



**Addendum No. 1  
to  
Request for Qualifications  
for  
Design-Build Services**

**Schweitzer Engineering Hall**  
Washington State University  
Pullman, WA

2/6/2023

Project No. 1853-2022  
Washington State University  
Facility Services, Capital

**RFQ Addendum No. 1**  
**2/6/2023**

**Schweitzer Engineering Hall**  
**Washington State University**  
**Pullman, WA**

**Statement of Qualifications Deadline: February 14, 2023, 3:00 pm**

1. This Addendum forms a part of the Contract Documents and modifies the original Request for Qualifications dated 1/20/2023, and any prior addenda, as noted below.
2. This addendum consists of 37 total pages and an excel spreadsheet.

**Item 1:**

Issuance of the Design-Build Agreement to be used with this project. This also includes the Completion Deliverables exhibit, as well as a replacement Application for Payment section, since there are changes to the reporting required for the implementation of Access Equity (B2Gnow).

Design-Builder should be aware of the following changes effective with this form of agreement: (1) the funding for this agreement while confirmed at 63M will be authorized incrementally, please review paragraphs 3.2 and 8.3.1. (2) there are no longer amendments to get to the full GMP. Instead Design Review Packages will be submitted through in-progress design review to confirm and move the Work forward, please review paragraphs 3.8-3.10. (3) By issuing the agreement, the questions surrounding the Post Completion Performance Period (aka TSO, or Performance Guarantee) are also answered since the description of expectations during the Post Completion Performance Period are detailed in the Agreement, in paragraphs 3.5-3.7, as well as article 7.

**Item 2:**

Proposer Questions:

RFQ Submittal Requirement 6.C. Please confirm if licenses are required for individuals or just the local firm as the designer of record.

Licenses for the lead contractor (construction license for company) and designer-of record (individual arch license) and specialty sub consultants (when selected with Owner, will be required).

RFQ Submittal Requirement 4.G. Please define the performance guarantee period, and specify if you are looking for contracting method for performance guarantee period as it pertains to energy performance, or are you looking for building warranty information?

The "performance guarantee" is actually referencing the Post Completion Performance Period described in the Agreement. It includes the TSO period (2 years after substantial completion). The purpose is to evaluate the performance of the building based on the energy model and make any adjustments necessary during the TSO period to meet the

buildings intended energy usage. See the Design-Build Agreement for a description of this period as well as the TSO Program Payment amounts. WSU is looking to understand how the Design-Builder intends to contract with those firms whom the Design-Builder intends to retain throughout the Post Completion Performance Period.

RFQ Submittal Requirement 3.C. Does WSU require the project references and contact information for Design-Build Experience?

It is not a requirement. However, WSU reserves the right to check references from prior clients, contractors, suppliers, subcontractors, and consultants identified or not explicitly identified within the SOQ.

RFQ Submittal Requirement. Does the surety letter and questions regarding the contract need to be within the page limit of the SOQ?

Yes, they are expected to be within the page limit.

**Item 3:**

The program appendixes unintentionally included a blank VCEA Makerspace Equipment Lists. Therefore, included is the intended VCEA Makerspace Equipment List.

All other requirements of the Request for Qualifications remain in force.

END OF ADDENDUM No. 1

# Schweitzer Engineering Hall

## Agreement between Owner and Design-Builder (Cost-Plus Fee with a Guaranteed Maximum Price)

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This AGREEMENT is made by and between the following parties, for design and construction services, in connection with the Project identified below.

OWNER: Washington State University  
c/o Facilities Services, Capital  
P.O. Box 641150  
Pullman, WA 99164-1150

DESIGN-BUILDER: [To be determined]

PROJECT: Schweitzer Engineering Hall  
Address TBD

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

### Article 1 The Work of the Design-Build Contract

- 1.1 Design-Builder to fully execute the Work. Design-Builder will fully execute the entire Work, including design and construction services, in strict accordance with the Contract Documents, and will provide all material, equipment, tools, labor, and design services necessary to timely complete the Work described in and reasonably inferable from the Contract Documents, except to the extent specifically indicated to be the responsibility of others.
- 1.2 Design-Builder to further Owner's interests. Design-Builder accepts the relationship of trust and confidence established by the Design-Build Contract and covenants with Owner to cooperate with Owner and others involved with the Project and to exercise Design-Builder's best skill and judgment; to furnish efficient, professional and competent design services and construction administration, management and supervision with sufficient quantities of fully qualified, competent and experienced personnel; and to perform the Work in an expeditious and economical manner consistent with Owner's interests. The parties will endeavor to promote harmony, cooperation and mutual respect among Project participants to the fullest extent possible in order to further the success of the Project and to effect prompt and successful completion of the Project within the requirements of the Contract Documents, the Contract Time and the Guaranteed Maximum Price (or "GMP").

### Article 2 Contract Documents

- 2.1 The Contract Documents. The "Contract Documents" form the "Design-Build Contract." The Contract Documents consist of this Agreement (Agreement between

Owner and Design-Builder or the "Agreement"); any attached Exhibits and other documents listed in the Contract Documents; the General Conditions; other documents listed in Article 13 of this Agreement; and written modifications, amendments and Change Orders to the Design-Build Contract issued after execution of this Agreement. If authorized representatives of both parties execute the Agreement, the Design-Build Contract is effective as of the date of first signature.

- 2.2. The Design-Build Contract is a complete and integrated agreement. The Design-Build Contract represents the entire, complete, and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. No oral representations or other agreements have been made by the parties except as specifically established in the Design-Build Contract.
- 2.3 The Design-Build Contract is between only Owner and Design-Builder. The Design-Build Contract will not be construed to create a contractual relationship of any kind between any Persons other than Owner and Design-Builder.
- 2.4 General Conditions modified. The General Conditions and Division 01 define the term "A/E" and identify certain responsibilities of the A/E. In the Design-Build Contract, however, Design-Builder retains the A/E and is responsible for both design and construction of the Work. The following provisions of the General Conditions are hereby modified:
- 1.01B A/E does not represent Owner.
  - 1.01K The Contract Time is defined in Section 4.2
  - 1.01P Services to be provided by Design-Builder during the Post-Completion Performance Period do not affect when Final Acceptance occurs and do not affect the completion of the Work for purposes of RCW 39.08, RCW 39.12, RCW 60.28 and other relevant statutes.
  - 1.01Q The Post-Completion Performance Period is the two (2) year period following Final Completion.
  - 1.01FF The Work will not include services performed by Design-Builder during the Post-Completion Performance Period (after Final Completion).
  - 1.02.1 Signed Agreement includes Design-Builder's final Proposal and presentation materials.
  - 2.01A Design-Builder will maintain the listed insurance until completion of the Post-Completion Performance Period.
  - 2.06A The builder's risk insurance will cover the interests of Design-Builder's A/E.
  - 2.06B A/E's services and expenses may not be covered. Refer to policy.
  - 3.01 Design-Builder will also provide services during the Post-Completion Performance Period.
  - 3.04B Replace "A/E" with "Owner's consultants."
  - 4.01C Design-Builder to report discrepancies to Owner.
  - 4.01F Questions to be referred to Owner.
  - 4.02C Final Project Record to be submitted to Owner.
  - 4.03 Submittals will be submitted to and reviewed by Owner, not A/E. Replace "A/E" with "Owner" throughout.
  - 4.03E Design-Builder and Owner may agree on the number of copies of Submittals to be submitted to Owner. If no such agreement

- is reached, Design-Builder will submit five (5) copies.
- 4.05 See Article 11 of this Agreement related to the instruments of service. Article 11 of this Agreement will apply in the event of any inconsistency with Section 4.05 of the General Conditions.
- 5.07A Replace "A/E" with "Owner's consultants."
- 5.07H Replace "A/E" with "Owner's consultants."
- 5.13A Owner must approve substitutions. Replace "A/E" with "Owner."
- 5.22 Design-Builder has no obligation under this Agreement to defend, indemnify, or hold harmless Design-Builder's A/E.
- 6.04B Retainage will be released after Final Acceptance and is independent of any separate services provided or TSO Program Payment paid during the Post-Completion Performance Period.
- 6.06A Completion of the Contract Work for purposes of RCW Chapters 39.08 and 60.28 will occur upon Final Acceptance.
- 6.09B Services to be provided by Design-Builder during the Post-Completion Performance Period do not affect when Final Acceptance occurs and do not affect when completion of the Contract Work occurs for purposes of RCW 39.08, RCW 39.12, RCW 60.28 and other relevant statutes.
- Part 8 Part 8 will apply to any disputes that arise during the Post-Completion Performance Period.
- 10.04 Strike "or A/E."
- 10.07 Design-Builder will retain records until six (6) years after the end of Post-Completion Performance Period.
- 10.08 Strike "A/E and Contractor."

### **Article 3** **Definitions**

- 3.1 Terms, words and phrases to have ordinary meanings. Terms, words and phrases used in the Contract Documents will have the meanings given them in this Agreement and in the General Conditions or, if not defined, in a manner consistent with construction and design industry standards. In the event of any inconsistency in such definitions, the definitions in this Agreement will control.
- 3.2 Confirmation of GMP Funding. The incremental authorization by Owner to Design-Builder for Design-Builder to perform and be paid for Work within the GMP as funding becomes available for the Project. Until such time as amounts within the GMP are confirmed by Owner in writing as fully funded, Owner is obligated to pay no more than the portion of the GMP for which funding is available. If funding is not secured, or if Owner otherwise elects to not proceed with Design-Builder and terminate Design-Builder in accordance with the Design-Build Contract, Owner is under no obligation to make payment to Design-Builder for Work not performed, including anticipated overhead or profit on Work not completed.
- 3.3 Design-Builder. "Design-Builder" is the Person identified as such in the Agreement and identified as "Contractor" in the General Conditions. The terms "Design-Builder" and "Contractor" are used interchangeably to identify the Person that is a party to this Agreement. Design-Builder must be licensed, bonded, and insured as a contractor, and legally permitted to do business, in the State of Washington. Design-

Builder's authorized representative, including its Designated Representative, will be authorized to act on Design-Builder's behalf with respect to the Project.

- 3.4 Design-Builder's A/E. "Design-Builder's A/E" or "A/E" is a Person lawfully licensed to practice architecture or engineering in the State of Washington that has a direct contract or employment relationship with Design-Builder to perform design, architecture and/or engineering services for all or a portion of the Work. Although Design-Builder's A/E is referred throughout the Contract Documents as if singular in number, Design-Builder's A/E may be multiple Persons. The "Design-Builder's A/E" means Design-Builder's A/E or Design-Builder's A/E's authorized representative, and includes any architect or engineer contracted or employed by Design-Builder to perform design Work for the Project.
- 3.5 Transition to Sustainable Occupancy Program Payment (TSO Program Payment). The potential quarterly payment Design-Builder can earn during the Post-Completion Performance Period by performing TSO Reviews and meeting or exceeding Key Performance Indicators (KPI) as defined in the KPI Plan during design. This potential payment is not included in, and is not subject to, the GMP.
- 3.6 Transition to Sustainable Occupancy Reviews (TSO Reviews). Periodic reviews of predicted and actual building performance after occupancy performed jointly by Owner, Design-Builder, and identified Subcontractors. As more particularly described in Article 7, during said reviews Design-Builder and identified Subcontractors will provide system operation guidance, building condition correction, and the parties will identify areas where the building is not performing to the program requirements.
- 3.7 Post-Completion Performance Period. The two (2) year period following Substantial Completion during which Design-Builder and Owner will monitor the building and its associated systems, conduct TSO Reviews, and collaborate to ensure that the completed facility transitions to sustainable occupancy and operations.
- 3.8 Project Execution Plan. The Project approach proposed by Design-Builder in response to Owner's Request for Proposals. Following execution of this Agreement, the Project Execution Plan may be adjusted by mutual agreement.
- 3.9 The Project Criteria. The Project Criteria may consist of preliminary engineering and architectural drawings and other information intended to convey Owner's initial concepts for the facility, the expected programmatic, functional and operational elements of the facility, and the expected net and gross areas of the buildings. Any drawings and other information included with the Project Criteria are not for construction but will be considered and used by Design-Builder to complete the design and prepare Construction Documents for the Project. Design-Builder or its A/E will be the designer of record for the Project, will take full responsibility for the design, and will produce Construction Documents for permit submission, Owner acceptance, Subcontractor procurement, and construction.
- 3.10 Design Review Packages. The Project will have regular in-progress design reviews and Design-Builder will submit Design Review Packages to Owner at the (1) Project Confirmation, (2) Detailed Design Documents, and (3) Construction Documents milestones as agreed in the Project Execution Plan developed during project confirmation to convey Design-Builder's plan and design for the Work, consistent with the Contract Documents, including the Project Criteria. When accepted by

Owner, these Design Review Packages will establish Project baselines from which future submissions will be evaluated.

Each Design Review Package will be complete upon the earlier of (1) Owner's written acceptance of the package or (2) termination of the Design-Build Contract. Owner is obligated to pay no more than the amount authorized through each Design Review Package milestone and has no obligation to authorize Design-Builder to proceed further with design or construction under the Agreement if it does not accept any of Design-Builder's Design Review Packages.

- 3.10.1 Project Confirmation. The point in time where the intent of the Project, concept, program, goals, priorities, GMP, and schedule have been established. The GMP identified in this Agreement will be reaffirmed by Owner and Design-Builder through the Project Confirmation submittal accepted by Owner. Design-Builder's submittal will identify any changes to the Project Execution Plan since execution of this Agreement.
- 3.10.2 Detailed Design Documents. The point in time where the design has been sufficiently completed, to the satisfaction of Owner, to identify Design-Builder expected scope of Work, appropriate trade partners are engaged, and cost, scope, deviation log and schedule have been defined. The GMP identified in the accepted Project Confirmation submittal will be reaffirmed by Owner and Design-Builder through the Detailed Design Documents submittal accepted by Owner. Design-Builder's submittal will also identify any changes to the Project Confirmation since acceptance of that submittal.
- 3.10.3 Construction Documents. "Construction Documents" are prepared by Design-Builder and accepted by Owner to convey Design-Builder's final design for the Work, consistent with the Contract Documents and permit requirements. The Construction Documents are identified in the General Conditions and other Contract Documents as Drawings and Specifications but do not include shop drawings or other Submittals. When complete, Owner will accept Design-Builder's Construction Documents Design Review Package, which will identify the final design for the Work. The Construction Documents Design Review Package may be accepted by Owner in phases. The GMP identified in the accepted Detailed Design Documents submittal will be reaffirmed by Owner and Design-Builder through the Construction Documents submittal accepted by Owner. Design-Builder's submittal will also identify any changes to the Detailed Design Documents since acceptance of that submittal.

#### **Article 4** **Notice to Proceed and Substantial Completion**

- 4.1 Notice to Proceed. Notices to Proceed will be issued by Owner. Owner may issue separate Notices to Proceed for Design-Builder's design phase services and for construction.
- 4.2 Contract Time. The Contract Time will be measured from the effective date of the Agreement date to the contractual date of Substantial Completion established in Section 4.3, subject to adjustments as provided in the Contract Documents. Time is of the essence in completion of the Work.
- 4.3 Substantial Completion and Final Completion. Subject to adjustment and

confirmation at Project Confirmation, Design-Builder will achieve Substantial Completion of the Work by May 29, 2026, subject to adjustments as provided in the Contract Documents, and will achieve Final Completion not later than Ninety Days (90) thereafter. Design-Builder represents to Owner that the Contract Time is adequate for full performance of the Work. Design-Builder will also achieve any interim milestones and phasing requirements set forth in the Contract Documents.

- 4.4 Post-Completion Performance Period. Services performed during the Post-Completion Performance Period do not impact when Final Completion or Final Acceptance occurs.
- 4.5 Liquidated damages. Owner will assess, and Design-Builder will be responsible for, liquidated damages in the amount of Three thousand, one hundred ninety-eight dollars and seventy-five cents (\$3,198.75) per Day for each Day beyond the contractual date for Substantial Completion that Substantial Completion is not timely achieved, and an additional Two thousand, five hundred ninety-eight dollars and seventy-five cents (\$2,598.75) per Day for each Day beyond the time period established in Section 4.3 that Final Completion of the entire Work is not achieved. Design-Builder and Owner agree that any liquidated damages established by this Agreement are not penalties and are a reasonable estimation of actual damages to Owner, as of this date of Agreement, based on the inherent uncertainty and difficulty in calculating and quantifying damages caused by delays in the construction of university facilities.

### **Article 5** **Design-Builder's Design and Preconstruction Services**

During the design and preconstruction phase, Design-Builder will perform services as provided in this Agreement and the Contract Documents.

- 5.1 Design Review Package Obligations.
- 5.1.1 Design-Builder is not authorized to proceed with, and Owner is not required to pay for, design or construction beyond each Design Review Package milestone until Owner provides written acceptance of Design-Builder's submittal.
- 5.2.2 If Owner and Design-Builder are unable to finalize any Design Review Package, Owner may terminate the Design-Build Contract as provided in the Contract Documents. If Design-Builder does not provide a Design Review Package submittal acceptable to Owner or otherwise declines or is unable proceed, Design-Builder will receive no payment beyond amounts already paid. In addition, Owner will have the right to seek damages from Design-Builder in accordance with the dispute resolution procedures set forth in the Contract Documents.
- 5.3 Design Obligations.
- 5.3.1 During the design and preconstruction phase, Design-Builder will advise and work with Owner and its representatives to make recommendations for alternate or substitute technologies, construction techniques, methods and practices based on maintainability and durability as well as cost savings, time saving and/or other related efficiencies.

- 5.3.2 The agreements between Design-Builder and Design-Builder's A/E, other design professionals retained by Design-Builder, and Subcontractors will be in writing. These agreements, including services with respect to this Project, will be promptly and fully disclosed to Owner upon Owner's written request after the effective date of the Design-Build Contract.
- 5.3.3 Design-Builder will be responsible for ensuring that the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations, and lawful orders of public authorities, including, but not limited to, the latest adopted versions of:
- .1 International Building Code with State of Washington Administrative Code Amendments
  - .2 International Mechanical Code with State of Washington Administrative Code Amendments
  - .3 Uniform Plumbing Code with State of Washington Administrative Code Amendments
  - .4 International Energy Conservation Code-Commercial with State of Washington Administrative Code Amendments
  - .5 International Fire Code with State of Washington Administrative Code Amendments
  - .6 National Electric Code with Washington State Administrative Code Amendments – Regulated by State of Washington Department of Labor and Industries
  - .7 ADA Title II for Public Buildings in conjunction with the IBC and ICC A-117.1
  - .8 ASME A17.1 with State of Washington Administrative Code Amendments for elevators – Regulated by State of Washington Department of Labor and Industries
  - .9 State of Washington Safety Codes for workers per Washington Administrative Code
  - .10 Asbestos regulations per Washington Administrative Code
- 5.3.4 Owner and Design-Builder will mutually agree on a schedule for in-progress design meetings. The design meetings will address the requirements for construction of the Project, including but not limited to draft drawings and other details that establish the quality levels of materials and systems proposed, and will identify any deviations from the Project Criteria, Proposal including the Project Execution Plan, or design documents included in a previously approved Design Review Package. During the design process, Design-Builder will document for Owner's benefit all decisions made. Design Review Packages will be authorized by written acceptance by Owner.
- 5.3.5 Design-Builder will prepare and submit a Key Performance Indicator (KPI) Plan to Owner that will identify, quantify, and comprehensively collect the performance objectives based upon the program requirements to be monitored during the Post-Completion Performance Period. The KPI Plan will be reviewed and approved by Owner and may include, but not be limited to, energy audits, surveys, acoustic performance, indoor air quality, life-cycle assessment, preventive and predictive maintenance optimization, and other building performance objectives to assist in the transition of the building into a fully operational and maintainable facility.
- 5.3.6 Upon Owner's written authorization, Design-Builder, with the assistance of Owner, will prepare and file design documents, including Construction Documents, required to obtain necessary approvals of governmental authorities having jurisdiction over

the Project.

- 5.3.7 Design-Builder will obtain from each of its design professionals, including Design-Builder's A/E, and will provide Owner with certifications with respect to the documents and services provided by these 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 Project Criteria and Proposal (unless specifically modified through an approved Design Review Package) and (ii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project; and (b) that Owner and its consultants will be entitled to rely upon the accuracy of the representations and statements contained in such certifications.
- 5.3.8 Design-Builder's design services will result in a Project design in accordance with the Contract Documents, including the Project Criteria, and suitable for its intended purpose. At the time of performance, Design-Builder's design professionals will be properly licensed in the State of Washington, equipped, organized and financed to perform the services. Each Person who performs the services will be experienced and qualified to perform the services he or she performs, and Owner will be entitled to rely upon any assistance, guidance, direction, advice or other services provided by any such Person.
- 5.3.9 Design-Builder will, at no cost to Owner, promptly and satisfactorily correct any of Design-Builder's design services that are defective or not in conformity with the requirements of the Design-Build Contract. The obligations of Design-Builder to correct defective or non-conforming design services will not in any way limit any other obligations of Design-Builder or other rights and remedies available to Owner under the Design-Build Contract or otherwise by law.
- 5.3.10 When the Contract Documents require or Design-Builder causes a Subcontractor of any tier to provide professional design services or certifications related to systems, materials or equipment, Design-Builder will cause design services or certifications to be provided by properly licensed design professionals and will ensure that all documents bear such design professional's written approval. Owner will be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.
- 5.4 Supplemental Preconstruction Obligations.
- 5.4.1 Design-Builder will include in the in-progress meetings with Owner such matters as procedures, progress, coordination, and scheduling of the Work. Design-Builder will actively and cooperatively advise Owner on proposed site use and improvements, selection of materials, and building systems and equipment. Design-Builder will also actively and collaboratively provide recommendations consistent with the Project requirements to Owner regarding constructability; availability of materials and labor; time requirements for procurement, installation and construction; phasing and site work planning; sequencing and scheduling for procurement, installation and construction; traffic planning; factors related to construction quality, maintainability and durability; and factors related to construction cost including, but not limited to, costs of alternative designs and materials, preliminary budgets, life-cycle data, and possible cost reductions.
- 5.4.2 Design-Builder will work with Owner to prepare a constructability plan for the Project

- to reduce cost, save time, improve quality, reduce risk and improve the overall process of Project delivery. Key objectives of the constructability program will include creation and maintenance of a well-planned, safe, effective, cooperative and mutually beneficial work environment for all participants. A primary objective of these efforts will be to ensure that the final Cost of the Work does not exceed the GMP and the Project is completed on time. Design-Builder will minimize adverse effects of labor or material shortages or delays; time requirements for procurement, installation and construction; and construction cost.
- 5.4.3 Design-Builder will perform site investigations, including but not limited to utility locates, to assist in development of the design and construction planning. Any investigations of hidden or subsurface conditions have been made only for purposes of developing the Project Criteria. The results of these investigations are available for the convenience of Design-Builder but they are not Contract 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. Design-Builder is solely responsible for interpreting the information and extrapolating beyond the testing location, including each individual boring, test pit or other location. Design-Builder will undertake any further investigation that Design-Builder believes necessary for design or construction.
- 5.4.4 Design-Builder will provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. Design-Builder will take into consideration occupancy needs, cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.
- 5.4.5 Design-Builder will maintain, for Owner's review and acceptance, and update at least monthly, a procurement schedule for long lead items. Design-Builder will expedite and coordinate the ordering and delivery of long lead materials. If Owner agrees to procure any items prior to the establishment of the GMP, such items will be identified in the Contract Documents and Owner will assign contracts for these items to Design-Builder. Thereafter, Design-Builder will accept responsibility for them.
- 5.4.6 Design-Builder will prepare an estimate of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for Owner's review and approval. Thereafter, Design-Builder will collaborate with Owner on cost estimates throughout the preconstruction phase as the design is completed, and will prepare detailed cost estimates with its Detailed Design Documents and Construction Documents Design Review Packages. Estimates will include increasing detail and refinement and allow for the further development of the design. Design-Builder will inform Owner when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action. Design-Builder will also prepare other necessary cost studies, comparative estimates, and comparative schedules to evaluate alternatives and options.
- 5.4.7 Owner, Design-Builder, and their consultants may participate in value engineering prior to completion of the design. Changes may be proposed to the drawings as a result of these processes. Design-Builder will make changes requested by Owner after consultation with Design-Builder's A/E. At the completion of its review(s), Design-Builder will provide Owner with a formal record of its findings and

recommendations. Value engineering will include selecting building systems, with final selection of systems to occur prior to completion of Construction Documents.

- 5.4.8 Design-Builder will prepare promptly following execution of this Agreement (and prior to submitting any Application for Payment) and periodically update an overall Project schedule consistent with the requirements of the Contract Documents. This schedule will identify all major Project milestones and coordinate and integrate Design-Builder's services with Owner's responsibilities. The Progress Schedule will include all major components of the Work; expected commencement and completion dates for the Work and for each Subcontractor; major milestones; dates for ordering and the delivery of major products, including those that are long lead; expected Submittal submission dates; occupancy requirements of Owner; and all other information required by the General Conditions and other Contract Documents. Design-Builder will be responsible for updating the Progress Schedule during construction as set forth in the General Conditions and other Contract Documents.
- 5.4.9 Design-Builder will prepare and submit a subcontracting plan to Owner that identifies Design-Builder's intended scopes of work, the timing of solicitation of Subcontractor bids and proposals, major coordination issues, and means to enhance the opportunity for local businesses to participate in performing the Work. Design-Builder will use its best efforts to develop Subcontractor interest in the Project and competition for each scope of work. Unless otherwise approved by Owner, Design-Builder will solicit at least three (3) bids or proposals for each component of the Work. Design-Builder will only self-perform Work when such Work is competitively bid by Design-Builder and Design-Builder can perform the Work at the lowest net cost to Owner.

### **Article 6** **Design-Builder's Obligations During Construction**

During the construction phase, Design-Builder will perform services as provided in this Agreement and the other Contract Documents, including Section 01 11 00, Summary of Work, and the General Conditions.

- 6.1 Owner to review and accept Construction Documents. Design-Builder will perform no construction Work prior to Owner's review and acceptance of Design-Builder's Construction Documents via one or more Construction Documents Design Review Submittal. Review and acceptance of Construction Documents by Owner is subject to the limitations of the Contract Documents and will not constitute an approval of Design-Builder's means and methods or a waiver or modification of any requirement of the Contract Documents.
- 6.2 Design-Builder to provide Submittals. Owner and Design-Builder will mutually agree on a schedule for Design-Builder to deliver Submittals for Owner review and comment. Owner will have at least fourteen (14) Days to review Submittals unless otherwise agreed. Design-Builder will perform no portion of the construction Work for which the Contract Documents require Submittals until Owner has accepted and taken action on each required Submittal in accordance with the procedure set forth in the Contract Documents. However, Submittals are not Contract Documents. Their purpose is to demonstrate for those portions of the Work for which Submittals are required the way that Design-Builder proposes to conform to the Contract Documents. Review and acceptance of Submittals by Owner is subject to the

limitations of the Contract Documents and will not constitute an approval of Design-Builder's means and methods or a waiver or modification of any requirement of the Contract Documents. Design-Builder will resolve all Owner Submittal review comments prior to commencement of the Work.

- 6.3 Design-Builder to provide Project staff. Design-Builder will provide experienced staff through Final Completion consistent with or in excess of that specified in the Proposal. Design-Builder's Project staff will not be changed without the written permission of Owner. The staff will include necessary and appropriate design, construction management personnel and administrative staff, including, at a minimum, a qualified Project Manager, a full-time Superintendent, a full-time Project Engineer, a Contractor Quality Control ("CQC") Manager, a scheduler, and an estimator. Design-Builder's staff will be sufficient to ensure that:
- .1 Responses to all correspondence are provided within seven (7) Days of receipt;
  - .2 Submittals are reviewed for completeness and forwarded to Owner within three (3) Days of receipt;
  - .3 Design-Builder's Project staff remains dedicated to the Project through Final Completion at no additional cost to Owner; and
  - .4 Responses, Notices, substantiation, Rejections, and Claims as required by Parts 7 and 8 of the General Conditions are provided to Owner within the time periods required by the Contract Documents.
- 6.4 Design-Builder to conduct meetings. Unless otherwise determined by Owner, Design-Builder will schedule and conduct weekly Project review meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work, and will prepare and promptly distribute written minutes from the meetings.
- 6.5 Design-Builder to actively manage and supervise Subcontractors. Design-Builder will coordinate and review and inspect the Work of Subcontractors. Design-Builder will provide notification at regularly scheduled meetings of any major defects or deficiencies and recommend remedial action. Design-Builder will take the lead role in negotiating and resolving any disputes with Subcontractors and obtain Owner's concurrence or approval of all settlements before executing change orders with Subcontractors.
- 6.6 Progress reports. Design-Builder will record the progress of the Project. On a monthly basis, or otherwise as agreed by Owner, Design-Builder will submit with its Application for Payment written progress reports to Owner, showing percentages of completion and other information required by Owner. The reports will:
- .1 Include information about Subcontractor buyout, as applicable.
  - .2 Identify variances between scheduled and probable completion dates for major components of the Work. Recommend action required to meet scheduled completion dates.
  - .3 Provide summary reports of each Progress Schedule update to document all significant changes and the reasons for them.
  - .4 Record in writing and by photographs the progress of the Project.
  - .5 Maintain and report a QC log.
  - .6 Document any outstanding questions and risks associated with delayed responses.
  - .7 List outstanding Submittals and risks associated with delayed responses.
  - .8 Describe the status of outstanding Contract Change Proposals and Change

- Proposal Requests, and any risks associated with delayed responses.
- .9 List all unresolved issues and Claims.
- .10 Identify the status of permits that Design-Builder is required to obtain or assist in obtaining.

Design-Builder will also keep, and make available to Owner with its monthly Application for Payment or more often as requested by Owner, a daily log containing a record for each Day of weather, Subcontractors working on the site, deliveries, Work accomplished, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the Work, accidents, injuries, and other information required by Owner. The information on the log does not constitute Notice of a potential or actual Claim to Owner.

Design-Builder will maintain, in good order and on a current basis, a record copy of all subcontracts, purchase orders, Addenda, Unilateral and Bilateral Change Orders, Submittals, inspection reports, maintenance and operating manuals and instructions, and Project Record. These records will be available to Owner, and, at completion of the Project, delivered to Owner.

- 6.7 Financial reporting and forecasting: Design-Builder will develop and maintain a system of cost control and accurate financial reporting capabilities during the Project, keep full and detailed records and accounts, and exercise such controls as necessary for proper financial management under this Agreement and to substantiate all costs incurred. At least monthly and as otherwise requested, Design-Builder will report to Owner any variances between actual and estimated costs. Design-Builder's financial reporting will include but not necessarily be limited to:
- .1 Subcontractor and supplier buyout status;
  - .2 Expenditures to date and forecasted costs to complete the Work (including projected savings or overruns) allocated by Schedule of Values line item with variances explained;
  - .3 Projected cash flow;
  - .4 Contingency use log;
  - .5 Change Order log (pending and/or approved Unilateral and Bilateral Change Orders); and
  - .6 Risk and issues log identifying estimated costs for each identified risk and issue.

- 6.8 Quality control and assurance and Owner's right to inspect the Work: Design-Builder will develop and submit an overall Quality Control and Assurance Plan administered by Design-Builder's CQC Manager to ensure that the Work is inspected by qualified members of Design-Builder's staff or third parties. The Quality Control and Assurance Plan must be acceptable to Owner. Owner expressly reserves the right to inspect any and all portions of the Work at any time during the Project. Design-Builder will provide access to the Work as needed by Owner or its representatives, including the use of scaffolding, platforms, or lifts. All corrections or observations noted by Owner will be logged by Design-Builder on a QC log for correction, tracking and documentation to the satisfaction of Owner. Neither Design-Builder nor its Subcontractors will intentionally install Work that does not meet applicable requirements.

- 6.9 Survey and layout obligations. Owner may provide survey benchmarks within or

near the construction limits for the Project. Once benchmarks are established by Owner, it will be Design-Builder's responsibility to re-establish them if they are disturbed. Design-Builder will be responsible to Owner for general building layout from established benchmarks, for the detailed layout of individual Work, and for the coordination of Work between Subcontractors to ensure that no conflicts exist.

- 6.10 Special inspection and testing. Certain special inspection and testing may be provided by Owner per Section 01 45 23, Testing Laboratory Services. Design-Builder will provide inspectors and testers furnished by Owner adequate advance notice and timely and appropriate access to the Work.

### Article 7

#### **Design-Builder Obligations During the Post-Completion Performance Period**

During the Post-Completion Performance Period, Design-Builder has the opportunity to earn the TSO Program Payment. The potential TSO Program Payment is not included in, and is not subject to, the GMP. To earn the TSO Program Payment, Design-Builder must:

- 7.1 Baseline KPI Report. Design-Builder will submit upon Substantial Completion a baseline KPI report in the format agreed upon in the KPI Plan (Baseline KPI Report). The Baseline KPI Report will be used for assessment and verification during the Post-Completion Performance Period.
- 7.2 TSO Reviews. Design-Build and Owner will jointly perform TSO Reviews on a monthly basis for the first four (4) months following Substantial Completion, then every other month for the next twenty (20) months for the remainder of the Post-Completion Performance Period.
- 7.2.1 Design-Builder and Owner will prepare in advance of each TSO Review appropriate measurement and verification data points based upon the KPI Plan. When available, Owner will provide the following data: occupant survey response and system activity report. As appropriate, Design-Builder will make available the following: maintenance and operations improvement recommendations, additional training identification, and seasonal transition analysis of building systems.
- 7.2.2 Design-Builder and Owner will ensure that appropriate representatives are present at each TSO Review to effectively respond to: warranty issues (through the correction period), maintenance optimization, minor corrective activities, and system analysis.
- 7.2.3 Within 14 Days following each TSO Review, Design-Build will deliver for Owner's review and comment a KPI report that includes a tracking matrix to monitor and report on the progress of findings following each TSO Review, a measurement and verification package, and minutes of the completed TSO Review. The tracking matrix will include, but not be limited to, the following data: item, date, corresponding report, recommendations, corrective actions taken, and representative responsible for next action.
- 7.2.4 In conducting and preparing for TSO Reviews, both parties will perform their duties professionally, diligently, cooperatively, and in good-faith.

**Article 8**  
**Contract Sum and Guaranteed Maximum Price**

- 8.1 Contract Sum. Following execution of the Agreement, and to the extent funding has been approved, Owner will pay the Contract Sum to Design-Builder for Design-Builder's performance of the Design-Build Contract. The Contract Sum is the sum of the Cost of the Work and Design-Builder's Fee; the Contract Sum will not exceed the GMP. The Contract Sum does not include Washington State sales tax due on progress payments on account of the Contract Sum.
- 8.2 Design-Builder's Fee. Design-Builder's Fee will be established and fixed based on the GMP accepted by Owner at Project Confirmation by multiplying (Proposed by Design-Builder) percent (TBD%) times the estimated the Cost of the Work at Project Confirmation. Design-Builder's Fee covers all of Design-Builder's profit and home office overhead as well as all other costs not reimbursable under this Agreement, including but not limited to costs of principal participation, home office administrative support, taxes including B&O tax, financing costs, and profit. The insurance rates and bond premium used to calculate the GMP will not increase during the term of this Agreement. The fee for changed Work for Design-Builder and Subcontractors will be as specified in the General Conditions. Design-Builder will not separately mark-up such fee by Design-Builder's Fee above.
- 8.3 Guaranteed Maximum Price. The sum of the Cost of the Work and Design-Builder's Fee for the Project, for all design and construction services required by the Contract Documents, is guaranteed by Design-Builder not to exceed the guaranteed maximum price of Sixty-three million dollars and no cents (\$63,000,000.00), subject to additions and deductions for changes in the Work as provided in the Contract Documents. The GMP may be adjusted by mutual agreement during the Project and is expected to be confirmed in writing by Owner and Design-Builder through Owner's written acceptance of each Design Review Package. Owner must approve explicitly in writing any changes to the GMP. The GMP includes by way of example and not limitation all design and construction Costs of the Work; all taxes except Washington State sales tax due on the Contract Sum; Design-Builder's contingency; any approved Allowances; all insurance, including liability and E&O coverage; overhead; and Design-Builder's Fee. Costs that would cause the GMP to be exceeded will be paid by Design-Builder without reimbursement by Owner.
- 8.3.1 Confirmation of GMP Funding. The GMP is expected to be authorized in three (3) packages. Design-Builder can earn up to Four million dollars and no cents (\$4,000,000.00) until such time that further funding is confirmed by Owner in writing.
- 8.3.2 TSO Program Payment. Design-Builder can earn a potential Twelve thousand five hundred dollars and no cents (\$12,500.00) payment per quarter (and not more than One hundred thousand dollars (\$100,000.00) total) during the Post-Completion Performance Period. The potential TSO Program Payment is not included in, and is not subject to, the GMP. The TSO Program Payment also is not subject to retainage, which will be released following Final Acceptance in accordance with the Contract Documents.
- 8.3.3 Apprenticeship Utilization Requirements. Design-Build will meet mandatory apprentice utilization of at least fifteen percent (15%) of the total labor hours worked on the Design-Build Contract unless Owner provides written determination otherwise

per the Contract Documents. Design-Builder acknowledges that apprenticeship utilization goals should be met, and that Owner has determined monetary incentives for meeting the goals, and monetary penalties for not meeting the goals. Therefore, Owner may retain the sum of Five hundred dollars and no cents (\$500.00) as a monetary penalty for not meeting the apprenticeship utilization goals. Or, Owner will pay, by issuance of a Change Order upon Substantial Completion, the sum of Five hundred dollars and no cents (\$500.00) as an incentive for meeting the apprenticeship utilization goals.

8.4 Contingency. The GMP includes all Design-Builder contingencies. The contingency is a sum established for Design-Builder's use to cover costs that are properly reimbursable as Cost of the Work but not the basis for a Change Order, such as, for example, design omissions, buyout error, scope gaps, failure of a Subcontractor of any tier, or expediting costs for critical materials. Design-Builder will use the contingency only with Owner's consent. Unused contingency will revert to Owner at Final Completion of the Project. For contingency within the GMP, Design-Builder will apply no additional fee for use of contingency.

8.5 Unit Prices. Any Unit Prices are as follows:

Description	Units	Price (\$0.00)
None		

Unit Prices as set forth in the Contract Documents are "all in." They include all material, equipment, labor, delivery, installation, and Subcontractor costs, any overhead and profit not included in Design-Builder's Fee, 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.

8.6 Allowances. Allowances included in the GMP are as follows:

Allowance	Amount	Included Items
None		

A limited number of Allowances may be included in the GMP due to uncertainty in scope, price and/or quantity at the time this Agreement is executed. Whenever actual costs are more or less than an Allowance, the GMP will be appropriately adjusted. Design-Builder must provide Owner with written Notice of its intent to expend an Allowance amount (providing Owner with the opportunity to approve or reject the cost) before expending an Allowance amount.

8.7 Assumptions. Assumptions or qualifications, if any, on which the GMP is based, are:

Completion Deliverables Exhibit dated 2/6/2023  
Project Execution Plan Exhibit dated TBD

8.8 Changes in the Work.

8.8.1 Owner may, without invalidating the Design-Build Contract, order changes in the Work consisting of additions, deletions or other revisions. Owner will issue such changes in writing.

- 8.8.2 Adjustments of the GMP on account of changes in the Work will be determined by the methods specified in the General Conditions.
- 8.8.3 In the event a Change Order is issued for a Change in the Work, Design-Builder and Subcontractors of any tier may only apply fee for changed Work, including overhead and profit, as specified in Section 7.02 of the General Conditions.
- 8.8.4 It is the intent of the parties that when the GMP is set, the GMP will include all elements necessary to design, construct, and complete the Project in accordance with the Contract Documents, and that Change Orders adjusting the GMP will therefore not be necessary except in limited circumstances. Accordingly, the GMP will be adjusted only for the following events:
- .1 Scope changes.
  - .2 Concealed or unknown conditions.
  - .3 Regulatory agency changes.
  - .4 Changes required by an inspector beyond those contained in regulations.
  - .5 Allowance adjustments.
- 8.8.5 Events for which the GMP will not be adjusted include but are not limited to:
- .1 Gaps in coverage between Subcontractors, including self-performed Work by Design-Builder, that occur after the GMP is negotiated.
  - .2 An item indicated in the Contract Documents that was not picked up in the GMP.
  - .3 Errors, omissions, or ambiguities in the design documents, including Construction Documents, prepared by Design-Builder.
  - .4 Coordination inconsistencies between design disciplines that Design-Builder knew of, caused, or reasonably should have known of.
  - .5 Failure or bankruptcy of a Subcontractor.
  - .6 Escalation of materials, equipment or labor prices.
  - .7 Estimating errors.
  - .8 Expediting costs for critical materials.
  - .9 Costs related to Subcontractor charges that result from mistakes or omissions in Subcontractor buyout, or coordination issues between Subcontractors, or interference between Subcontractor and Design-Builder or among Subcontractors.

## **Article 9** **Cost of the Work**

- 9.1 Costs to be Reimbursed.
- 9.1.1 Definition. The term Cost of the Work will mean the actual costs reasonably and necessarily incurred by Design-Builder in the proper performance of the Work, without overhead, profit, mark-up or fee, and at rates not higher than the standard paid at the place of the Project except with prior consent of Owner. The Cost of the Work will include only items reimbursable as set forth in this Article 9. If any cost is subject to Owner's prior approval, Design-Builder will obtain this approval in writing prior to incurring the cost. Whenever the Contract Documents state that Design-Builder will perform any Work or incur any expense, it will be understood to mean, in the absence of language to the contrary, that the cost will be a Cost of the Work payable by Owner, not to exceed the GMP.

- The following Sections identify the categories of costs to be reimbursed as Costs of the Work.
- 9.1.2 Construction and Supervision Labor Costs.
    - 9.1.2.1 Wages of construction workers, including working foremen, directly employed by Design-Builder to perform the construction of the Work at the site or, with Owner's approval, at off-site locations in the performance of the Work. Wages of construction workers will not be less than the prevailing rate of wage required by RCW 39.12, "Prevailing Wages on Public Works."
    - 9.1.2.2 Wages or salaries of Design-Builder's supervisory and administrative personnel pre-approved in writing by Owner when stationed at or away from the site, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of time required for the Work and directly involving the Project. 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. Design-Builder will not bill Owner for wages or salaries of these supervisory and administrative personnel in excess of eight (8) hours per day and forty (40) hours per week.
    - 9.1.2.3 Costs paid or incurred by Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary annualized benefits such as sick leave, medical and health benefits, vacation, holidays and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 9.1.2.1 through 9.1.2.3. Costs paid or incurred by Design-Builder for bonuses, stock options, deferred compensation, or discretionary payments to employees are not reimbursable Costs of the Work unless included in agreed burden rates. Owner and Design-Builder reserve the right to establish potential performance bonuses that can benefit Owner by reducing the overall cost of the Project.
    - 9.1.2.4 The parties may establish fully burdened wage rates when establishing the GMP. Any agreed wage and burden rates are subject to Owner's audit and may be adjusted to reflect actual charges.
  - 9.1.3 Subcontract Costs.
    - 9.1.3.1 Payments made by Design-Builder to Subcontractors will be in accordance with the requirements of their subcontracts. The costs in any cost-plus subcontracts must conform to the requirements of this Article 9. Design-Builder will maintain a procedure for the review, processing and payment of Subcontractor payment applications. Design-Builder will verify the completeness of all Subcontractor payment applications and assemble and check all supporting documentation required by the Contract Documents or by the subcontracts, including receipt of all lien waivers and releases.
    - 9.1.3.2 Payments made to subsidiaries or affiliates of Design-Builder must be approved by Owner. Owner expressly reserves the right to require Design-Builder to utilize independent Subcontractors rather than Design-Builder's subsidiaries or affiliates. Any Work subcontracted to a Design-Builder subsidiary or affiliate will be executed

on a lump sum or cost-reimbursable basis as pre-approved by Owner.

9.1.4 Costs of Materials and Equipment Incorporated in the Completed Construction.

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

9.1.4.2 Costs of materials described in Section 9.1.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, will become Owner's property at the completion of the Work or, at Owner's option, will be sold or returned to the supplier by Design-Builder. Any amounts realized from such sales or returns will be credited to Owner as a deduction from the Cost of the Work.

9.1.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items.

9.1.5.1 Costs of consumables, including transportation, storage, installation, maintenance, dismantling and removal, of materials, supplies, temporary facilities, machinery, and equipment, that are provided by Design-Builder at the site and fully consumed in the performance of the Work.

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

.1 Rates and quantities of equipment rented will 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. Rentals from Design-Builder or any entity in which Design-Builder or one or more of its owners has a direct or indirect ownership interest ("CM Equipment") will be pre-approved by Owner and separately accounted for. The rental cost for CM Equipment, as well as all other rental charges, will not exceed rates listed in the Rental Rate Blue Book by Data Quest, San Jose, California, or fair market rental costs, whichever are lower. If more than one rate is applicable, the best available 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 furnishing all fuel, oil, lubrication, repairs, maintenance, and insurance. No gas surcharges will 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 total cost of rental allowed will not exceed the cost of purchasing the equipment outright. Owner, at its option, may direct Design-Builder to purchase tools and equipment specifically for the Project, which will become Owner's possession 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 will be established for the equipment, which rate and use must be approved by Owner prior to performing the Work. Design-Builder will separately account for rentals from itself or any Person in which Design-Builder or one or more of its owners has a direct or indirect ownership interest.

- 9.1.5.3 Costs of street cleaning, if any, and for removal and disposal of debris and rubbish from the site.
- 9.1.5.4 Cost of document reproductions, telephone service including long-distance telephone calls, Internet service, postage and parcel delivery charges, and other technology-related costs incurred by Design-Builder related to the Project and approved by Owner, including the cost of computers, other hardware, and software, as well as reasonable petty cash expenses of the Project.
- 9.1.5.5 The reasonable travel expenses, based upon most current Washington State travel per diem guideline rates, of Design-Builder's personnel incurred while traveling in connection with the Work with Owner's prior written approval and vehicle expenses which are not related to travel expenses but are assignable to the worksite for Design-Builder's personnel (Superintendent, Project Manager, Project Engineer and Quality Control Staff). Commuting-related travel is not reimbursable.
- 9.1.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by Owner and meeting the other requirements for payment of off-site materials and equipment.
- 9.1.6 Design and Other Consulting Services.
- 9.1.6.1 Compensation, including fees and reimbursable expenses, paid by Design-Builder for design and design-related consulting services required by the Contract Documents, including but not limited to services to produce Construction Documents and Submittals needed for permitting, final Owner approval, Subcontractor bidding purposes, and construction.
- 9.1.7 Miscellaneous Costs.
- 9.1.7.1 That portion of insurance and bond premiums that are directly attributed to the Design-Build Contract. Costs for self-insurance are not reimbursable without Owner's prior written approval.
- 9.1.7.2 Use or similar taxes (but not income or B&O taxes) imposed by a governmental authority that are related to the Work and for which Design-Builder is liable. Sales tax due on the Contract Sum will be paid by Owner with each progress payment.
- 9.1.7.3 Project-specific fees and assessments for permits, license fees, inspections that Design-Builder is required by the Contract Documents to pay, but not for the cost of any re-inspection fees or penalties.
- 9.1.7.4 Fees of laboratories for tests required of Design-Builder by the Contract Documents and not paid for by Owner, except those related to defective or non-conforming Work for which reimbursement is excluded by the Contract Documents.
- 9.1.7.5 Royalties and license fees paid for the use of a particular design, process or product explicitly required by the Contract Documents. The Cost of the Work will not include, and Design-Builder will 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 Design-Builder or its A/E, consultants, or Subcontractors of any tier.

- 9.1.7.6 The cost of warehousing pre-approved in writing by Owner for stored materials or equipment subsequently incorporated into the Work.
- 9.1.7.7 Costs incurred by Design-Builder in preparing and maintaining the Progress Schedule, scheduling plots, correspondence, and reports, so long as such costs are specific to this Project and were not incurred to prepare for, submit or prove a Claim.
- 9.1.8 Other Costs and Emergencies.
- 9.1.8.1 Other costs reasonably incurred in the performance of the Work if and to the extent approved in advance and in writing by Owner.
- 9.1.8.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in the Contract Documents.
- 9.1.8.3 Cost of repairing or correcting, prior to Final Completion, damaged Work executed by Design-Builder, Subcontractors or suppliers, provided that such damaged Work was not caused by 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 Design-Builder from insurance, sureties, Subcontractors of any tier or suppliers. Design-Builder will take reasonable action to recover and, to the extent it has failed to recover, will assign its rights to pursue and collect to Owner upon request.
- 9.2 Costs Not to Be Reimbursed.
- The Cost of the Work will not include:
- 9.2.1 Salaries and other compensation of Design-Builder's personnel stationed at Design-Builder's principal office or offices other than the site office, including all administrative and accounting personnel, except as specifically provided in Sections 9.1.2.
- 9.2.2 Expenses of Design-Builder's principal office and offices other than the site office.
- 9.2.3 Overhead and general expenses, except as may be expressly included in Section 9.1.
- 9.2.4 Design-Builder's capital expenses, including interest on Design-Builder's capital employed for the Work.
- 9.2.5 Rental costs of machinery and equipment, except as specifically provided in Section 9.1.5, or costs or losses resulting from lost, damaged or stolen machinery or equipment or negligent or improper use of machinery or equipment.
- 9.2.6 Costs due to the negligence or failure of Design-Builder, Subcontractors and/or 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 Contract Documents.

- 9.2.7 Costs, other than costs included in Change Orders approved by Owner that would cause the GMP to be exceeded.
- 9.2.8 Penalties, extensions, fines, and re-inspection fees imposed by governmental entities to the extent caused by Design-Builder or a Subcontractor of any tier.
- 9.2.9 Safety costs expressed as a percentage or as any other calculated expression.
- 9.2.10 Legal, consultant, or claims-related expenses, except as specifically provided in Section 9.1.7.8.
- 9.2.11 Accounting in Design-Builder's main or home office.
- 9.2.12 Warehousing in Design-Builder's facility, except as approved under Section 9.1.7.6.
- 9.2.13 Daily commuting to the jobsite.
- 9.2.14 Business license(s).
- 9.2.15 Testing and inspection of rejected Work.
- 9.2.16 Home office data processing, software, hardware or computer-related costs.
- 9.2.17 Insurance or bonding costs except as specifically required and reimbursable under the Contract Documents.
- 9.2.18 Overtime wages unless pre-approved by Owner.
- 9.2.19 Any cost not specifically and expressly described in Section 9.1.
- 9.3 Discounts, Rebates and Refunds.
  - 9.3.1 Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment will accrue to Owner and Design-Builder will make provisions so that they can be obtained. If Design-Builder is offered discounts and/or rebates based upon prompt payment, Design-Builder will offer Owner the opportunity to take advantage of such discount and/or rebate, and if Owner makes prompt payment then Owner will only be charged the price as reduced by the discount and/or rebate. If Owner declines the opportunity, Design-Builder may keep any such discounts and/or rebates it achieves through its own prompt payment. If Design-Builder does not provide Owner the opportunity to participate then Design-Builder may only charge the net costs after consideration of discounts and rebates. Design-Builder will notify Owner in a timely manner of the availability of such cash discounts, rebates, or refunds.
  - 9.3.2 Amounts that accrue to Owner in accordance with the provisions of Section 9.3.1 will be credited to Owner as a deduction from the Cost of Work.
- 9.4 Related Party Transactions.
  - 9.4.1 For purposes of Section 9.4, the term "related party" will mean a parent, subsidiary, affiliate or other entity having common ownership or management with Design-

Builder; any entity in which any stockholder in, or management employee of, Design-Builder owns any interest in excess of ten percent in the aggregate; or any Person or entity which has the right to control the business or affairs of Design-Builder. The term "related party" includes any member of the immediate family of any Person identified above.

9.4.2 If any of the costs to be reimbursed arise from a transaction between Design-Builder and a related party, Design-Builder will notify Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If Owner, after such notification, authorizes the proposed transaction, then the cost incurred will be included as a cost to be reimbursed, and Design-Builder will procure the Work, equipment, goods or service from the related party. If Owner fails to authorize the transaction, Design-Builder will procure the Work, equipment, goods or service from some Person or entity other than a related party according to the terms of the Contract Documents.

9.5 Accounting Records. Design-Builder and its Subcontractors will keep full and detailed records and accounts related to the Cost of the Work and exercise such controls as may be necessary for proper financial management under the Design-Build Contract and to substantiate all costs incurred. The accounting and control systems will be satisfactory to Owner. Owner will usually conduct, at a minimum, a pre-construction audit conference, an interim audit and a final audit of the Project, however Owner reserves the right to conduct an audit at any time. Owner and Owner's auditors will, during regular business hours and upon reasonable notice, be afforded access to, and will be permitted to audit and copy (including electronically), Design-Builder's and Subcontractors' original records and accounts, including complete documentation supporting accounting entries, books, ledgers, computerized records, daily reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, invoices of Subcontractors of any tier, memoranda and other data relating to this Project or any Claim. Design-Builder and its Subcontractors will preserve these records for a period of six (6) years after Final Completion, or for such longer period as may be required by law.

## **Article 10** **Payments**

10.1 Applications for Payment.

10.1.1 The Contract Documents detail the requirements for Applications for Payment. Based upon Applications for Payment that Design-Builder submits to Owner, Owner will make progress payments to Design-Builder on account of the Contract Sum.

10.2 Progress Payments.

10.2.1 Subject to other provisions of the Contract Documents, the amount of each progress payment will be computed as follows and in accordance with Section 01 29 00, Applications for Payment:

.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 Owner of changes in the Work, amounts not in dispute may be included as provided in the General Conditions unless 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 Owner, suitably stored and insured off the site at a location agreed upon in writing);
- .3 Add Design-Builder's Fee. Design-Builder's Fee will be prorated to equal the percentage of the Cost of the Work described in .1 and .2 as compared to the GMP;
- .4 Subtract the aggregate sum of previous payments made by Owner;
- .5 Subtract amounts, if any, for which 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 arising out of the Work and the State of Washington with respect to taxes.

10.3 Final Accounting.

- 10.3.1 Following Substantial Completion and Final Completion, and when Design-Builder believes that all Work required by the Contract Documents has been fully performed, Design-Builder will deliver to Owner a final accounting of the Cost of the Work with its final Application for Payment.
- 10.3.2 Owner will review and report in writing on Design-Builder's final accounting within thirty (30) Days after delivery, provided that Owner is given prompt access to Design-Builder's records. Design-Builder will promptly make available at its office all accounting documents related to the Project. Based upon such Cost of the Work as Owner reports to be substantiated by Design-Builder's final accounting, and provided the other conditions of the Contract Documents have been met, Owner will notify Design-Builder in writing of Owner's intention to make final payment or to withhold payment. Owner's final accounting will not preclude or in any way limit Owner from exercising its rights of audit under other provisions of the Design-Build Contract.
- 10.3.3 If Owner reports that the Cost of the Work as substantiated by Design-Builder's final accounting to be less than claimed by Design-Builder, Design-Builder will be entitled to invoke the dispute resolution procedure of the Design-Build Contract with respect to the disputed amount. If Design-Builder fails to so initiate resolution of the dispute within the time specified in Article 8 of the General Conditions following Owner's delivery of the accounting to Design-Builder, the substantiated amount reported by Owner will become final and binding. Pending a final resolution pursuant to the Contract Documents, Owner will pay Design-Builder any undisputed amount determined by Owner to be due Design-Builder, not to exceed the GMP, in response to Design-Builder's final Application for Payment.
- 10.3.4 If, subsequent to final payment and at Owner's request, Design-Builder incurs costs in connection with the correction or completion of Work as described as reimbursable

in Article 9, Owner will reimburse Design-Builder such costs and 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 GMP.

10.4 Final Payment.

10.4.1 Final payment, constituting the entire unpaid balance of the Contract Sum, less retainage, will be made by Owner to Design-Builder no later than thirty (30) Days after Design-Builder has fully performed the Design-Build Contract and Final Completion has occurred (except for 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), Design-Builder has submitted a final Application for Payment, and Owner has substantiated Design-Builder's final accounting.

10.4.2 Owner will release retainage to Design-Builder in accordance with RCW Chapter 60.28 and the Contract Documents.

10.5 Subcontractor Payment Reporting.

10.5.1 All contract payments are subject to compliance tracking using the Washington State Office of Minority & Women's Business Enterprise's business diversity management system, Access Equity (B2Gnow). Contractor and all subcontractors (regardless of certification) will register and report all progress payments made utilizing the system. The Owner reserves the right to withhold payments from the Contractor for non-compliance with this requirement.

**Article 11**  
**Instruments of Service**

11.1 Instruments of service. The Drawings (including original Construction Documents), Specifications, materials, models, sketches, renderings, surveys, reports, and other documents, including those prepared as 3D electronic models, using CAD, and existing in other electronic formats, prepared or provided by Design-Builder's A/E and/or Design-Builder are instruments of service intended for use solely with respect to the Project. Owner will own any instruments of service prepared during the design, and will be permitted to retain copies, including reproducible and originally stamped copies, of all other instruments of service. For all instruments of service, including those prepared during the design, Owner is granted an unlimited and royalty free license to utilize the instruments of service to communicate about the Project, complete or expand the Project, correct any deficiencies, make any renovations or repairs to the Project, or for future projects other than the construction of another building.

Owner agrees to indemnify and hold Design-Builder harmless from any subsequent modification of the instruments of service by Owner and from Owner's use of the instruments of service on other projects not involving Design-Builder.

11.2 Design-Builder to convey instruments of service to Owner. Upon Owner's request if made during the Project or within five years of completion of the Post-Completion Performance Period, each of Design-Builder's design professionals, including

Design-Builder's A/E, will be contractually required to convey to Owner in whatever format Owner may designate that design professional's instruments of service for the completion, use, updating, modernizing, and maintenance of the Project, conditioned upon Owner's agreement to indemnify and hold harmless the design professional as set forth above. Design-Builder's design professionals, including Design-Builder's A/E, will be permitted to remove all indications of their ownership and/or involvement from instruments of service provided in electronic format. Design-Builder will incorporate the requirements of this Section in all agreements with design professionals.

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

**Article 12**  
**Miscellaneous Provisions**

- 12.1 Design-Builder's A/E. Design-Builder's A/E and other design professionals and consultants engaged by Design-Builder are listed below:

Name and Address	License Number	Relationship to Design-Builder	Other Information
TBD			

- 12.2 Owner's Consultants. Consultants, if any, engaged directly by Owner, as well as their professions and responsibilities, are listed below:

Name and Address	Responsibilities to Owner	Other Information
Miller Hull Partnership 71 Columbia St. 6 <sup>th</sup> Floor Suite 600 Seattle, WA 98104	Programming Consultant	Owner consultants identified in this table are not eligible to contract with or provide services to Design-Builder.

- 12.3 Separate Contractors. Separate contractors, if any, engaged directly by Owner and known by Owner as of the date of this Agreement, as well as their trades and responsibilities, are listed below:

Name and Address	Responsibilities to Owner	Other Information
None		

- 12.4 Designated Representatives.

- 12.4.1 Owner's Designated Representative, designated below, will be authorized to act on Owner's behalf with respect to the Project:

Louise Sweeney  
Senior Project Manager  
Facilities Services, Capital

Jason Harper  
Senior Construction Manager  
Facilities Services, Capital

12.4.2 Design-Builder's Designated Representative, identified below, will be authorized to act on Design-Builder's behalf with respect to the Project:

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

12.4.3 Neither Owner's nor Design-Builder's Designated Representatives will be changed without ten (10) Days' written Notice to the other party.

12.5 Interest. Payments due and unpaid under the Contract Documents will bear interest as specified by RCW 39.76, not to exceed the Bank of America prime plus two percent (2%) per annum.

12.6 Information to CPARB. Design-Builder and all Subcontractors will submit Project information required by the state Capital Projects Advisory Review Board (CPARB).

12.6.1 Design-Builder will submit to Owner the complete project specific diverse business inclusion plan summarized in Design-Builder's Proposal. At a minimum, the plan must address inclusion of underutilized firms as Subcontractors and suppliers including, but not limited to, the office of minority and women's business enterprises certified businesses, veteran certified businesses, and small business. Design-Builder will track and report to the public body 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.

12.7 Insurance.

12.7.1 In addition to the insurance requirements imposed in the General Conditions and other Contract Documents, Design-Builder and Design-Builder's A/E, other design consultants, and any design-build Subcontractors of any tier will purchase and maintain for at least six (6) years after Substantial Completion Professional Liability/Errors and Omissions Liability insurance in an amount of not less than two million dollars (\$2,000,000) per claim and annual aggregate (deductible of up to fifty thousand dollars (\$50,000) permitted). If design consultants or design-build Subcontractors of any tier have a contract value of less than two million dollars (\$2,000,000), they may purchase and maintain for at least six (6) years after Substantial Completion Professional Liability/Errors and Omissions Liability insurance in an amount of not less than one million dollars (\$1,000,000) per claim and annual aggregate (deductible of up to fifty thousand dollars (\$50,000) permitted) in lieu of the requirements above. Design consultants or design-build Subcontractors of any tier whose contract value is greater than two million dollars (\$2,000,000.00) but would like the reduced Professional Liability/Errors and Omissions Liability insurance requirements must receive Owner's written approval. Design-Builder, Design-Builder's A/E, other design consultants, and any design-build Subcontractors of any tier will promptly notify Owner of any material changes to, interruption of, or termination of this insurance, and will immediately procure replacement coverage. Design-Builder, Design-Builder's A/E, other design consultants, and any design-build Subcontractor of any tier will either maintain active policy coverage or secure an extended reporting period, providing coverage for claims first made and reported to the insurance company within six (6) years of Substantial Completion or termination

of the Work under the Contract Documents, whichever occurs first.

- 12.8 Payment and performance bonds. Payment and performance bonds will be provided by Design-Builder. The amounts of such payment and performance bonds will equal or exceed the GMP plus Washington State sales tax.

**Article 13**  
**Enumeration of the Contract Documents**

- 13.1 The Contract Documents. The Contract Documents, except for modifications issued after execution of this Agreement, are enumerated as follows:

13.1.1 This executed Agreement, any attached Exhibits and other documents listed in this Agreement.

13.1.2 The General Conditions and any Supplementary Conditions of the Design-Build Contract.

13.1.3 Owner's Project Criteria.

13.1.4 The Addenda, if any, are as follows:

Number	Date	Pages

13.1.7 Design-Builder's Proposal including the Project Execution Plan dated [date], and Statement of Qualifications dated [date] (together, the "Proposal"), to the extent consistent with or which represent enhancements to Owner's Project Criteria. Design-Builder's submission and identification of proposed design features to Owner are to be provided by Design-Builder within the GMP. Proposal and Construction Documents prepared by Design-Builder and accepted by Owner in accordance with the Contract Documents. Acceptance by Owner of each of the following Design Review Packages will establish baseline Construction Documents from which future submissions will be evaluated:

- .1 Project Confirmation Submittal
- .2 Detailed Design Documents Submittal
- .3 Construction Documents Submittal

All Submittals will include updated deviation log(s) noting variances from previous Submittals, proposal criteria and standards for review and approval.

13.1.8 Other documents ("Exhibits"), if any, forming part of the Contract Documents are as follows:

Project Manual dated 1/20/2023  
WSU Request for Qualifications dated 1/20/2023  
WSU Request for Proposals dated \_\_\_\_\_  
Department of Labor and Industries Prevailing Wage Rates.

**OWNER:**  
**WASHINGTON STATE UNIVERSITY**

**DESIGN-BUILDER:**  
**FIRM NAME**  
**WA CONTRACTOR LICENSE NUMBER**

\_\_\_\_\_  
(Signature) (Date)

Olivia Yang  
Associate Vice President  
Facilities Services

\_\_\_\_\_  
(Signature) (Date)

(Printed Name)  
(Title)

END OF SECTION 00 50 00

**COMPLETION DELIVERABLES EXHIBIT**  
**Schweitzer Engineering Hall**

This Attachment lists the deliverables specific to Design-Build required in addition to (or specifically altering) the established deliverables of the completion milestones of the Contract Documents.

Substantial Completion	
	Provide a Substantial Completion Submittal inclusive of all documentation required to achieve Substantial Completion as described in the Agreement, the General Conditions and Section 01 70 00. In additional, Design-Builder shall also provide:
	1. Record of Design-Builder's A/E Certification of review of the draft O&M Manual.
	2. Scheduled prior and submitted upon Substantial Completion provide Owner with the A/E developed punch list inspection report. Architect of record and Engineer of record must conduct the punchlist inspection accompanied by Owner's Representative.
	3. Provide the Baseline KPI Report required as part of the Post Completion Performance Period.
Final Completion	
	Provide a Final Completion Submittal inclusive of all documentation required to Achieve Final Completion as described in the Agreement, the General Conditions and Section 01 70 00. In addition, Design-Builder shall also provide:
	1. In lieu of the Project Record as described in 00 72 00, Article 4.02, Design-Builder shall maintain the Project Record electronically in Bluebeam or approved equivalent. Design-Builder shall upon Final Completion provide a hyperlinked PDF that includes tracked changes showing all changes to the Project Documents throughout the project, and is bookmarked for all divisions.
	2. Design-Builder shall compile a final Conformed Record Drawing with revision date in native format, as a converted CAD sheet set in DWG format, as a text searchable PDF format, one no larger than 30" X 42" paper set drawing, and one set of 4-mil single sided Mylar Drawings no larger than 30" X 42". For the CAD drawings: Adhere to the National CAD Standards. Do not provide multiple tab layout in a single file. Bind all .xrefs prior to submitting. Purge all files prior to submission. Must be viewable in native format without any add-ons.
	3. Provide an Excel or CSV drawing index.
	4. Provide any 3D Models in native format, if created.
	5. Provide any additional surveys or geotechnical reports obtained by Design-Builder.
	6. Provide a minimum of 2 Final O&M Manuals per the requirements of Section 01 78 39, as well as a text searchable PDF.
	7. Provide LEED submittal documentation.
	8. Provide the termination of stormwater permit.
Final Acceptance	
	Provide a Final Acceptance Submittal inclusive of all documentation required to Achieve Final Acceptance as described in the Agreement, the General Conditions and Section 01 70 00.
Retention Release	
	No deliverables required.

End of Attachment Completion Deliverables Exhibit

PART 1 GENERAL

1.01 SUMMARY

- A. This Section includes procedures for preparation and submittal of Applications for Payment.

1.02 SUBMITTALS

- A. Prior to submitting its first Application for Payment, Contractor shall:
1. Submit a preliminary Progress Schedule per Section 01 32 13 – Progress Schedule.
  2. If requested, submit a projected monthly cash-flow analysis for the duration of the Project.
  3. Submit an approved Intent to Pay Prevailing Wages form prior to commencing the Work. An approved Intent to Pay Prevailing Wages form must be on file with Owner for each classification of laborers, workers, or mechanics employed by Contractor or Subcontractors whose Work is included in an Application for Payment.
  4. “Washington State Prevailing Wage Rates for Public Works Contracts/Whitman County” are made a part of the Contract Documents and are included at the end of this Section. It is Contractor’s responsibility to verify with the Washington State Department of Labor and Industries the most current and applicable prevailing wage rates for this Project.
  5. Submit and receive approval of the Schedule of Values per Section 01 29 73 – Schedule of Values, and the General Conditions. All Applications for Payment shall be in the same format.
  6. Submit a list of all Subcontractors with points of contact and other contact information, including phone number, email address, and mailing address.
  7. Submit a list of all major material suppliers with points of contact and other contact information, including phone number, email address, and mailing address.
  8. Submit Retainage Option Form to Owner for the disposition of retainage funds.
    - a. In accordance with Chapter 60.28 of the Revised Code of Washington (RCW), Owner shall reserve retainage not to exceed 5% of the monies earned by Contractor as a trust fund for the protection and payment of:
      - 1) The claims of any person and/or Owner arising out of or relating to Work performed on the Project; and
      - 2) The State with respect to taxes, fees, or penalties that may

be imposed and due from Contractor (see General Conditions).

- b. Retainage will be released per Section 01 70 00 - Project Close-Out.
- c. At the option of Contractor, the moneys reserved by Owner shall be:
  - 1) Retained in a fund by Owner;
  - 2) Bonded for all of the retainage using a bond form acceptable to Owner;
  - 3) Placed in escrow with a bank or trust company by Owner.
    - a) Escrow: If the retained funds are to be placed in escrow, Contractor will select the escrow agent, subject to approval by Owner. The selected agent must be a bank or trust company in the State of Washington.
    - b) Escrow Agent: If Contractor elects the escrow option, an escrow agreement shall be executed by Contractor, Owner, and bank or trust company. Three copies of the agreement should be completed and executed by Contractor and returned to Owner for execution; Owner will forward copies to the bank or trust company for receipt, acceptance, and execution. The bank or trust company will retain one copy and return one copy each to Contractor and Owner. A completed and signed escrow agreement must be on file with Owner before Contractor's first Application for Payment is processed.
    - c) Escrow Investments: The bank or trust company may invest the retained funds in bonds and other securities selected by Contractor, except stocks, subject to the written approval of Owner.
    - d) The investments selected must mature on or prior to the date 45 Days following Final Acceptance of the Work. Interest on such investments may be paid to Contractor as it accrues.
    - e) Escrow Costs and Fees: All escrow costs and fees shall be paid by Contractor.
    - f) Release of Escrow Investments to Contractor: Retainage will be released per Section 01 70 00 - Project Close-Out. Once Contractor has fully complied with the Contract Documents and statute, Owner shall issue written instructions to the bank or trust company to release to Contractor the investment held in escrow.

B. Draft Application for Payment:

1. Contractor shall submit a draft, itemized Application for Payment within the last 7 Days of the month.
2. The draft application does not constitute a payment request and shall not be signed.
3. Contractor shall carefully check all extensions, totals, and required information for accuracy before submittal.
4. Contractor and Owner may meet to confer regarding the current progress of the Work and the amount of payment to which Contractor is entitled. Owner may request that Contractor provide supporting documentation substantiating its right to payment. Contractor is not entitled to make a final payment request, nor is any payment due Contractor, until such data is furnished. Contractor may include in its Application for Payment projected costs to the end of the month.
  - a. Fill in the following information within Owner's Application for Payment form:
    - 1) Percentage of Work completed based upon the approved schedule of values.
    - 2) List Change Orders approved by Owner prior to submission date. Use Owner's designations. Do not bill for changed Work until a fully executed Change Order has been received.
    - 3) Certification of Participation WBE and MBEs, all certification types acceptable, supply this regardless of having firms to report upon.
    - 4) List all Subcontractors that have performed Work at the site during the pay period.
    - 5) If applicable, Apprentice/Journeyman Participation.
5. Contractor shall submit or make available for review the following prior to the draft Application for Payment:
  - a. Project Record; (see Section 01 78 39 – Project Record)
  - b. Updated Progress Schedule in native format (see section 01 32 13 – Progress Schedule);
  - c. Contractor Quality Control Reports (see Section 01 45 00 - Quality Control); and
  - d. Stored Materials: Requests for payment of stored materials may only be made for materials properly stored on or off-site and in full compliance with the General Conditions.

- C. Application for Payment:
1. Contractor may not submit the approved Application for Payment (or payment will be withheld) until all requirements of the draft application for payment are met.
  2. Upon approval of the Draft Application for Payment, contractor will be authorized to submit the agreed upon Application for Payment for processing and payment. This application for payment shall be signed by hand by a responsible officer of the Contractor and may be submitted in scanned format electronically.
  3. Formal submittal must include all parts of the Application for Payment form.
  4. Owner shall make progress payments in such amounts as it determines are properly due within 30 Days of receipt of a properly executed Application for Payment.
  5. Owner shall notify Contractor in accordance with Chapter 39.76 RCW if the Application for Payment does not comply with the requirements of the Contract Documents.
- D. Disputed Amounts: If Contractor believes it is entitled to payment for Work performed during the prior calendar month in addition to the agreed-upon amount, Contractor may, also within the same period, submit to Owner along with the approved Application for Payment a separate, written payment request specifying the exact additional amount claimed due, the category in the Schedule of Values in which the payment is claimed 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, Contractor and all Subcontractors shall file with Owner by the same date certified copies of all payroll records relating to the additional amount due, pursuant to WAC 296-127-320.
- E. Payments to Subcontractors: Contractor shall pay each Subcontractor no later than 10 Days after receipt of payment from Owner the amount to which the Subcontractor is entitled. Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to lower-tier Subcontractors in a similar manner.
1. Applications for Payment shall not request payment for portions of the Work that Contractor does not intend to pay a Subcontractor, unless such Work has been performed by others whom Contractor intends to pay.
  2. If, after making an Application for Payment but before paying a Subcontractor for its performance covered by the Application, Contractor 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), Contractor may withhold the amount as allowed under the Subcontract, but it shall:
    - a. Give the Subcontractor and Owner written notice of the

- withholding as soon as practicable once Contractor determines the cause for the withholding but before the due date of the Subcontractor payment;
- b. Include the reasons for the withholding and the actions the Subcontractor must take to release the payment; and
  - c. Once Subcontractor has taken the required remedial actions, pay Subcontractor within 8 Days.
3. Owner may, at its sole option, issue joint checks to Contractor and to any Subcontractor. If Owner makes payments by joint check, such value shall be reflected on the next Application for Payment.
- F. Subcontractor Payment Reporting: Contractor and all tiers of subcontractors will utilize Access Equity accessed at the Office of Minority and Women's Business Enterprises (OMWBE) at <https://omwbe.diversitycompliance.com/> to report subcontractor payment information. The Contractor shall:
1. Complete the OMWBE user training.
  2. Register and enter all required Subcontractor information into Access Equity upon Owner creation of the contract record.
  3. Monitor and report amount and date of all payments:
    - a. Received from Owner;
  4. Made to Subcontractor(s); Resolve any discrepancies between reported and received payments.
  5. Require each Subcontractor to:
    - a. Register in Access Equity and complete the user training.
    - b. Verify amounts and date of receipt of payments from Prime Contractor or higher tier Subcontractor.
    - c. Report any payments made to a lower tier Subcontractor.
    - d. Resolve any discrepancies between reported and received payments.
- G. Application for Final Payment:
1. Application for Final Payment will be accepted for processing only after Contractor has completed the requirements of Final Completion as described in Section 01 70 00 – Project Close-Out.
- H. Release of Retainage:
1. Retainage will be released per Section 01 70 00 - Project Close-Out.

END OF SECTION 01 29 00