractor) or expendable charges, preparation of as-built drawings, impact on unchanged Work, Claim and Change preparation, and delay and impact costs of any kind (cumulative, ripple, or otherwise), added to the total cost to the Owner of any Change Order, Construction Change Directive, Claim or any other claim of any kind on this Project. No Fee shall be due, however, for direct settlements of Subcontractor claims by the Owner after Substantial Completion. The Fee shall be limited in all cases to the following schedule:

- .1 A Subcontractor of any tier shall receive 12% of the cost of any materials supplied or work properly performed by that Subcontractor's own forces.
- .2 A Subcontractor of any tier shall receive 6% of the amount owed directly to a lower-tier Subcontractor or supplier for materials supplied or for work properly performed by that Subcontractor or supplier.
- .3 A Subcontractor of any tier shall receive no more than 6% of any amounts owed to any remote, sub-tier subcontractors which are within the lines of contractual responsibility but not in privity of contract with such Subcontractor, for work performed by that remote, sub-tier subcontractor.
- .4 The cost to which this Fee is to be applied shall be determined in accordance with Sections GC-7.6.1 through GC-7.6.4. None of the fee percentages authorized in this Section GC-7.6.5 may be compounded with any other fee percentage or percentages authorized in this paragraph.

If a change in the Work involves both additive and deductive items, the appropriate Fee allowed will be added to the net difference of the items. If the changed Work is performed by a wholly-owned subsidiary or by a company with common ownership interests (i.e., at least 50% similar ownership) of the Design-Builder or any Subcontractor, then only the entity performing the changed Work may receive a Fee per the above schedule and the higher-tier company shall not be entitled to any Fee. The parties acknowledge that the fees listed in this Section GC-7.6.5 are higher than the fees and overhead normally included in determining the Subcontractor's subcontract price; that these higher percentages are a sufficient amount to compensate the Subcontractor for all effects and impacts of Changes in the Work; and that the resultant overcompensation of the Subcontractor for some Changes compensates the Subcontractor for any Changes for which the Subcontractor believes the percentage is otherwise insufficient. The Owner and Design-Builder agree that the cost of any changed Work or of any other increase or decrease in the GMP, including a Claim, shall not include, among other similar costs, consultant costs, attorneys' fees, or Claim preparation expenses, as such matters are not recoverable from the Owner.

**GC-7.6.6 Cost of change in insurance or bond premium.** The Design-Builder is not reimbursed for its insurance and bond costs as the Design-Builder is paid for such costs through the Design-Builder's Fee. For Subcontractors, such costs are added to the sum of the amounts specified in Sections GC-7.6.1 through GC-7.6.5 as follows:

- .1 Subcontractors' liability insurance: The actual cost (expressed as a percentage submitted with the certificate of insurance and subject to audit) of any changes in the Subcontractor's liability insurance arising directly from the changed Work; and
- .2 Public works bond: The actual cost (expressed as a percentage submitted with evidence of bondability and subject to audit) of the change in the Subcontractor's premium for any statutorily or contractually required performance and payment bond arising directly from the changed Work.

Upon request, the Subcontractor shall provide the Owner with supporting documentation from its insurer or surety of any claimed cost.

**GC-7.6.7** The costs reimbursable to Design-Builder and Subcontractors of any tier may not include, among other things, consultant costs, attorneys' fees, or Claim preparation expenses.

## **ARTICLE GC-8 TIME**

### **GC-8.1 DEFINITIONS**

**GC-8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Design-Build Documents for Substantial Completion of the Work.

**GC-8.1.2** Within seven days after execution of the Agreement, the Design-Builder shall submit certificates of insurance and all other documents required by the Design-Build Documents. The date of commencement of the Work shall be the date stated in the Agreement unless provision is made for the date to be fixed in a notice to proceed issued by the Owner. Work on the site may begin when applicable permits have been issued and the Design-Builder complies with the requirements of the notice to proceed.

**GC-8.1.3** The date of Substantial Completion (or a designated portion thereof) is the date determined by the Owner in accordance with the Design-Build Documents.

**GC-8.1.4** The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

### **GC-8.2 PROGRESS AND COMPLETION**

**GC-8.2.1** Time limits stated in the Design-Build Documents are of the essence of the Design-Build Contract. By executing the GMP Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

**GC-8.2.2** The Design-Builder shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence construction operations on the site or elsewhere prior to the effective date of insurance required by the Design-Build Documents to be provided by the Design-Builder and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Design-Build Documents or a notice to proceed given by the Owner, the Design-Builder shall notify the Owner in writing before commencing construction.

**GC-8.2.3** The Design-Builder shall proceed expeditiously and with adequate forces to achieve Substantial Completion within the Contract Time and Final Completion within sixty days thereafter.

**GC-8.2.4** THE TIMELY COMPLETION OF THIS PROJECT IS ESSENTIAL TO THE OWNER. The Owner will incur serious and substantial damages if Substantial Completion of the Work does not occur within the Contract Time; however, it would be difficult if not impossible to determine the amount of such damages, which could include, for example, personnel and overtime costs, transportation costs, governmental fees, storage costs, portable rental costs, loss of use, and lost opportunities. Consequently, provisions for liquidated damages as a reasonable estimate of loss are included in the Design-Build Documents. The Owner's right to liquidated damages is not affected by partial completion, occupancy, or beneficial occupancy. The Design-Builder shall provide sufficient forces, construction plant and equipment, and shall work such hours, including night shifts, overtime operations and weekend and holiday work as may be necessary to insure the production of the Work in accordance with the date of Substantial Completion and the approved Project schedule. If the Design-Builder fails to perform in a timely manner in accordance with the Design-Build Documents and, through the fault of the Design-Builder or Subcontractor(s) of any tier fails to meet or maintain the Project schedule, the Design-Builder shall take such steps as may be necessary to immediately improve its progress by increasing the number of workers, shifts, overtime operations or days of work or other means and methods, all without additional cost to the Owner.

**GC-8.2.5** Any provisions in the Contract for liquidated damages shall not relieve or release the Design-Builder from liability for any and all damages suffered by the Owner due to other breaches of the Contract or suffered by separate contractors.

### **GC-8.3 DELAYS AND EXTENSIONS OF TIME**

**GC-8.3.1** If the Design-Builder is delayed at any time in the commencement or progress of the Work (1) by an act or neglect of the Owner or of a separate contractor employed by the Owner, (2) by changes ordered in the Work only to the extent reflected in approved Change Orders providing for specific extensions of the Contract Time, (3) by unanticipated, abnormal weather (see Section GC-8.3.4), (4) by fire, unusual and unanticipated governmental delays (including permit delays not caused by the Owner), unavoidable casualties or other causes beyond the Design-Builder's control, (5) by delay authorized by the Owner pending mediation and litigation, or (6) by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for a reasonable time as determined by the actual change to the critical path of the Project schedule directly caused by the delay event. In no event, however, shall the Design-Builder be entitled to any extension of time absent proof of (1) delay to an activity on the critical path of the Project schedule, so as to actually delay the Project completion beyond the date of Substantial Completion or (2) delay transforming an activity into the critical path of the Project schedule, so as to actually delay the Project completion beyond the date of Substantial Completion.

**GC-8.3.2** Claims relating to time shall be made in accordance with the provisions of Article GC-4. That the Owner may be aware of the occurrence or existence of a delay through means other than the Design-Builder's written notification shall not constitute a waiver of the requirement that the Design-Builder provide timely and written notice and/or Claim.

**GC-8.3.3** This Section GC-8.3 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

- .1** If the delay was not caused by the Owner, the Design-Builder, a Subcontractor of any tier, or the Engineer, or anyone acting on behalf of any of them, the Design-Builder is entitled only to an increase in the Contract Time in accordance with the Design-Build Documents but not an increase in the GMP. If the delay was caused by the Design-Builder, a Subcontractor of any tier, or anyone acting on behalf of any of them, the Design-Builder is not entitled to an increase in the Contract Time or in the GMP. The Design-Builder shall be entitled to a change in the GMP only if the delay was caused by the Owner or anyone acting on behalf of it. The Design-Builder shall not recover damages, an equitable adjustment or an increase in the GMP or Contract Time from the Owner where the Design-Builder could have reasonably avoided the delay by the exercise of due diligence. The Design-Builder shall be able to recover an increase in the GMP, provided it is consistent with the terms of the Design-Build Documents, only if the delay was in the critical path, could not have reasonably been avoided, was unreasonable and was caused by the Owner or anyone acting on its behalf as permitted under the Design-Build Documents. The Owner is not obligated directly or indirectly for damages, an equitable adjustment, or an increase in the GMP for any delay suffered by a Subcontractor of any tier that does not increase the Contract Time.
- .2** In the event the Design-Builder is held to be entitled to damages from the Owner for delay beyond the payment permitted in Section GC-7.6.5, it is agreed that the total combined damages awardable against the Owner for each day of delay shall be limited to the original Design-Builder's general conditions costs divided by the total number of days of Contract Time. For any impact and delay costs to Subcontractors for which the Owner is responsible under the Design-Build Documents, damages awardable against the Owner shall be limited to the Subcontractor's project management, superintendence and administrative staff located and working directly at the Project site and only for the extended duration that such staff are required to work beyond the original required date of Substantial Completion and ending no later than the date at which Substantial Completion is achieved, with no Subcontractor Fee or overhead added to such costs. By submitting its proposal and by signing the GMP Amendment, the Design-Builder represents that it would be difficult if not impossible to determine the amount of any delay damages due it, that it has taken this provision for liquidated damages into consideration in its bid, and that these liquidated damages are a reasonable estimate of its loss. No damages will be allowed for any time prior to seven days before receipt of written notice of the Claim of the delay pursuant to Article 4.
- .3** The Design-Builder shall not in any event be entitled to damages arising out of actual or alleged loss of efficiency; morale, fatigue, attitude, or labor rhythm; constructive acceleration; home office overhead; expectant underrun; trade stacking; reassignment of workers; rescheduling of work, schedule compression; concurrent operations; dilution of supervision; learning curve; beneficial or

joint occupancy; logistics; ripple; season change; extended or expanded overhead or general conditions; profit upon damages for delay; impact damages; cumulative impacts; or similar damages. Any effect that such alleged costs may have upon the Design-Builder or its Subcontractors of any tier is fully compensated through the percentage Fee on Change Orders paid through Section 7.5.6 and any delay damages paid hereunder.

- .4 The Design-Builder shall not be entitled to any adjustment in the Contract Time or the GMP, or to any additional payment of any sort, by reason of the loss or the use of any float time, including time not on the critical path or time between the Design-Builder's anticipated completion date and the end of the Contract Time, whether or not the float time is described as such on the Design-Builder's Construction Schedule.

**GC-8.3.4** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction, and that the Work was on schedule (or not behind schedule through the fault of the Design-Builder) at the time the adverse weather conditions occurred. Neither the Contract Time nor the GMP will be adjusted for normal inclement weather. The Design-Builder shall be entitled to a change in the Contract Time only (but not a change in the GMP) if the Design-Builder can substantiate to the reasonable satisfaction of the Owner that there was materially greater than normal inclement weather considering the full term of the Contract Time and using a ten-year average of accumulated record mean values from climatological data compiled by the U.S. Department of Commerce National Oceanic and Atmospheric Administration for the locale closest to the Project, and that the alleged abnormal inclement weather actually extended the critical path of the Work. The change in Contract Time shall be provisional until Substantial Completion has been achieved, at which time the change in the Contract Time shall be the extent to which the total net accumulated number of calendar days lost due to inclement weather from commencement of the Work until Substantial Completion exceeds the total net accumulated number to be expected for the same period from the aforesaid data.

## **ARTICLE GC-9 PAYMENTS AND COMPLETION**

### **GC-9.1 CONTRACT SUM**

**GC-9.1.1** The Contract Sum is stated in the Design-Build Documents and, including authorized adjustments, is the total amount payable by the Owner to the Design-Builder for performance of the Work under the Design-Build Documents. The Contract Sum to be paid by the Owner shall not exceed the GMP.

### **GC-9.2 SCHEDULE OF VALUES**

**GC-9.2.1** At least fourteen days before the first Application for Payment, the Design-Builder shall submit to the Owner an initial schedule of values allocated to various portions of the Work prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. At a minimum, the Work shall be itemized by section or system; separate values for design, labor, materials and equipment shall be provided; and line items on the schedule of values shall be tied to the Design-Builder's Project schedule. Quantities shall be provided for each section or system of the Work. If an example of the schedule of values is included in the Design-Build Documents, the Design-Builder shall itemize and prepare the schedule of values as indicated by the example with respect to form, content, and level of detail. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. The schedule of values may be updated periodically to reflect changes in the allocation of the estimated Contract Sum.

### **GC-9.3 APPLICATIONS FOR PAYMENT**

**GC-9.3.1** Progress payments will be made monthly for Work duly approved and performed during the calendar month preceding the application. These amounts are paid in trust to the Design-Builder for distribution to Subcontractors to the extent and in accordance with the approved Application for Payment.

### **GC-9.3.2 PAYMENT REQUESTS**

**GC-9.3.2.1 Draft Application.** At the last scheduled meeting of each month, the Design-Builder shall submit to the Owner a report on the current progress of the Work as compared to the Design-Builder's Construction Schedule, and a draft, itemized application for payment for Work performed during that calendar month on a form supplied or approved by the Owner. This shall not constitute a payment request. The Design-Builder and the Owner shall confer prior to the last working day of the month regarding the current progress of the Work and the amount of payment to which the Design-Builder is entitled. The Owner may request the

Design-Builder to provide data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from Subcontractors of any tier, lien releases, and certified payroll records, and reflecting retainage as provided elsewhere in the Contract Documents. The Design-Builder shall not be entitled to make a payment request, nor is any payment due the Design-Builder, until such data is furnished.

**GC-9.3.2.2 Payment Request.** After the Design-Builder and the Owner have met and conferred regarding the updated draft application, and the Design-Builder has furnished all progress information required and all data requested by the Owner under Section GC-9.3.2.1 above, and the Design-Builder has made available current as-built drawings, the Design-Builder may submit a payment request by the last working day of the month following the meeting in the agreed-upon amount, in the form of a notarized, itemized Application for Payment for Work properly performed during that calendar month on a form supplied or approved by the Owner, along with a lien release on a form supplied or approved by the Owner from each Subcontractor for whose Work the Owner paid the Design-Builder for the prior month. The Application shall also state that prevailing wages have been paid in accordance with the prefiled statements of intent to pay prevailing wages on file with the Owner and that all payments due Subcontractors of any tier from the Owner's payment the prior month have been made. The submission of this Application constitutes a certification that the Work is current on the Design-Builder's Construction Schedule, unless otherwise noted on the application. If required by the Owner, the Design-Builder shall submit proof of payment to Subcontractors for prior months, such as lien releases or cancelled checks. A payment request shall not be valid unless it complies with the requirements of the Contract Documents.

**GC-9.3.2.3 Disputed Amounts.** If the Design-Builder believes it is entitled to payment for Work performed during the calendar month in addition to the agreed-upon amount, the Design-Builder may submit to the Owner along with the approved payment request a separate written payment request specifying the exact additional amount due, the category in the schedule of values in which the payment is due, the specific Work for which the additional amount is due, and why the additional payment is due. Furthermore, for the submittal to be considered, the Design-Builder and all Subcontractors shall file with the Owner by the same date certified copies of all payroll records pursuant to WAC 296-127-320 relating to the additional amount claimed due.

**GC-9.3.2.4 Validity of Payment Requests.** A payment request shall not be valid unless it complies with the requirements of the Design-Build Documents. If a separate payment request concerning a disputed amount does not comply with the requirements of the Contract, the Owner will provide a written statement to the Design-Builder.

**GC-9.3.2.5** The Application shall state that all payments due Subcontractors of any tier from the Owner's prior payment have been made. No payment request shall include amounts the Design-Builder does not intend to pay to a Subcontractor because of a dispute or other reason. If, after making a request for payment but before paying a Subcontractor for its performance covered by the payment request, the Design-Builder discovers that part or all of the payment otherwise due to the Subcontractor is subject to withholding from the Subcontractor under the subcontract (such as for unsatisfactory performance or non-payment of lower tier Subcontractors), the Design-Builder may withhold the amount as allowed under the subcontract, but it shall give the Subcontractor and the Owner written notice of the remedial actions that must be taken as soon as practicable after determining the cause for the withholding but before the due date for payment to the Subcontractor, and pay the Subcontractor within eight working days after the Subcontractor satisfactorily completes the remedial action identified in the notice.

**GC-9.3.2.6** Unless otherwise provided in the Design-Build Documents, payments shall be made on account of Project-specific materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in writing and in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment and otherwise to protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site.

**GC-9.3.3** The Design-Builder warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an

Application for Payment, all Work for which Applications for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Subcontractors of any tier, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### **GC-9.3.4 Retainage.**

**GC-9.3.4.1** In accordance with RCW 60.28, a sum equal to five percent (5%) of each approved Application for Payment shall be retained. The Design-Builder shall exercise, in writing, one of the options listed below:

- .1 Retained percentages will be retained in a fund by the Owner not subject to release until sixty days following the Final Acceptance of the Work as completed; or
- .2 Deposited by the Owner in an interest-bearing account in a bank, mutual savings bank or savings and loan association and not subject to release until sixty days following Final Acceptance of the Work as completed; or
- .3 Placed in escrow with a bank or trust company and not subject to release until sixty days following the Final Acceptance of the Work as completed.

If the Design-Builder provides a bond in place of retainage, it shall be in an amount equal to five percent (5%) of the estimated Contract Sum plus Change Orders. The minimum requirements for the bond are that it must be on a form acceptable to the Owner, with an A.M. Best rating of "A minus" or better and a financial rating of no less than "VII," signed by a surety registered by the Washington State Insurance Commissioner and on the currently authorized insurance list published by the Washington State Insurance Commissioner; additional requirements as established by the Owner may be applied.

**GC-9.3.4.2** The Design-Builder or a Subcontractor of any tier may withhold payment of not more than five percent (5%) as retainage from the monies earned by any Subcontractor or Subcontractor of any tier, provided that the Design-Builder pays interest to the Subcontractor at the same interest rate it receives, if any, from its reserved funds. If requested by the Owner, the Design-Builder shall specify the amount of retainage and interest due a Subcontractor.

#### **GC-9.4 ACKNOWLEDGEMENT OF APPLICATION FOR PAYMENT**

**GC-9.4.1** The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, acknowledge to the Design-Builder receipt of the Design-Builder's Application for Payment indicating the amount the Owner has determined to be properly due and, if applicable, the reasons for withholding payment in whole or in part.

#### **GC-9.5 DECISIONS TO WITHHOLD PAYMENT**

**GC-9.5.1** The Owner may withhold a payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Application for Payment or that the quality of Work is not in accordance with the Design-Build Documents. The Owner may also withhold a payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible, including but not limited to loss resulting from acts and omissions, because of the following:

- .1 defective Work not remedied;
- .2 third-party claims (except where an insurer has unconditionally accepted coverage) filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to Subcontractors or for design services labor, materials or equipment, or for failure of such Subcontractors to make payments properly to Subcontractors of any tier;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the GMP;
- .5 damage to the Owner or a separate contractor (except where an insurer has unconditionally accepted coverage);
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;



- .7 unsatisfactory prosecution of the Work by the Design-Builder, including but not limited to failure to carry out the Work in accordance with the Design-Build Documents;
- .8 delay by the Design-Builder and/or its Subcontractor(s) of any tier, or failure to comply with the Design-Builder's Project schedule requirements, or the imposition of liquidated damages;
- .9 failure to submit any documents required by statute;
- .10 failure to submit a properly updated Project schedule;
- .11 failure to comply with a requirement of the Design-Build Documents in which the Owner has reserved the right to withhold payment;
- .12 damages for failure to meet timely and proper completion of the Contract, including the assessment of liquidated damages;
- .13 failure to properly maintain as-built records;
- .14 failure to properly submit daily construction records; or
- .15 failure to properly submit certified payrolls.

**GC-9.5.2** When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld.

**GC-9.5.3** Pursuant to RCW 39.12, "Prevailing Wages on Public Works," the Design-Builder will not receive any payment until the Design-Builder and all Subcontractors of any tier for whom payment is sought have submitted State-approved "Statements of Intent to Pay Prevailing Wage" to the Owner. The statement must have the approval of the Industrial Statistician of the Department of Labor and Industries before it is submitted to the Owner. The statement must include the Design-Builder's registration number, the number of workers in each trade classification, and the applicable wage rate for each trade listed. The Design-Builder agrees to provide each Subcontractor of any tier with a schedule of applicable prevailing wage rates. The Design-Builder and the respective Subcontractors of any tier shall pay all fees required by the Department of Labor and Industries, including fees for the approval of the "Statement of Intent to Pay Prevailing Wages." Approved copies of the "Statement of Intent to Pay Prevailing Wages" must be posted where workers can easily read them.

#### **GC-9.6 PROGRESS PAYMENTS**

**GC-9.6.1** After the Owner has issued a written acknowledgement of receipt of the Design-Builder's Application for Payment, and it has been approved by the Owner, the Owner shall make payment of the approved amount within thirty days of its receipt and approval of the Design-Builder's Application for Payment; any payments made by or through the Office of the Superintendent of Public Instruction shall be made in accordance with policies, procedures, and forms required by that office. The Owner shall be entitled to withhold payment to the extent provided by the Design-Build Documents, notwithstanding the issuance of an acknowledgement of Application for Payment.

**GC-9.6.2** The Design-Builder shall promptly pay the Design-Builder's Engineer, each design professional and other consultants retained directly by the Design-Builder, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of each such party's respective portion of the Work, the amount to which each such party is entitled. If the Design-Builder does not receive payment for any cause that is not the fault of the Design-Builder's Engineer, a design professional and other particular consultant but does receive payment for services performed by that entity, the Design-Builder shall pay that entity in accordance with its contract for its satisfactorily completed services, less the retained percentage.

**GC-9.6.3** The Design-Builder shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of such Subcontractor's portion of the Work, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the Subcontractor's portion of the Work. The Design-Builder shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Subcontractors in a similar manner. If the Design-Builder does not receive payment for any cause that is not the fault of a particular Subcontractor but does receive payment for materials supplied or Work performed by that Subcontractor, the Design-Builder shall pay that Subcontractor in accordance with its subcontract for its satisfactorily completed Work, less the retained percentage. The Owner will, on request, provide to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the

Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Subcontractor.

**GC-9.6.4** The Owner shall have no obligation to pay or to see to the payment of money to a Subcontractor of any tier except as may otherwise be required by law. However, the Owner may, at its sole option, issue joint checks to the Design-Builder and to any Subcontractor or material or equipment suppliers to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Design-Builder will reflect such payment on the next Application for Payment.

**GC-9.6.5** A progress payment, or partial or entire use or occupancy of the Project by the Owner, shall not constitute acceptance of Work.

**GC-9.6.6** Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the GMP, payments received by the Design-Builder for Work properly performed by Subcontractors of any tier and suppliers shall be held by the Design-Builder in trust for those Subcontractors or suppliers who performed Work or provided materials, or both, under contract with the Design-Builder for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account.

#### **GC-9.7 FAILURE OF PAYMENT**

**GC-9.7.1** If for reasons other than those enumerated in Section GC-9.5.1, the Owner improperly does not issue a payment for undisputed amounts within fifteen days of the time period required by the Agreement following a timely Application for Payment for amounts properly due and owing to the Design-Builder, then the Design-Builder may, upon seven additional days' written notice to the Owner, during which time the Design-Builder shall continue contract performance and the Owner may cure such lack of payment at any time, stop the Work until payment of the amount owing has been received. The Design-Builder may not stop the Work if the Owner withholds payments pursuant to Section GC-9.5.1. The Contract Time shall be extended appropriately and the GMP shall be increased by the amount of the Design-Builder's reasonable costs of shutdown, delay and start-up.

#### **GC-9.8 SUBSTANTIAL COMPLETION**

**GC-9.8.1.1** Substantial Completion is the stage in the progress of the Work when the Work, or designated portion thereof approved by the Owner, is sufficiently complete in accordance with the Design-Build Documents so that the Owner can fully occupy or utilize the Work, or the designated portion thereof, for its intended use, including FF&E and student, teacher, and staff occupancy. The fact that the Owner may occupy the Work or a designated portion thereof does not indicate that the Work is acceptable in whole or in part. All Work other than incidental corrective or punch list Work and final cleaning shall be completed, including but not limited to the following:

- (1) Obtain applicable occupancy permits, including fire/life safety systems and health department approval, elevator permits, and similar approvals or certificates by governing authorities and franchised services, assuring the Owner's full access and use of completed Work.
- (2) Submit the Design-Builder's punch list of items to be completed or corrected and written request for inspection.
- (3) Complete final start-up, testing, and commence instruction and training sessions on all major building systems including HVAC and controls, intercom, data communications, fire alarm, telephone, fire sprinkler, security and clocks.
- (4) Make final changeover of locks and transmit new keys to the Owner, and advise the Owner of the changeover in security provisions.
- (5) Discontinue or change over and remove temporary facilities and services from the Project site.
- (6) Advise the Owner on coordination of shifting insurance coverages, including proof of extended coverages as required.
- (7) Complete final cleaning.

The Work is not Substantially Complete unless the Owner reasonably judge that the Work can achieve Final Completion within sixty days (or such other period of time as is specified in the Design-Build Documents), appropriate cleaning has occurred, all designated systems and parts are usable, including the HVAC system (at least one week of trend logs shall be provided and the HVAC system shall be balanced), utilities are connected

and operating normally and training sessions have occurred, all required permits and approvals have been issued, O & M manuals have been submitted for review, and the Work is accessible by normal vehicular and pedestrian traffic routes. The fact that the Owner may occupy the Work or a designated portion thereof does not indicate that the Work is Substantially Complete or is acceptable in whole or in part, nor does such occupation toll or change any liquidated damages due the Owner.

**GC-9.8.1.2 Date of Commissioning of Selected Equipment and Systems.** The equipment and systems so designated in the Contract Documents are considered "Selected Equipment and Systems." When the Design-Builder considers that all Selected Equipment and Systems are complete, fully functional, ready for normal operation and functional performance testing, and all pre-commissioning checklists are completed, the Design-Builder shall so notify the Owner in writing a minimum of forty (40) days prior to the Date of Substantial Completion (or such other date as may be established in the Contract Documents). A reasonable period shall be allowed for the Owner and commissioning agent to schedule and observe the functional performance tests identified in the Contract Documents. If the inspection discloses that the Selected Equipment and Systems are not Substantially Complete or that any item is not in accordance with the requirements of the Contract Documents, the Design-Builder shall expeditiously, and before the Date of Commissioning, complete or correct such item upon notification by the Owner or commissioning agent. The Design-Builder shall then submit a request for another inspection to determine completion of those Selected Equipment and Systems and pay the costs associated with the re-inspection, including fees of the Owner, commissioning agent and their consultants. When all the Selected Equipment and Systems are complete, the Owner's commissioning agent will notify the Owner in writing, which shall establish the Date of Commissioning. Training of Owner personnel shall begin immediately after the Date of Commissioning and shall be conducted by appropriate Subcontractor personnel on site who are knowledgeable with the construction and operation of each system prior to departure of the installing entity from the site. Warranties on any Selected Equipment and Systems required by the Contract Documents shall commence on the Date of Substantial Completion, unless otherwise provided, but the Design-Builder shall retain the responsibility to maintain the system until Final Completion.

**GC-9.8.2** When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive punch list of items to be completed or corrected prior to final payment. The Design-Builder shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

**GC-9.8.3** Upon receipt of the Design-Builder's punch list, and upon verification that all permits, approvals, testing, training and other submittals and administrative actions required under the Design-Build Documents for obtaining Substantial Completion have been satisfied, the Owner shall make an inspection to determine whether the Work or designated portion thereof has achieved Substantial Completion. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, that is not substantially complete, the Design-Builder shall complete or correct such item. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine whether the Design-Builder's Work has achieved Substantial Completion. If the Owner determines that the Work or designated portion has not achieved Substantial Completion, the Design-Builder shall expeditiously complete the Work or designated portion, again request an inspection, and pay the costs associated with the reinspection. Any items not listed by the Owner but required or necessary for Final Completion of the Contract shall be supplied and installed by the Design-Builder at no change to the GMP, notwithstanding their not being recorded on the list.

**GC-9.8.4** In the event of a dispute regarding whether the Design-Builder's Work has achieved Substantial Completion, the dispute shall be resolved pursuant to Article GC-4.

**GC-9.8.5** When the Work or designated portion thereof is substantially complete, the Design-Builder shall prepare for the Owner's signature an acknowledgement of Substantial Completion which, when signed by the Owner, shall establish (1) the date of Substantial Completion of the Work, (2) responsibilities between the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and (3) the time within which the Design-Builder shall finish all items on the list accompanying the acknowledgement. When the Owner's inspection discloses that the Work or a designated portion thereof has achieved Substantial Completion, the Owner shall sign the acknowledgement of Substantial Completion. Warranties required by the

Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof except that warranties for HVAC equipment shall commence with acceptance of the Commissioning Report by the Owner's Board of Directors. The Design-Builder shall attach and submit with the executed acknowledgement of Substantial Completion a written list of each outstanding and unresolved Claim; any Claim not so submitted and identified, other than retainage and the undisputed balance of the Contract Sum, shall be deemed waived and abandoned. If the Owner determines that the Work or designated portion is not substantially complete, the Design-Builder shall expeditiously complete the Work or designated portion, again request an inspection, and pay the costs associated with the reinspection, including design and consultant fees.

**GC-9.8.6** Upon execution of the acknowledgement of Substantial Completion, and upon the Design-Builder's Application for Payment and consent of surety, if any, the Owner shall make payment as provided in the Design-Build Documents. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents. No further payment will be due or owing until the payment following Final Completion.

**GC-9.8.7** The Design-Builder shall prepare, continue to monitor with the Owner, and cause to be completed, all punch lists with respect to the activity of each Subcontractor of any tier and report weekly to the Owner on outstanding punch list items. Beginning ninety days before the scheduled date of Substantial Completion, the Design-Builder shall prepare and submit to the Owner weekly reports to identify items to be completed and recommendations for effectuating the earliest possible completion. The Design-Builder shall include this report as a schedule item on the Project schedule.

#### **GC-9.9 PARTIAL OCCUPANCY OR USE**

**GC-9.9.1** The Owner may, upon written notice to the Design-Builder, take possession of, operate, occupy or use any completed or partially completed portion of the Work at any stage and time, so long as such operation, occupancy, or use does not unreasonably interfere with the Work. The Design-Builder will cooperate with such occupancy and use, including without limitation any FF&E, student, teacher or staff move-in, provided it does not occur until authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete. Unless otherwise agreed in writing, such possession, use or operation shall not be deemed an acceptance of any portion of the Work, nor accelerate the time for any payment to the Design-Builder under the Design-Build Contract, nor prejudice any rights of the Owner under the Design-Build Contract or under any insurance, bond, guaranty or other requirement of the Contract, nor relieve the Design-Builder of the risk of loss or any of its obligations under the Design-Build Contract, nor establish a Date of Substantial or Final Completion, nor establish a date for termination or partial termination of the running of liquidated damages, nor constitute a waiver of any Owner claims. If the Design-Builder fails to achieve Substantial Completion of the Work within the Contract Time, or fails to achieve Final Completion of the Work within sixty days of Substantial Completion (or such other period of time as is specified in the Design-Build Documents), the Owner may take possession of, use or operate all or any part of the Work without an increase in the GMP or the Contract Time on account of such possession or use. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section GC-9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld.

**GC-9.9.2** Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

**GC-9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

#### **GC-9.10 FINAL COMPLETION, FINAL ACCEPTANCE, AND FINAL PAYMENT**

##### **GC-9.10.1 FINAL COMPLETION**

**GC-9.10.1.1** The Design-Builder shall cause punch list items to be completed within sixty days of Substantial Completion or within such reasonable period as may be required to correct the item (in the event that the punch list items are, because of their nature, incapable of correction during that period) provided that the Design-Builder commences to correct the item within that period and thereafter diligently and in good faith

pursues the corrective action to completion. If, after the Date of Substantial Completion, the Owner considers that punch list items are unlikely to be completed within sixty days of the Date of Substantial Completion (or such other period of time as is specified in the Design-Build Documents), the Owner may, upon seven days' written notice to the Design-Builder, take over and perform some or all of the punch list items. Moreover, and without limiting any other available remedy, the Owner may take over and complete any portion of the Work at any time more than sixty days following Substantial Completion if Final Completion has not been achieved. If the Owner elects to take over and perform any portion of the Work, the Owner may deduct from the Cost of the Work the actual cost of performing this punch list Work (including direct and indirect costs), including any design costs, plus fifteen percent (15%) to account for the Owner's transaction costs from the GMP.

**GC-9.10.1.2** Upon receipt of written notice from the Design-Builder that the Work is ready for final inspection and acceptance, the Owner shall promptly make such inspection accompanied by the Design-Builder (if requested by the Owner). When the Owner finds all punch list items complete and the Work acceptable under the Design-Build Documents and fully performed, the Owner shall, subject to Section GC-9.10.2, promptly make final payment to the Design-Builder. If the Owner determines that some or all of the punch list items are not accomplished, the Design-Builder shall be responsible to the Owner for all costs, including reinspection fees, for any subsequent Owner's inspection to determine compliance with the punch list.

**GC-9.10.1.3** When the Owner finds that the Work has been concluded, a final occupancy permit has been issued, any commissioning process and validation process have been successfully concluded, and the Design-Builder has submitted all the items in Section GC-9.10.2.1 or otherwise required by the Design-Build Documents to the Owner, the Design-Builder may submit a final Application for Payment. The Owner will then promptly issue a final acknowledgment of the final Application for Payment stating that the entire balance found to be due the Design-Builder and noted in the final Application for Payment is due and payable. The Owner's acknowledgment of the final Application for Payment shall establish the date of Final Completion upon its execution by the Owner.

**GC-9.10.1.4** The Design-Builder is liable for, and the Owner may deduct from any amounts due the Design-Builder, all design consultant, Commissioning and construction management fees, incurred by the Owner for services performed more than sixty days after Substantial Completion of all the Work (or such other period of time as is specified in the Design-Build Documents), whether or not those services would have been performed prior to that date had Final Completion been achieved in a timely manner.

**GC-9.10.1.5** "Final Completion" will be attained when the Design-Builder has accomplished the following:

- (1) Complete all requirements listed in Section GC-9.8 for Substantial Completion.
- (2) Complete all remaining punch list items and remaining Work, obtain approval by Owner that all Work is complete, and obtain permanent occupancy permits.
- (3) Submit an acknowledged final Application for Payment.
- (4) Submit record documents, any final property survey, and operation and maintenance manuals required by the Design-Build Documents.
- (5) Deliver tools, spare parts, extra stock of material and similar physical items to the Owner as required by the Design-Build Documents.
- (6) Complete final cleaning after punch list Work (in addition to the final cleaning that was required to obtain Substantial Completion).
- (7) Complete instruction and training sessions (which many occur prior to Substantial Completion) on all major building systems including HVAC, intercom, data communications, fire alarm, telephone, fire sprinkler, emergency power, security and clocks.
- (8) Submit executed warranties.
- (9) Make final changeover of locks and transmit new keys to the Owner, and advise the Owner of the changeover in security provisions.
- (10) Discontinue or change over and remove temporary facilities and services from the Project site.
- (11) Advise the Owner on coordination of any shifting insurance coverages, including proof of extended coverages as required.
- (12) Acceptance of the final Commissioning Report by the Owner's Board of Directors.

## **GC-9.10.2 FINAL ACCEPTANCE AND PAYMENT (EXCLUDING RETAINAGE)**

**GC-9.10.2.1** Final payment shall not become due until after the Owner has formally accepted the Project (“Final Acceptance”). Pursuant to RCW 60.28, “Lien for Labor, Materials, Taxes on Public Works,” completion of the Contract Work shall occur upon Final Acceptance. To achieve Final Acceptance, Final Completion must have occurred, and the Design-Builder must have submitted to the Owner the following:

- (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner’s property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, except for any claims that are specifically identified on the affidavit (Affidavit of Payment of Debts and Claims, AIA form G706 or equivalent),
- (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least forty-five days’ prior written notice has been given to the Owner,
- (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents,
- (4) consent of surety, if any, to final payment (AIA form G707 or equivalent),
- (5) other data establishing payment or satisfaction of or protection against obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Design-Build Documents, to the extent and in such form as may be designated by the Owner (“Affidavit of Release of Liens,” AIA form G706A or equivalent),
- (6) pursuant to RCW 39.12.040, an “Affidavit of Wages Paid” from the Design-Builder and from each Subcontractor of any tier certified by the Industrial Statistician of the Washington State Department of Labor and Industries, with the fees paid by the Design-Builder or Subcontractor,
- (7) certification that the materials in the Work are “lead-free” and “asbestos-free,” and
- (8) all warranties, guarantees, training, manuals, operation instructions, certificates, spare parts, maintenance manuals and stock, specified excess material, as-built drawings and other documents, training or items required by the Design-Build Documents or local governmental entities.

**GC-9.10.3** If, after the Owner determines that the Design-Builder’s Work or designated portion thereof has achieved Substantial Completion, Final Completion thereof is materially delayed through no fault of the Design-Builder or by issuance of a Change Order or a Construction Change Directive affecting Final Completion, the Owner may, upon application by the Design-Builder, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been provided, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**GC-9.10.4 Release of Retainage.** The retainage will be held and applied by the Owner as a trust fund in a manner required by RCW 60.28. Release of the retainage will be processed in ordinary course of business upon the expiration of sixty days following Final Acceptance of the Work by the Owner provided that no notice of lien shall have been given as provided in RCW 60.28, that no claims have been brought to the attention of the Owner and that the Owner has no claims under this Contract; and provided further that release of retention has been duly authorized by the State. The following items must be obtained prior to release of retainage: pursuant to RCW 60.28, a certificate from the Department of Revenue; pursuant to RCW 50.24, a certificate from the Department of Employment Security; and appropriate information from the Department of Labor and Industries.

**GC-9.10.5 Waiver of Claims**

**GC-9.10.5.1** Final Payment by Owner. The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1 liens, statutory retainage, Claims, security interests or encumbrances arising out of the Design-Build Documents and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents; or
- .3 terms of warranties required by the Design-Build Documents.

**GC-9.10.5.2** Final Payment to Design-Builder. Acceptance of final payment by the Design-Builder, a Subcontractor of any tier or material supplier shall constitute a waiver of claims by that payee except those

previously made in writing and identified by that payee as unsettled and attached to the Design-Builder's Final Application for Payment.

**GC-9.10.5.3 Change Orders.** The execution of a Change Order shall constitute a waiver of Claims by the Design-Builder arising out of the Work to be performed or deleted pursuant to the Change Order, except as specifically described in the Change Order. Reservations of rights will be deemed waived and are void unless the reserved rights are specifically described in detail to the satisfaction of the Owner and are approved in writing by the Owner. If the Design-Builder adds a reservation of rights that has not been initialed by the Owner to any Change Order, Construction Change Directive, Change Order proposal, Application for Payment or any other document, all amounts and all Work therein shall be considered disputed and not due or payable unless and until costs are renegotiated or the reservation is withdrawn or changed in a manner satisfactory to and, in all cases, initialed by the Owner. If the Owner makes payment for a Change Order or an Application for Payment that contains a reservation of rights not initialed by the Owner to indicate agreement with the reservation, and if the Design-Builder accepts such payment, then the reservation of rights shall be deemed waived, withdrawn and of no effect.

**GC-9.10.6** If a Subcontractor of any tier refuses to provide a release or waiver required by the Owner, the Owner may (a) retain in the fund, account, or escrow funds in such amount as to defray the cost of foreclosing the liens of such claims and to pay attorneys' fees, the total of which shall be one hundred and fifty percent (150%) of the claimed amount or such higher amount as authorized by statute, or (b) accept a bond from the Design-Builder, satisfactory to the Owner, to indemnify the Owner against such lien. If any such lien remains unsatisfied after all payments from the retainage are made, the Design-Builder shall refund to the Owner all moneys that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

#### **GC-9.11 Records**

**GC-9.11.1** The Design-Builder and each Subcontractor of any tier shall maintain books, ledgers, records, documents, estimates, correspondence, logs, schedules, bids and/or proposals, emails, and other tangible and electronic data and other evidence relating or pertaining to the costs and/or performance of the Design-Build Contract ("Records") to such extent and in such detail as will properly reflect and fully support compliance with the requirements of the Design-Build Documents and with all costs, charges and other amounts of whatever nature. The Design-Builder and each Subcontractor shall preserve such Records for a period of six years following the date of Final Acceptance under the Design-Build Contract and for such longer period as may be required by any other provision of the Design-Build Contract. Within seven days of the Owner's request, the Design-Builder or a Subcontractor of any tier, as applicable, shall make available at its office during normal business hours all requested Records for inspection, audit and reproduction (including electronic reproduction) by the Owner or its representatives; failure to fully comply with this requirement shall constitute a waiver of all claims and a material breach of contract.

**GC-9.11.2** The Design-Builder agrees, on behalf of itself and Subcontractors of any tier, that any rights under RCW 42.56, "Disclosure," will commence at Final Acceptance, and that the invocation of such rights at any time by the Design-Builder or a Subcontractor of any tier shall initiate an equivalent right to disclosures from the Design-Builder and that Subcontractor of any tier for the benefit of the Owner.

**GC-9.11.3** The Design-Builder and its Subcontractors of any tier shall submit any Project information required by the capital projects advisory review board pursuant to RCW 39.10.

### **ARTICLE GC-10 PROTECTION OF PERSONS AND PROPERTY**

#### **GC-10.1 SAFETY PRECAUTIONS AND PROGRAMS**

**GC-10.1.1** The Design-Builder shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Design-Builder shall have the right to control and shall be solely and completely responsible for conditions of the work site, including safety of all persons and property, during performance of the Work. The Design-Builder shall maintain the Work site and perform the Work in a manner that meets statutory and common-law requirements for the provision of a safe place to work. This requirement shall apply continuously and not be limited to working hours. Any review by the Owner of the Design-Builder's performance shall not be construed to include a review of the adequacy of the Design-Builder's safety measures in, on or near the site of the Work.

**GC-10.1.2** No action or inaction of the Owner relating to safety or property protection or a violation thereof shall in any way: (1) relieve the Design-Builder of sole and complete responsibility for the violation and the correction thereof, or of sole liability for the consequences of said violation; (2) impose any obligation upon the Owner to inspect or review the Design-Builder's safety program or precautions or to enforce the Design-Builder's compliance with the requirements of this Article 10; (3) impose any continuing obligation upon the Owner to ensure the Design-Builder performs the Work safely or to provide such notice to the Design-Builder or any other person or entity; (4) affect the Design-Builder's sole and complete responsibility for performing the Work safely or the Design-Builder's responsibility for the safety and welfare of its employees and the employees of Subcontractors of any tier; or (5) affect the Design-Builder's responsibility for the protection of property, students, staff and the general public.

## **GC-10.2 SAFETY OF PERSONS AND PROPERTY**

**GC-10.2.1** The Design-Builder shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1** employees on or involved in the Work and other persons who may be affected thereby;
- .2** the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Design-Builder's Subcontractors or Sub-subcontractors; and
- .3** other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

**GC-10.2.2** The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. The Design-Builder shall comply with all notices and comply with all requests from the Owner regarding the safety and protection of the Owner's students and staff. The Design-Builder shall comply with the safety regulations set forth in "Safety Standards for Construction" and "General Safety Standards" and any other requirements published by the Washington State Department of Labor and Industries. The Design-Builder shall comply with the Federal Occupational Safety and Health Act of 1970 (OSHA), including all revisions, amendments and regulations issued thereunder, and the provisions of the Washington Industrial Safety and Health Act of 1973 (WISHA), including all revisions, amendments and regulations issued thereunder by the Washington State Department of Labor and Industries. The WISHA regulations shall apply to all excavation, trenching and ditching operations. In case of conflict between any such requirements, the more stringent applicable regulation or requirement shall apply.

**GC-10.2.3** The Design-Builder shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Design-Builder shall maintain at the work site office or other well-known place at the work site all materials (e.g., a first aid kit) necessary for giving first aid to the injured, and shall establish, publish and make known to all employees procedures for ensuring immediate removal to a hospital or a doctor's care, persons, including employees, who may have been injured on the site. Employees shall not be permitted to work on the site before the Design-Builder has established and made known procedures for removal of injured persons to a hospital or a doctor's care. The Design-Builder's and/or any Subcontractors shall ensure that at least one of such employees has a valid, effective first aid card.

**GC-10.2.4** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work and explicitly permitted by the Design-Build Documents, the Design-Builder shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**GC-10.2.5** The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Design-Builder, the Engineer, a Subcontractor of any tier, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss



attributable to acts or omissions of the Owner or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section GC-3.17.

**GC-10.2.6** The Design-Builder shall designate a responsible member of the Design-Builder's organization at the site whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

**GC-10.2.7** The Design-Builder shall not load or permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

**GC-10.2.8** At all times until the Owner's occupancy of the Work or a designated portion of the Work, the Design-Builder shall protect from damage, weather, deterioration, theft, vandalism and malicious mischief, and shall bear the risk of any uninsured loss or destruction of, or injury or damage to, all materials, equipment, tools, and other items incorporated or to be incorporated in the Work or designated portion, or consumed or used in the performance of the Work or designated portion, and all Work in process and completed Work or designated portion. The Design-Builder is responsible for any deductible amounts related to any insurance coverage.

**GC-10.2.9** Any notice given to the Design-Builder by the Owner of a safety or property protection violation will not: (1) relieve the Design-Builder of sole and complete responsibility for the violation and the correction thereof, or for sole liability for the consequences of said violation; (2) impose any obligation upon the Owner to inspect or review the Design-Builder's safety program or precautions or to enforce the Design-Builder's compliance with the requirements of this Article 10; or (3) impose any continuing obligation upon the Owner to provide such notice to the Design-Builder or any other persons or entity.

**GC-10.2.10** The Project site may be occupied by Owner and students during construction of the Project. The safety of these site occupants and others is of paramount importance to the Owner. For that reason, the Design-Builder shall exercise control over all construction operations to ensure the safety of all site occupants and shall coordinate with the Owner as necessary to promote the Design-Builder's obligation for site safety. The Design-Builder shall also strictly follow all hours of work, joint occupancy, site security, and phasing requirements of the Project, including those set forth in Design-Build Documents.

#### **GC-10.2.11 INJURY OR DAMAGE TO PERSON OR PROPERTY**

If the Design-Builder suffers injury or damage to person or property because of an alleged act or omission of the Owner, or of others for whose acts the Owner may be legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the Owner within a reasonable time not exceeding twenty-one days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. This Section does not apply to Claims, damages for additional costs or time, acceleration, or delay.

#### **GC-10.3 HAZARDOUS MATERIALS**

**GC-10.3.1** The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, as defined by CERCLA, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing. The Design-Builder shall proceed with the Work in areas not affected.

**GC-10.3.2** Upon receipt of the Design-Builder's written notice, and with the Owner's agreement, the Owner shall obtain the services of a licensed laboratory to reasonably verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task

of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not it has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection, but the Owner shall not be responsible for any delay resulting from the Design-Builder's objection to such person or entity. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time may be extended appropriately and the GMP may be increased in the amount of the Design-Builder's demonstrated and reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Articles 4, 7, and 8.

**GC-10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, Subcontractors, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section GC-10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity or if the removal of such material or substance was a part of the Design-Builder's Work.

**GC-10.3.4** The Owner shall not be responsible under this Section GC-10.3 for materials or substances the Design-Builder brings to the site. The Owner shall be responsible for materials or substances required by the Design-Build Documents, except to the extent of the Design-Builder's fault, misuse, or negligence in the use and handling of such materials or substances. The Design-Builder shall store all hazardous materials safely, whether or not required by Design-Build Documents. The Design-Builder shall not install hazardous materials, including without limitation asbestos, lead, mercury, or polychlorinated biphenyl (PCB), in the Work.

**GC-10.3.5** The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section GC-10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

**GC-10.3.6** If, without fault or negligence on the part of the Design-Builder, and if the remediation was not a part of the Design-Builder's scope of Work under the Design-Build Documents, the Design-Builder is held liable by a government agency for the cost of remediation of an existing hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

**GC-10.3.7** To the extent this Project involves the remediation of contaminated property, the Design-Builder shall comply with RCW 64.44 and 70.105D and any provisions of the Washington Administrative Code promulgated thereunder, including the use of authorized contractors as provided in RCW 64.44.060. The Design-Builder shall comply with all applicable requirements of RCW 70.95 and any provisions of the Washington Administrative Code promulgated thereunder.

#### **GC-10.4 EMERGENCIES**

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Design-Builder on account of an emergency shall be determined as provided in Articles 4 and 7.

#### **GC-10.5 PUBLIC SAFETY AND CONVENIENCE**

**GC-10.5.1** The Design-Builder shall conduct its Work so as to ensure the least possible obstruction to vehicular traffic and inconvenience to the general public and others in the vicinity of the Work and to ensure the protection of persons, property and natural resources. No road or street shall be closed to the public except with the permission of the Owner and the proper governmental authority. Fire hydrants on or adjacent to the Work shall be accessible to firefighting equipment at all times. Temporary provisions shall be made by the Design-Builder to ensure the use of sidewalks, fire lanes, private and public driveways and proper functioning

of gutters, sewer inlets, drainage ditches and culverts, irrigation ditches and natural water courses, if any, on the Work site.

## **ARTICLE GC-11 INSURANCE AND BONDS**

**GC-11.1** Except as may otherwise be set forth in the Agreement or elsewhere in the Design-Build Documents, the Owner and Design-Builder shall purchase and maintain the following types of insurance with limits of liability and subject to such terms and conditions, as set forth in this Article GC-11.

### **GC-11.2 DESIGN-BUILDER'S LIABILITY INSURANCE**

**GC-11.2.1** The Design-Builder shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located possessing an A.M. Best's policyholder's rating of A minus or better and a financial rating of no less than VIII and reasonably acceptable to the Owner, an occurrence-based Commercial General Liability Insurance Policy, which shall provide personal injury, bodily injury and property damage liability to cover the Design-Builder's operations, including Subcontractors and suppliers of any tier; owned, non-owned and hired vehicles; on work the Design-Builder may subcontract or sublet to others; and on the indemnity provisions of this Contract, including but not limited to premises, products/completed operations, personal injury, blanket contractual liability, explosion, collapse or underground (XCU), employment related practices coverage, and stopgap employer's liability. Except for professional liability insurances, this insurance will name the Owner, the Owner's Project Manager, consultants and employees, any required governmental agencies and others designated in the Design-Build Documents as additional insureds for all coverages required by Article GC-11 and will include a severability of interest (cross liability clause) for Work performed under this Contract. The Design-Builder's policy shall be designated primary coverage for both defense and indemnity, and any Owner's policies excess. Such limits of liability insurance shall have per project general aggregate provisions and be in such amounts as specified in the Design-Build Documents.

**GC-11.2.2** The Design-Builder, the Design-Builder's Engineer, other design consultants, and any design-build Subcontractors of any tier shall purchase from and maintain in a company or companies lawfully authorized to do business in the State of Washington, and possessing an A.M. Best's policyholder's rating of A minus or better and a financial rating of no less than IX, Professional Liability/Errors and Omissions Liability insurance with limits of liability specified in the Design-Build Documents or required by law, whichever coverage is greater. Such insurance shall be purchased from a company or companies or reasonably acceptable to the Owner and maintained for at least six years after Substantial Completion.

**GC-11.2.3** The insurance required by Section GC-11.2 shall be written for not less than the limits of liability specified in the Design-Build Documents or required by law, whichever coverage is greater. If existing policy(s) provide higher limits than those specified herein, the higher limits shall be applicable and the certificates should reflect those higher limits. If the Owner is damaged by the failure of the Design-Builder or a Subcontractor of any tier to maintain any of the required insurance or to so notify the Owner, then the Design-Builder shall bear all costs attributable thereto. Coverages shall be maintained without interruption from date of commencement of the Work until the date of Final Acceptance, except for any coverage required to be maintained after Final Acceptance. Completed operations coverage shall remain in force for six years after Substantial Completion and shall name the Owner, the Owner's Project Manager, consultants, and any other identified in the Design-Build Documents as additional insureds. The insurance described above shall include coverage for underground, collapse and explosion exposures. In addition, the Design-Builder shall purchase and maintain insurance for claims under workers' compensation (industrial insurance), disability benefit and other similar employee benefit acts in the State statutory amount and Stop Gap Liability Insurance (Employer's Contingent Liability Insurance) with coverage of at least \$1,000,000 each occurrence/each accident. All policies and certificates must be signed copies and shall contain a provision that written notice by certified mail must be provided to the Owner at least forty-five days before the policies expire or are cancelled or any coverages afforded under the policies are reduced, limits decreased, or the additional insureds removed. The Design-Builder shall provide to the Owner copies of any subsequently issued endorsements amending, modifying, altering or restricting coverage or limits.

**GC-11.2.4** Before commencement of the Work, including presence on the site, and before any exposure to loss can occur, and, in any event, within ten days after the Owner has issued its Conditional Notice to Proceed, the Design-Builder shall provide the Owner with four copies of Certificates of Insurance on AIA Document G705

or ACORD Certificate of Liability Insurance as evidence of all insurance required by the Design-Build Documents. If the Agreement is executed, no Progress Payment will be due until all such certificates are provided but failure to withhold payment shall not constitute a waiver of any provision of the Design-Build Contract. All policies and certificates must be signed copies and shall contain a provision that coverages afforded under the policies cannot be materially altered (i.e., the coverages reduced, the limits decreased or the additional insured removed) allowed to expire, or cancelled without first giving forty-five days' prior written notice by certified mail to the Owner. The Design-Builder shall provide to the Owner copies of any subsequently issued endorsements amending, modifying, altering or restricting coverage limits. Furthermore, such policies or certificates shall contain a clause verifying that the policy contains coverage for blanket contractual liability including both oral and written contracts and that liability coverages include protection for underground, collapse and explosion and that the indemnification provisions under the Design-Build Contract are acknowledged. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section GC-11.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be provided by the Design-Builder with reasonable promptness.

**GC-11.2.5** The Owner's specification or approval of the insurance in this Contract or of its amount shall not relieve or decrease the liability of the Design-Builder under the Design-Build Documents or otherwise. Coverages are the minimum to be provided and are not limitations of liability under the Contract, indemnification, or applicable law provisions. The Design-Builder may, at its expense, purchase larger coverage amounts. And notwithstanding anything herein to the contrary, the Design-Builder shall provide all bonding, insurance, and permit documentation as required by governmental entities for all portions of the Project.

**GC-11.2.6** The Design-Builder shall ensure and require that Subcontractors of any tier have insurance coverage to cover bodily injury and property damage on all operations and all vehicles owned or operated by Subcontractors of all tiers in the minimum amount of \$1,000,000 per occurrence with a \$2,000,000 aggregate limit. Also, Subcontractors shall name the Design-Builder, the Owner, and the Owner's consultants and shall cause the commercial liability coverage required by the Design-Build Documents to include the Owner, the Owner's Project Manager, consultants, and others identified by the Owner as additional insureds for claims arising out of or caused in whole or in part by the Design-Builder's negligent acts or omissions during the Design-Builder's (1) operations and (2) completed operations, giving at least forty-five days' notice of cancellation.

### **GC-11.3 OWNER'S LIABILITY INSURANCE**

**GC-11.3.1** The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

### **GC-11.4 PROPERTY INSURANCE**

**GC-11.4.1** Unless the Owner elects in writing to procure builder's risk insurance directly, the Design-Builder shall purchase and maintain until Substantial Completion, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk, "all-risk" or equivalent policy form in the amount of the initial GMP, plus the value of subsequent Design-Build Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. Such property insurance shall be maintained, unless otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until no person or entity other than the Owner has an insurable interest in the property required by this Section GC-11.4 to be covered. This insurance shall include interests of the Owner, Design-Builder, and Subcontractors of any tier in the Project. This insurance shall provide "all-risk" coverage for the interests of the Owner, the Design-Builder and Subcontractors as named insureds, as their respective interests appear. Each loss may be subject to a deductible of not more than \$25,000. Losses up to the deductible amount or otherwise not covered by insurance shall be a Cost of the Work within the GMP, except the Owner shall be responsible for the deductible amounts listed above for losses caused by the Owner or caused by natural disaster. This insurance shall include as named insureds and as loss payees the Owner, the Design-Builder and Subcontractors of any tier, as their respective interests appear. The policy shall be endorsed to allow complete or partial occupancy by the Owner before or after Substantial Completion without the insurer's approval. All tools and equipment of the Design-Builder and

Subcontractors of any tier not intended as part of the construction or installation of the Work will be the sole responsibility of the Design-Builder.

**GC-11.4.2** Property insurance shall be on an “all-risk” or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Design-Builder’s services and expenses required as a result of repairing the loss.

**GC-11.4.3** This property insurance shall cover portions of the Work stored off the site and also portions of the Work in transit. All tools and equipment of the Design-Builder and Subcontractors of any tier not intended as part of the construction or installation of the Work will be the sole responsibility of the Design-Builder.

**GC-11.4.4** Partial occupancy or use in accordance with Section GC-9.10 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use, by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

**GC-11.4.5** Before an exposure to loss may occur, the Design-Builder shall file with the Owner a copy of each policy that includes insurance coverages required by this Section GC-11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire and that its limits will not be reduced until at least forty-five days’ prior written notice has been given to the Owner.

**GC-11.4.6** If the GMP includes the cost for the Design-Builder to obtain the property insurance and if the Design-Builder does not purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Design-Builder shall so inform the Owner in writing prior to commencement of the Work. The Owner may then effect insurance that will protect the interests of the Owner, and by appropriate Change Order the cost thereof shall be charged to the Design-Builder. If the Owner is damaged by the failure or neglect of the Design-Builder to purchase or maintain insurance as described above, then the Design-Builder shall bear all reasonable costs properly attributable thereto.

**GC-11.4.7 Waivers of Subrogation.** The Owner and Design-Builder waive all rights against each other and any of their consultants, separate contractors described in Section GC-6.1, if any, Subcontractors, agents and employees, each of the other, and any of their contractors, subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered and paid for by property insurance obtained pursuant to this Section GC-11.4, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section GC-6.1, if any, and the Subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, even though the person or entity 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.

**GC-11.4.8 Adjustment.** Upon the occurrence of a loss insured under the property insurance, the Owner shall participate in and approve the adjustment and settlement of any loss with the insurers. The Design-Builder shall pay Subcontractors their just shares of insurance proceeds received by the Design-Builder, and, by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Subcontractors in similar manner. Any inconsistent policy provisions will supersede the provisions of this Section.

## **GC-11.5 PERFORMANCE BOND AND PAYMENT BOND**

**GC-11.5.1** The Design-Builder shall secure from a surety company acceptable to the Owner, licensed in the State of Washington, possessing an A.M. Best rating of "A minus" or better and a financial rating of no less than "IX," and shall furnish and pay for bonds covering the faithful performance of the Design-Build Contract and payment of obligations arising under the Design-Build Documents, each in the full amount of the GMP plus sales tax, pursuant to RCW 39.08, "Contractor's Bond." Prior to the execution of the Agreement, the Design-Builder shall deliver the originals of the bonds to the Owner for the Preconstruction Services. Upon execution of the GMP Amendment, the Design-Builder shall deliver the originals of the bonds covering the balance of the Project to the Owner. **THE DESIGN-BUILDER SHALL NOT PROCEED WITH THE WORK UNTIL SUCH SURETY BONDS ARE RECEIVED.** The Design-Builder shall be responsible for any delay in the Contract Time because of failure to submit acceptable bonds.

**GC-11.5.2** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Design-Builder shall promptly provide a copy of the bonds or shall permit a copy to be made.

## **ARTICLE GC-12 UNCOVERING AND CORRECTION OF WORK**

### **GC-12.1 UNCOVERING OF WORK**

**GC-12.1.1** If a portion of the Work is covered contrary to the Owner's request, requirements of a governmental authority, or as otherwise specifically expressed in the Design-Build Documents, it must be uncovered for the Owner's or governmental authority's examination and be replaced at the Design-Builder's expense without change in the GMP, Contract Time or Contract Sum.

**GC-12.1.2** If a portion of the Work has been covered that the Owner or the governmental authority has not specifically requested to examine prior to its being covered and for which the Design-Build Documents did not require inspection, the Owner or the governmental authority may request to see such Work and it shall be uncovered by the Design-Builder. If such Work is in accordance with the Design-Build Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Design-Build Documents, correction shall be at the Design-Builder's expense without any increase in the GMP, Contract Sum, or Cost of the Work unless the condition was caused by the Owner or a separate contractor, employed by the Owner, and in that event the Owner or separate contractor shall be responsible for payment of such costs.

### **GC-12.2 CORRECTION OF WORK**

#### **GC-12.2.1 BEFORE OR AFTER FINAL COMPLETION**

The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Final Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing, shall be at the Design-Builder's expense.

#### **GC-12.2.2 AFTER FINAL COMPLETION**

In addition to the Design-Builder's obligations under Section GC-3.5, if, within the later of one year after the later of the date of Final Completion of the Work or after the date for commencement of warranties established under the Design-Build Documents, or by terms of an applicable special warranty required by the Design-Build Documents including the special warranty applicable to Selected Equipment and Systems, any of the Work is found to be not in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it with no change in the Cost of the Work according to the requirements of this Section GC-12.2 promptly after receipt of written notice from the Owner. If the Design-Builder does not initiate corrective Work within the timelines outlined below, the Owner may then proceed to correct the Work and dispose of materials and equipment as it sees fit, and the Design-Builder will be liable for all costs. This one-year correction period shall be extended with respect to portions of Work first performed after Final Acceptance and by corrective Work performed by the Design-Builder by the period of time between Final Completion and the actual performance of the Work. This obligation shall survive acceptance of the Work under the Contract and termination of the Contract, is in addition to other warranties provided by contract or law, and does not establish a time limit for damages.

**GC-12.2.3** The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and that either are not corrected by the Design-Builder or accepted by the Owner.

**GC-12.2.4** The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

**GC-12.2.5** Nothing contained in this Section GC-12.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder might have under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section GC-12.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

### **GC-12.3 ACCEPTANCE OF NONCONFORMING WORK**

**GC-12.3.1** If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the GMP will be equitably adjusted by Change Order, in the Owner's sole discretion, by the greater of the (1) cost of correction or (2) diminution of value of the Work that is not in accordance with the requirements of the Design-Build Documents. Such adjustment shall be effected whether or not final payment has been made.

## **ARTICLE GC-13 MISCELLANEOUS PROVISIONS**

### **GC-13.1 GOVERNING LAW AND VENUE**

**GC-13.1.1** The Design-Build Contract shall be governed by the internal law of the State of Washington, without regard to its choice-of-law provisions. The venue for any litigation arising out of the Design-Build Documents shall be in the Superior Court for the county in which the Project is located.

### **GC-13.2 SUCCESSORS AND ASSIGNS**

**GC-13.2.1** The Owner and Design-Builder respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section GC-13.2.2, neither party to the Design-Build Contract shall assign the Design-Build Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Design-Build Documents. The Design-Builder also shall not assign to any third party any Claims it may have against the Owner arising under this Contract or otherwise related to the Project.

**GC-13.2.2** The Owner may, without consent of the Design-Builder, assign the Design-Build Contract to an entity providing construction financing for the Project. In such event, the entity shall assume the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

**GC-13.2.3** If a majority of the ownership or the control of Design-Builder is acquired by a third party, and such acquisition reasonably imperils performance or creates a conflict of interest that the Owner, in its sole discretion, cannot reasonably reconcile, then the Owner may terminate this Contract at any time pursuant to Section GC-14.2, except that the Owner shall give the Design-Builder thirty days' written notice of termination and the opportunity for the Design-Builder to cure prior to termination.

### **GC-13.3 WRITTEN NOTICE**

**GC-13.3.1** All notices shall be in writing and shall be delivered to the Designated Representative or an officer of the Owner or Design-Builder, except notices and claims that shall be provided pursuant to Article 4. If such individuals are not reasonably available, notices may be sent by registered or certified mail to the last business address known to the party giving notice. The date of written notice shall be the earlier of the date of personal delivery or three days after the date of postmark.

#### **GC-13.4 RIGHTS AND REMEDIES**

**GC-13.4.1** Duties and obligations imposed by the Design-Build Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law. The Design-Builder's sole remedy for claims, disputes and other matters in question of the Design-Builder, direct or indirect, arising out of, or relating to, the Design-Build Contract or breach thereof, except claims that have been waived under the terms of the Design-Build Contract, however, is the dispute resolution procedure of Article GC-4.

**GC-13.4.2** No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Design-Build Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

**GC-13.4.3** If any portion of this Contract is held to be void or unenforceable, the remainder of the Design-Build Contract shall be enforceable without such portion.

#### **GC-13.5 TESTS AND INSPECTIONS**

**GC-13.5.1** Tests, inspections and approvals of portions of the Work required by the Design-Build Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. The Design-Builder shall plan and allow adequate time for all tests, inspections, and approvals, and shall not be entitled to an extension of the Contract Time for any delay associated with a test, inspection, or approval. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to or provided by the Owner or with the appropriate public authority, and the Owner shall bear all related costs of required tests, inspections and approvals, except that the Design-Builder will be responsible for any costs of retesting and any extra costs caused by the Design-Builder. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The independent testing agency shall prepare the test reports, logs and certificates applicable to the specific inspections and tests and promptly and simultaneously deliver the specified number of copies of them to the designated parties.

**GC-13.5.2** If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section GC-13.5.1, the Owner shall in writing instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section GC-13.5.3, shall be at the Owner's expense.

**GC-13.5.3** If such procedures for testing, inspection or approval under Sections GC-13.5.1 and GC-13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure, including those of repeated procedures, shall be at the Design-Builder's expense.

**GC-13.5.4** Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

**GC-13.5.5** If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

**GC-13.5.6** Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work. The Design-Builder shall provide the Owner with at least forty-eight hours' written notice prior to all tests and inspections.

**GC-13.5.7** If the Owner is responsible under the Design-Build Documents, law or regulation to pay for an inspection of any inspector, consultant or architect, the Owner shall be required to pay only for the first actual inspection. If the Design-Builder arranges for an inspection and an extra cost is incurred because the inspector is required to wait, to leave without inspecting, to perform a partial inspection, to return to complete or reinspect, or otherwise to expend time other than for the primary inspection, the Design-Builder shall be



responsible for all such costs to the extent caused by the Design-Builder. If the Design-Builder does not pay the charges for which it is responsible within thirty days of billing, the Owner may pay the charges directly and back charge the Design-Builder on the next progress payment for the amount paid plus a fifteen percent (15%) handling fee.

**GC-13.5.8** No acceptance by the Owner of any Work shall be construed to result from any inspections, tests or failures to inspect or test by the Owner or any other person. No inspection, test, failure to inspect or test, or failure to discover any defect or nonconformity by the Owner or any other person shall relieve the Design-Builder of its responsibility for meeting the requirements of the Design-Build Documents or impair the Owner's right to reject defective or nonconforming items or right to avail itself of any other remedy to which the Owner may be entitled, notwithstanding the Owner's knowledge of the defect or nonconformity, its substantiality or the ease of its discovery. If the Owner is affirmatively aware that any Work does not meet the requirements of the Design-Build Documents, the Owner shall so notify the Design-Builder. Entities performing inspections and/or testing do not have the authority to direct the Design-Builder's means and methods and are not agents or representatives of the Owner.

#### **GC-13.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD**

The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method set forth in this Design-Build Contract, and within the time period specified by applicable law and the time limits identified in the Design-Build Documents, whichever is shorter. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section GC-13.6.

#### **GC-13.7 STATUTES AND OTHER REQUIREMENTS**

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

**GC-13.7.1 Design-Builder Registration and Related Requirements.** Pursuant to RCW 39.06, "Registration, Licensing of Contractors," the Design-Builder shall be registered and licensed as required by the laws of the State of Washington, including but not limited to RCW 18.27. The Design-Builder shall also have a current State unified business identifier number; have industrial insurance coverage for the Design-Builder's employees working in Washington as required in Title 51 RCW; have necessary licenses to perform the design work required by the Design-Build Documents; have an employment security department number as required in Title 50 RCW; have a State excise tax registration number as required in Title 82 RCW, and; not be disqualified from bidding on any public works contract under RCW 39.06.010 (unregistered or unlicensed contractors) or RCW 39.12.065(3) (prevailing wage violations).

**GC-13.7.2 Law against Discrimination.** The Design-Builder shall comply with pertinent statutory provisions relating to public works of RCW 49.60, "Discrimination."

**GC-13.7.3 Provisions for Access.** The Design-Builder shall comply with applicable provisions of RCW 70.92, "Provisions in Buildings for Aged and Handicapped Persons," the Washington Access Code, the Americans with Disabilities Act, and other accessibility laws, and shall defend, indemnify, and hold harmless the Owner from any actual or alleged violations of such laws.

**GC-13.7.4 Safety Standards.** The Design-Builder shall comply with pertinent provisions of RCW 49.17, "Washington Industrial Safety and Health Act," and Chapter 296-155 WAC, "Safety Standards for Construction Work."

**GC-13.7.5 Unemployment Compensation.** Pursuant to RCW 50.24, "Contributions by Employers," in general and RCW 50.24.130 in particular, the Design-Builder shall pay contributions for wages for personal services performed under this Contract or arrange for an acceptable bond.

**GC-13.7.6 Drug-Free Workplace.** The Design-Builder and all Subcontractors of any tier shall fully comply with all applicable federal, State, and local laws and regulations regarding drug-free workplace, including the

Drug-Free Workplace Act of 1988. Any person not fit for duty for any reason, including the use of alcohol, controlled substances, or drugs, shall immediately be removed from the Work.

**GC-13.7.7 Tobacco-Free Environment.** Pursuant to RCW 28A.210.310, smoking or use of any kind of lighted pipe, cigar, cigarette, or any other lighted smoking equipment, material or smokeless tobacco products is prohibited on all school district property.

**GC-13.7.8 Weapons-Free Environment.** The Design-Builder and its employees, agents, and Subcontractors of any tier shall not bring onto the Project site or onto any Owner property any firearm or any other type of weapon described in either RCW 9.41.280(1) or RCW 9.41.250. Any person violating this Section shall immediately be removed from the Work, and such a violation shall be grounds for a termination of this Agreement for cause at the Owner's discretion.

**GC-13.7.9 Asbestos Removal.** To the extent this Project involves asbestos removal, the Design-Builder shall comply with Chapter 49.26 RCW, "Health and Safety – Asbestos," and any provisions of the Washington Administrative Code promulgated thereunder.

**GC-13.7.10 Public Records and Confidential Information.** Design-Builder acknowledges that the Owner is subject to the provisions of RCW 42.56 and that this Contract and all materials made available under or as a consequence of it (collectively for this Section called the "Materials"), shall be public records as defined in RCW 42.56.

**GC-13.7.11 Inadvertent Discovery of Human Remains.** Any human remains that are discovered during Project-related ground disturbance, construction, maintenance, or operation activities will be treated with dignity and respect. In the event that human remains are discovered during ground disturbance, construction, maintenance, or operation of the Project, the following procedures are to be followed to ensure compliance with RCW 68.60: Abandoned and Historic Cemeteries and Historic Graves, and RCW 27.44: Indian Graves and Records. If ground-disturbing activities encounter human skeletal remains during the course of the Project, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance until the State provides notice to proceed. The finding of human skeletal remains will be reported to the Snohomish County Coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The Snohomish County Coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the Snohomish County Coroner determines the remains are non-forensic, then they will report that finding to DAHP, who will then take jurisdiction over the remains. DAHP will notify any appropriate cemeteries and all affected Tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Native American or non-Native American and report that finding to any appropriate cemeteries and the affected tribes. DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.

## **ARTICLE GC-14 TERMINATION OR SUSPENSION OF THE DESIGN/BUILD CONTRACT**

### **GC-14.1 TERMINATION BY THE DESIGN-BUILDER**

**GC-14.1.1** Except as provided by RCW 60.28.080, the Design-Builder may terminate the Design-Build Contract if the Work is stopped for a period of sixty consecutive days for any of the following reasons through no act or fault of the Design-Builder or a Subcontractor of any tier or other persons or entities for whom the Design-Builder or a Subcontractor of any is responsible:

- .1** issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- .2** an act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- .3** the Owner has improperly failed to make payment to the Design-Builder of undisputed amounts in accordance with the Design-Build Documents.

**GC-14.1.2** The Design-Builder may terminate the Design-Build Contract if, through no act or fault of the Design-Builder or a Subcontractor of any tier or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated

suspensions, delays or interruptions of the entire Work by the Owner, as described in Section GC-14.3, constitute in the aggregate more than one hundred percent (100%) of the total number of days scheduled for completion, or one hundred and twenty days in any 365-day period, whichever is less.

**GC-14.1.3** If one of the reasons described in Sections GC-14.1.1 or GC-14.1.2 exists, the Design-Builder may, upon an additional seven days' written notice to the Owner (during which period the Owner shall have the right and opportunity to cure), terminate the Design-Build Contract and recover from the Owner payment for Work properly executed and reimbursable as a Cost of the Work, the Fee applicable to Work executed and reimbursable, and costs incurred by reason of such termination. The Owner may cure or commence to cure all defects within such seven-day period, in which case the Design-Builder may not terminate the Contract. The total recovery of the Design-Builder shall not exceed the unpaid balance of the GMP.

#### **GC-14.2 TERMINATION BY THE OWNER FOR CAUSE**

**GC-14.2.1** The Owner may, upon seven days' written notice to the Design-Builder, terminate (without prejudice to any right or remedy of the Owner) the whole or any portion of the Work or the Design-Build Contract for cause if the Design-Builder:

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make prompt payment to the Design-Builder's Engineer or to a Subcontractor for services, materials or labor in accordance with the agreements between the Design-Builder and the Design-Builder's Engineer and Subcontractors;
- .3 fails to comply with laws, ordinances, rules, regulations or orders applicable to the Work;
- .4 fails to prosecute the Work or any portion thereof with sufficient diligence to ensure the Substantial Completion of the Work within the Contract Time;
- .5 is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency; or
- .6 fails to comply with the provisions of RCW 28A.400.330 by permitting a worker on the Project having contact with school children who has been convicted of or pled guilty to a felony crime involving children;
- .7 staffs the Project with personnel different from the personnel listed in its proposal;
- .8 fails to supply workers with relevant experience and sufficient skills, suitable materials or suitable equipment or performs Work of a lesser quality than specified in the Design-Build Documents;
- .9 fails to provide the approved Statement of Intent to Pay Prevailing Wages, Affidavit of Wages Paid, or fails to provide and maintain in effect the insurance and bonds required by the Design-Build Documents;
- .10 fails to comply with the conditions, Specifications or provisions of the Design-Build Documents;
- .11 assigns the Contract or sublets Work without first obtaining the Owner's written permission;
- .12 receives a Stop Work Directive and fails to take corrective action; or
- .13 otherwise materially or substantially breaches or defaults under a provision of the Design-Build Contract.

**GC-14.2.2** When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies, and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate the Design-Builder on all or a portion of the Work and may, subject to any prior rights of the surety:

- .1 exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon provided for the Work;
- .2 accept assignment of contracts pursuant to Section GC-5.5.1;
- .3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall provide to the Design-Builder an accounting of the costs incurred by the Owner in finishing the Work; and
- .4 take or direct any or all of the actions in Section GC-14.5.

**GC-14.2.3** When the Owner terminates the Design-Build Contract for one of the reasons stated in Section GC-14.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

**GC-14.2.4** If the unpaid balance of the earned Contract Sum exceeds the cost of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The amount to be paid to the Design-Builder or Owner, as the case may be, shall survive termination of the Contract.

**GC-14.2.5** If the Owner terminates only a portion of the Work, the Design-Builder shall continue to perform the remainder of the Work in accordance with the Design-Build Documents to the extent not terminated.

**GC-14.2.6** If, after the Design-Builder has been terminated pursuant to this Section GC-14.2 or otherwise for cause, it is determined that insufficient grounds exist to terminate the contract for cause, then such termination shall be considered a termination for convenience pursuant to Section GC-14.4.

### **GC-14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

**GC-14.3.1** The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

**GC-14.3.2** The GMP and Contract Time shall be adjusted for changes in the cost and time caused by suspension, delay or interruption as described in Section GC-14.3.1. Adjustment of the GMP shall be consistent with the terms of the Design-Build Documents and include fee. No adjustment shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Design-Build Contract.

### **GC-14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

**GC-14.4.1** The Owner may, at any time, terminate (without prejudice to any right or remedy of the Owner) the whole or any portion of the Design-Build Contract for the Owner's convenience and without cause.

**GC-14.4.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall:

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**GC-14.4.3** In the event of termination for the Owner's convenience prior to commencement of construction, the Design-Builder shall be entitled to receive payment consistent with the Design-Build Documents for design services properly performed and costs necessarily incurred by reason of such termination but not for any overhead or profit on the anticipated construction Work. In case of termination for the Owner's convenience after commencement of construction, the Design-Builder shall be entitled to receive payment consistent with the Design-Build Documents for Work properly executed and other costs necessarily incurred by reason of such termination (such as the cost of settling and paying claims arising out of the termination of subcontracts or purchase orders), along with a reasonable overhead and profit (not to exceed the Fee) on the Work executed. The total sum to be paid to the Design-Builder under this Section GC-14.4 shall not exceed the GMP as reduced by the amount of payments otherwise made, and as otherwise permitted by this Design-Build Contract. The amounts payable to the Design-Builder shall exclude the fair value of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Owner or to a buyer pursuant to Section GC-14.5.1.

### **GC-14.5 EFFECTS OF TERMINATION BY OWNER**

**GC-14.5.1** Unless the Owner directs otherwise, after receipt of a notice of termination from the Owner pursuant to Section GC-14.2 or 14.4, the Design-Builder shall promptly:

- .1 stop Work under the Contract on the date and as specified in the notice of termination;

- .2 place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of any portion of the Work that is not terminated;
- .3 procure cancellation of all purchase orders and subcontracts, upon terms acceptable to the Owner, to the extent that they relate to the performance of Work terminated;
- .4 assign to the Owner all of the right, title and interest of the Design-Builder under all purchase orders and subcontracts, as directed by the Owner, in which case the Owner shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- .5 with the Owner's approval, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts not assigned to the Owner;
- .6 transfer title and deliver to the entity or entities designated by the Owner all design documents, fabricated or unfabricated parts, Work in process, partially completed supplies and equipment, materials, parts, tools, dies, jigs and other fixtures, completed Work, supplies and other material produced as part of, or acquired in connection with the performance of, the Work terminated, and the completed or partially completed design documents, information and other property related to the Work;
- .7 use its best efforts to sell any property of the types referred to in Section GC-14.5.1.6 which is not designated for transfer by the Owner pursuant to that Section. The Design-Builder shall not be required to extend credit to any buyer, and may acquire any such property under the conditions prescribed by and at a price or prices approved by the Owner, and the proceeds of any such transfer or disposition may be applied in reduction of any payments to be made by the Owner to the Design-Builder;
- .8 take such action as may be necessary or as directed by the Owner to preserve and protect the Work and property related to this Project in the possession of the Design-Builder in which the Owner has an interest; and
- .9 continue performance to the extent not terminated.

**GC-14.5.2** In arriving at any amount due the Design-Builder after termination, the following deductions shall be made:

- .1 all advance or other prior payments on account made to the Design-Builder applicable to the terminated portion of the Contract;
- .2 any claim the Owner may have against the Design-Builder;
- .3 an amount necessary to protect the Owner against outstanding or potential liens or claims; and
- .4 the agreed price for or the proceeds of sale of any materials, supplies or other things acquired by the Design-Builder or sold, pursuant to the provisions of Section GC-14.5.1.7, and not otherwise recovered by or credited to the Owner.

**GC-14.5.3** If (and only if) the termination pursuant to Section GC-14.4 is partial, the Design-Builder may file a Claim for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract. Any claim by the Design-Builder for an equitable adjustment under this Section must be asserted within sixty days from the effective date of the partial termination.

**GC-14.5.4** The Design-Builder shall refund to the Owner any amounts paid by the Owner to the Design-Builder in excess of costs reimbursable under the Design-Build Documents.

**GC-14.5.5** The Design-Builder shall, from the effective date of termination until the expiration of six years after final settlement under this Contract, preserve and make available to the Owner, at all reasonable times at the office of the Design-Builder, and without charge to the Owner, all books, records, documents, photographs and other evidence bearing on the costs and expenses of the Design-Builder under this Contract and relating to the terminated Work. The Owner may have costs reimbursable under this Article 14 audited and certified by independent certified public accountants selected by the Owner, who shall have full access to all the books and records of the Design-Builder.

**GC-14.5.6** In the event of any termination, or if the Owner and Design-Builder do not agree upon and execute a GMP Amendment, the Owner shall be entitled to use and/or assign the rights to use all finished or unfinished Instruments of Service and other materials, including the right to complete such Instruments of Service, and the Owner shall indemnify and hold harmless the Design-Builder, its consultants, agents and employees, from any

claims arising from the Owner's subsequent use of such documents and other materials, except to the extent the Design-Builder is solely or concurrently negligent.

**GC-14.5.7** The damages and relief from termination by the Owner specifically provided in Article 14 shall be the Design-Builder's sole entitlement in the event of termination.

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**GUARANTEED MAXIMUM PRICE AMENDMENT**

This Guaranteed Maximum Price Amendment (“GMP Amendment”) is made as of the \_\_\_\_ day of \_\_\_\_\_ in the year of Two Thousand and Twenty-Two by and between:

the “Owner”:

**Edmonds School District No. 15**  
20420 68th Avenue West  
Lynnwood, Washington 98036

and the “Design-Builder”:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

for the following design-build project (the “Project”):

**Mountlake Terrace High School HVAC Replacement**  
21801 44th Avenue West  
Mountlake Terrace, Washington 98043

*The Owner and Design-Builder agree as follows:*

**ARTICLE A.1**

**A.1.1 Guaranteed Maximum Price**

Pursuant to Section 4.1.2 of the Agreement, the Owner and Design-Builder hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Design-Builder, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed.

**A.1.1.1** The Contract Sum is guaranteed by the Design-Builder not to exceed \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), subject to additions and deductions by Change Order as provided in the Design-Build Documents.

**A.1.1.2 Itemized Statement of the Guaranteed Maximum Price.** Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder’s Fee, and other items that comprise the Guaranteed Maximum Price:

\_\_\_\_\_

**A.1.1.3** The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

\_\_\_\_\_

**A.1.1.4** Allowances included in the Guaranteed Maximum Price, if any:

Item	Price

**A.1.1.5** Unit Prices included in the Guaranteed Maximum Price, if any:

Item	Units	Price per Unit

**A.1.1.6** Assumptions, if any, on which the Guaranteed Maximum Price is based:

\_\_\_\_\_

**A.1.1.7** The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract, if any:

\_\_\_\_\_

**A.1.1.8** The Guaranteed Maximum Price is based upon the following Specifications:

\_\_\_\_\_

**A.1.1.9** The Guaranteed Maximum Price is based upon the following Drawings:

\_\_\_\_\_

**A.1.1.10** The Guaranteed Maximum Price includes the Design-Builder's Contingency which was calculated as follows:

\_\_\_\_\_

**A.1.1.11** The Guaranteed Maximum Price is based upon the following other documents and information, if any:

\_\_\_\_\_

## **ARTICLE A.2**

**A.2.1** Pursuant to Section 3.3 of the Agreement, the required date of Substantial Completion established by this GMP Amendment is \_\_\_\_\_, 20\_\_\_\_.

### **A.2.2 Liquidated Damages and Time.**

Pursuant to Section 3.4 of the Agreement, if the Design-Builder fails to achieve Substantial Completion by the required date of Substantial Completion, the Owner will sustain significant damage and loss as a result of such failure. The exact amount of such damages will be difficult to ascertain, therefore, the Owner and the Design-Builder agree as follows:

If the Design-Builder fails to achieve Substantial Completion by the required date of Substantial Completion date, and as otherwise required by the Design-Build Documents, the Owner shall be entitled to retain or recover from the Design-Builder, as liquidated damages and not as a penalty, \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per calendar day commencing upon the first day following the required date of Substantial Completion in Section A.2.1 above and continuing until the actual date that Substantial Completion is achieved. Such liquidated damages are hereby agreed to be a reasonable pre-estimate of damages the Owner will incur as a result of delayed completion of the Work. The liquidated damages shall be Owner's sole and exclusive remedy for delay.



**Edmonds School District No. 15**

\_\_\_\_\_

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

\_\_\_\_\_  
**DESIGN-BUILDER** (Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
(Printed name and title)

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