



**ARIZONA STATE UNIVERSITY
STANDARD FORM AGREEMENT BETWEEN OWNER AND
DESIGN-BUILDER
ON THE BASIS OF A GUARANTEED MAXIMUM PRICE**

November 1, 2020 Edition

THIS PAGE IS BLANK

TABLE OF CONTENTS

ARTICLES

- ARTICLE 1
SCOPE OF WORK
- ARTICLE 2
CONTRACT DOCUMENTS
- ARTICLE 3
INTERPRETATION AND INTENT
- ARTICLE 4
OWNERSHIP OF DOCUMENTS
- ARTICLE 5
CONTRACT TIME
- ARTICLE 6
FEES AND GUARANTEED MAXIMUM PRICE
- ARTICLE 7
PROCEDURE FOR PAYMENT
- ARTICLE 8
TERMINATION FOR CONVENIENCE
- ARTICLE 9
REPRESENTATIVES OF THE PARTIES; AUTHORITY
- ARTICLE 10
INSURANCE AND BONDS
- ARTICLE 11
OTHER PROVISIONS

EXHIBITS

- Exhibit A - Design-Build Agreement General Conditions
Attachment 1 - Performance and Payment Bonds
Attachment 2 - Change Order Pricing Format (Sample)
- Exhibit B - Design-Build Agreement Scope of Services
Attachment 1 - Project Deliverables
- Exhibit C - D-B Company Name
Design and Pre-Construction Services Hourly Rates Summary, Dated month, day, year
- Exhibit D - Design-Build Agreement Form of Pre-Construction Services Amendment (Template)
- Exhibit E - Design-Build Agreement Form of GMP Amendment (Template)
- Exhibit F - Cost of the Work (Template)
- Exhibit G - List of Construction Documents
- Exhibit H - Statement of All Clarifications and Assumptions
- Exhibit J - Schedule of Major Milestones

This **AGREEMENT** is made this _____ day of _____ in the year 20____, by and between **ARIZONA BOARD OF REGENTS** for and on behalf of the Arizona State University ("**OWNER**"), located at 1551 S. Rural Road, Tempe, AZ 85281 and _____ ("**DESIGN-BUILDER**" or "**D-B**") located at _____, (each a "Party" or collectively the "Parties") for services in connection with the following Project: (number, name, location, and general description) (the "**PROJECT**").

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

Article 1 Scope of Work

1.1 In accordance with ABOR Policy 3-804, Owner intends to enter into a contract for design and construction services by a qualified design-builder as described in "Exhibit A - Design-Build General Conditions" and "Exhibit B - Design-Build Scope of Services" (hereinafter the "Scope").

1.2 The D-B shall perform all needed design, pre-construction, and construction services in the Pre-Construction and Construction Phases of the Project, and provide all material, equipment, tools, and labor necessary to satisfactorily complete all work, deliverables and services described in and reasonably inferable from the Contract Documents (collectively "Scope of Work", "Project Work" or "the Work"). The Parties agree that this Agreement shall not be effective as a contract for Construction Phase services until such time as the Parties agree on a Guaranteed Maximum Price (GMP) and Construction Phase Fee in the form of a written Amendment to this Agreement specifically incorporating those contract terms.

1.3 During the Design and Pre-Construction Phase, the D-B shall provide design and pre-construction services to determine the project designs, provide complete Construction Document Submittals, provide project GMPs, confirm the existing site conditions, including site surveys and geotechnical studies, and confirm project schedules, in accordance with this Agreement, "Exhibit A - Design-Build General Conditions", and "Exhibit B - Design-Build Scope of Services".

1.4 The D-B must keep the Project within the Owner's Project Budget requirements, and D-B's estimates of probable Construction Costs shall not exceed this amount. D-B shall prepare complete project construction cost estimates for all the Work required to complete the Project, with each Design Phase Submittal and with each GMP Proposal, using the format set forth in "Exhibit F - Cost of the Work", which excludes the Design and

Pre-Construction Phase Fee, so that the Owner and D-B have an opportunity to assess overall budget capacity prior to authorization of partial or complete GMPs.

The amount within the Owner's Project Budget available for the Work may be revised only by an Owner-approved written modification of the D-B Agreement.

1.5 If the GMP proposed by the D-B is acceptable to the Owner, and if the Owner desires to proceed with the Project, the Parties agree to execute an Amendment to this Agreement, in the form provided on "Exhibit E - Design-Build Agreement Form of GMP Amendment" attached hereto, to establish the GMP and Construction Phase Fee as described in "Exhibit F - Cost of the Work", and to incorporate herein the Construction Documents and other Contract Documents, and D-B's assumptions and clarifications as may be necessary to define the Scope of Work as described in "Exhibit G - List of Construction Documents", "Exhibit H - Statement of All Clarifications and Assumptions", and "Exhibit J - Schedule of Major Milestones" attached hereto. If the GMP is not within the Owner's Project Budget, or if the Owner desires not to proceed with the Project, the Owner reserves the right to terminate this Agreement or act as otherwise provided for in the "Exhibit A - D-B General Conditions".

1.6 Professional Registration Requirements and Standard of Care

D-B agrees that the D-B's Design Professional (including Sub-Consultants) are current registrants with the State of Arizona Board of Technical Registration (and others as required), and are fully qualified by education, technical training, and experience as professionals, to perform Professional Services and Contract Administration.

D-B agrees that in performing the Professional Services it will exercise the Standard of Care described below, and will cause its Design Professional and Sub-Consultants to exercise the same. D-B will also cause all Consultants and Sub-Consultants it employs, or contracts with, to meet this same Standard of Care.

The "Standard of Care" is the performance standard under which D-B shall provide its Professional Services, and is defined as: The skill, care and competence exercised by members of the applicable professional discipline currently practicing under similar circumstances. D-B shall perform the Professional Services as expeditiously as is consistent with the Standard of Care and the orderly and timely progress of the Project and Project Schedule.

Notwithstanding the contractual and indemnity remedies provided to Owner under the D-B Agreement, and notwithstanding any applicable law barring recovery for any economic loss caused by D-B, D-B acknowledges that a violation of the Standard of Care causing injury or damage to Owner is actionable, and D-B agrees that the Owner may pursue as a remedy, in addition to any contractual or indemnity remedy, a tort claim for professional negligence against D-B.

Although the Owner has the right to make claims in tort for professional negligence against D-B for the negligence, recklessness, or intentional wrongful conduct or errors or omissions of D-B, the D-B's Design Professional (including Sub-Consultants), D-B agrees it shall also be responsible for and shall indemnify and hold Arizona State University, the Arizona Board of Regents, and the State of Arizona, harmless from any and all losses, expenses, damages, costs, and injuries, arising from or resulting from any negligence, recklessness, or intentional wrongful conduct, or errors or omissions, in the Design Documents prepared by D-B, or D-B's Sub-Consultants, for the Owner, or in the Construction Administration during the Construction Phase.

The Owner's acceptance of the Design Documents provided to it by D-B, and D-B's estimates of Probable Construction Cost, shall not relieve D-B from any responsibility for errors or omissions in those regards, nor from any other obligation of D-B under the D-B Agreement or applicable laws, statutes, ordinances, building codes, rules and regulations, or operation of law.

D-B acknowledges and agrees that approval and involvement by the Owner during the Design Phase (including, without limitation, recommendations by the Owner as to the Design), in no way relieves D-B of full responsibility for the Design and the Design Documents.

All drawings and specifications shall bear the signature and professional seal for all disciplines.

D-B shall be fully responsible for all design and coordination provided under this Agreement. D-B shall provide thorough review and coordination of all disciplines, drawings, and specifications, as well as Owner's Consultants (if any), and demonstrate to the Owner that this has been accomplished. This includes, but is not limited to:

- a. Civil Engineering, including Surveying and Drainage Analysis
- b. Landscape and Irrigation Design
- c. Architectural Design
- d. Acoustical Design
- e. Interior Design, including FF&E
- f. Structural Engineering
- g. Mechanical Engineering
- h. Plumbing Engineering
- i. Performance Design and Specification of the Fire Sprinkler System, including Architectural Control of Fire Sprinkler Head Locations
- j. Electrical Engineering
- k. Performance Design and Specification of the Addressable Fire Alarm System
- l. Telecommunications Systems
- m. Audio Visual Systems
- n. Owner's Proprietary Keyless Access and Security Systems
- o. Interference detection and resolution at the earliest appropriate submittal phase, and at each subsequent submittal phase
- p. Cost Estimating Services for Each Phase

D-B hereby agrees, subject to the Standard of Care, that it shall have the same legal responsibility to the Owner as the Owner has, or may have, to others arising out of, or resulting from, any errors or omissions of D-B.

1.7 Changes in Scope and/or Schedule:

1.7.1 The Owner at any time, by written notice to D-B, may make changes within the general scope of this D-B Agreement including, without limitation, to any one or more of the following:

1. Scope of Design, Pre-Construction, and/or Construction Phase Services, including but not limited to required drawings, designs, or specifications
2. Schedule of Milestones
3. Time for Completion

1.7.2 If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the D-B Agreement, whether or not identified in the notice, the Owner may negotiate with the D-B to make equitable adjustments to D-B's Fee or Guaranteed Maximum Price, the Milestone Schedule, or the Time for Completion, or shall otherwise modify the D-B Agreement as appropriate.

For Construction Services, D-B must assert its right to an equitable adjustment under this clause within thirty (30) days from the date of receipt of the written notice from the Owner. Owner may, in its sole and absolute discretion, consider and/or deny requests for equitable adjustment that are made more than thirty (30) days from receipt of the written notice, but in any event before final payment under D-B Agreement.

1.7.3 Any changes must be authorized by Owner in writing before they are performed.

Article 2 Contract Documents

2.1 The "Contract Documents" are comprised of the following. In the event of a conflict in the Contract Documents, the Contract Documents will be applied in the following order of precedence:

2.1.1 This Agreement without Exhibits or Attachments.

2.1.2 Exhibit A to this Agreement - "Design-Build General Conditions", with Attachments.

2.1.3 Exhibit B to this Agreement - "Design-Build Scope of Services".

2.1.4 Exhibit F - Cost of the Work
Exhibit H - Statement of All Clarifications and Assumptions
Exhibit J - Schedule of Major Milestones

For the purposes of order of precedence only, these three documents will be treated as one document.

- 2.1.5** Exhibit G to this Agreement - "List of Construction Documents".
- 2.1.6** Exhibit C to this Agreement - "D-B Company Name's Design and Pre-Construction Services Hourly Rates Summary" dated month day, year, as subsequently modified by addenda, amendments or change orders.
- 2.1.7** The following other documents, if any, forming part of the Agreement: N/A, TBD or list, for example, Unit Price Schedules, CM@Risk's Allowances, Owner's Permit List, if any, and other Contract Documents.
- 2.1.8** Owner's Request for Qualifications (RFQ) dated _____ with all addenda, exhibits and clarifications.
- 2.1.9** The D-B's Statement of Qualifications (SOQ) submission, as required by the RFQ, dated _____, as accepted and agreed to by the Owner, including any clarifications and revisions of the submission.

Article 3 Interpretation and Intent

- 3.1** The Contract Documents are complementary and must be interpreted in harmony so as to avoid conflict, with words and phrases interpreted consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity, Contract Documents shall take precedence in the order in which they are listed in Section 2.1.
- 3.2** Terms, words and phrases used in the Contract Documents, shall have the meanings as defined in "Exhibit A - Design-Build General Conditions" or if not specifically defined, their ordinary and common meaning.
- 3.3** The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 4 Ownership of Documents

- 4.1** The plans, drawings, specifications, notes, reports, renderings, final models, design concepts and images, and all other documents and items to be prepared and furnished by Design-Builder pursuant to this Part 1 Agreement (hereinafter referred to as "Work Product"), both physical and digital, shall be the property of the Owner, including the right to use same on Owner's other projects without additional cost to the Owner. D-

B shall maintain for its file copies of those documents, drawings and/or other products required by law or the standards of professional practices.

4.2 In the case of reuse or modification of the Design Documents by the Owner, D-B's name and all professional seals shall be removed, and D-B shall not be liable to the Owner or third parties in their reuse.

4.3 By execution of this D-B Agreement, D-B transfers and hereby assigns all copyright, ownership, and other intellectual property interest in the Construction Documents and the completed Project to the Owner, and further agrees to execute any separate assignment agreement necessary to implement such transfer. D-B may use on other projects any standard details and other parts of the Construction Documents not prepared exclusively for Owner.

4.4 If Owner terminates the Project for its convenience as set forth in Article 8 of the Agreement or Design-Builder elects to terminate this Agreement in accordance with Section 11.3 of the General Conditions, it is understood that the use of the Work Product is at Owner's sole risk without liability to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any type.

Article 5 Contract Time

5.1 Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.2 For the Design and Pre-Construction Phase Services, the Work and Contract Time shall commence within five (5) days of D-B's receipt of Owner's Notice to Proceed, unless the parties mutually agree otherwise in writing. Completion of the Design Documents set forth in "Exhibit B - Scope of Services" shall be achieved no later than _____, subject to adjustments in accordance with the Contract Documents.

5.3 For the Construction Phase Services the Work and Contract Time shall commence within five (5) days of D-B's receipt of Owner's Notice-to-Proceed (NTP), unless the Parties mutually agree otherwise in writing.

5.4 Substantial Completion.

5.4.1 Substantial Completion of the Work (the Substantial Completion Date) shall be achieved no later than _____ (__) calendar days after receipt of the NTP, or by date certain _____, subject to adjustments in accordance with the Contract Documents.

5.4.2 Interim milestones and/or Substantial Completion of identified portions or phases of the Work shall be achieved as follows, subject to adjustments in accordance with the

Contract

Documents:

_____.

5.5 Final Completion.

5.5.1 Final Completion of the Work or portion or phase thereof shall be achieved within _____ (__) calendar days after the date established for Substantial Completion of the Work, or by date certain _____, unless otherwise mutually agreed by amendment or change order.

5.5.2 Interim milestones and/or Final Completion of identified portions or phases of the Work shall be achieved as follows, subject to adjustments in accordance with the Contract Documents:

_____.

5.6 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Date provided in Section 5.4.1 as adjusted in accordance with the Contract Documents (the “Scheduled Substantial Completion Date”), Owner will suffer damages which are difficult to specify accurately and ascertain. Design-Builder agrees that if Substantial Completion for the entire Work or any portion thereof is not attained by the scheduled Substantial Completion Date, Design-Builder shall pay Owner _____ dollars (\$_____) per day as liquidated damages, and not as a penalty, for each calendar day that Substantial Completion extends beyond the Designated Date. In addition, if Final Completion is not attained within the time period defined by Section 5.5.1, Design-Builder shall pay Owner _____ dollars (\$_____) per day that the Owner does not have beneficial use of as liquidated damages, and not as a penalty for each calendar day that Final Completion extends beyond the Designated Date. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving Final Completion on the established dates.

Notwithstanding anything stated herein, the above-stated liquidated damages shall in no way limit Owner’s other rights (e.g. “recovery measures” or termination) or limit Owner’s entitlement to damages for any breach other than for delay for which Contractor may be responsible pursuant to the terms of this Agreement or applicable law. If for any reason liquidated damages as set forth in this section are unenforceable, Owner shall be entitled to recover its actual damages sustained as a result of any delay in the completion of this Project.

Article 6 Fees and Guaranteed Maximum Price

6.1 Fees

6.1.1 Include Basic Services and Additional Services (as defined in this Article 6.1) (collectively “Professional Services”). The D-B shall render the Professional Services in the Phases as described in the Scope. The Phases are to be performed in the sequence set forth in the Scope, and D-B shall not proceed with the next Phase in the Scope without prior written authorization from the Owner.

6.1.2 Design and Pre-Construction Phase Services. Design-Builder shall be compensated for Design and Pre-Construction Services (Basic Services) in accordance with this Article 6.1.2 of the Agreement. Included are the following:

Design-Builder’s Design Services Fixed Fee in the amount _____ Dollars (\$_____);

Design-Builder’s Pre-Construction Services Fixed Fee in the amount of _____ Dollars (\$_____).

These fees will be authorized incrementally by Amendment(s). Initial and future fees accepted by this Agreement include:

INITIAL AUTHORIZED FEES	Phase 1	Phase 2	Total
Design Services Fees			
phase	\$ ****,***,*** **	\$ ****,***,*** **	\$ ****,***,*** **
phase	\$ ****,***,*** **	\$ ****,***,*** **	\$ ****,***,*** **
phase	\$ ****,***,*** **	\$ ****,***,*** **	\$ ****,***,*** **
phase	\$ ****,***,*** **	\$ ****,***,*** **	\$ ****,***,*** **
phase	\$ ****,***,*** **	\$ ****,***,*** **	\$ ****,***,*** **
Sub-Total Design Services Fees	\$ ****,***,*** **	\$ ****,***,*** **	\$ ****,***,*** **
Pre-Construction Services Fees			
phase	\$ ****,***,*** **	\$ ****,***,*** **	\$ ****,***,*** **
phase	\$ ****,***,*** **	\$ ****,***,*** **	\$ ****,***,*** **
phase	\$ ****,***,*** **	\$ ****,***,*** **	\$ ****,***,*** **
phase	\$ ****,***,*** **	\$ ****,***,*** **	\$ ****,***,*** **
phase	\$ ****,***,*** **	\$ ****,***,*** **	\$ ****,***,*** **
Sub-Total Pre-Construction Services Fees	\$ ****,***,*** **	\$ ****,***,*** **	\$ ****,***,*** **
Total Initial Services Fees	\$ ****,***,*** **	\$ ****,***,*** **	\$ ****,***,*** **
Initial Reimbursable Expenses	\$ ****,***,*** **	\$ ****,***,*** **	\$ ****,***,*** **
FUTURE FEES AUTHORIZED BY AMENDMENT	Phase 1	Phase 2	Total
Design Services Fees			
phase	\$ ****,***,*** **	\$ ****,***,*** **	\$ ****,***,*** **
phase	\$ ****,***,*** **	\$ ****,***,*** **	\$ ****,***,*** **
phase	\$ ****,***,*** **	\$ ****,***,*** **	\$ ****,***,*** **
phase	\$ ****,***,*** **	\$ ****,***,*** **	\$ ****,***,*** **
phase	\$ ****,***,*** **	\$ ****,***,*** **	\$ ****,***,*** **

Construction Administration	\$ *** ** - **	\$ *** ** - **	\$ *** ** - **
Closeout / Warranty	\$ *** ** - **	\$ *** ** - **	\$ *** ** - **
Sub-Total Design Services Fees	\$ *** ** - **	\$ *** ** - **	\$ *** ** - **
Pre-Construction Services Fees			
phase	\$ *** ** - **	\$ *** ** - **	\$ *** ** - **
phase	\$ *** ** - **	\$ *** ** - **	\$ *** ** - **
phase	\$ *** ** - **	\$ *** ** - **	\$ *** ** - **
phase	\$ *** ** - **	\$ *** ** - **	\$ *** ** - **
phase	\$ *** ** - **	\$ *** ** - **	\$ *** ** - **
Sub-Total Pre-Construction Services Fees	\$ *** ** - **	\$ *** ** - **	\$ *** ** - **
Total Future Services Fees	\$ *** ** - **	\$ *** ** - **	\$ *** ** - **
Future Reimbursable Expenses	\$ *** ** - **	\$ *** ** - **	\$ *** ** - **

6.1.3 Additional Design and Pre-Construction Phase Services:

6.1.3.1 Additional Design and Pre-Construction Phase Services (“Additional Services”) is defined as all services not described in “Exhibit B - Scope of Services” and this Agreement, but that are otherwise requested by Owner.

6.1.3.2 The following Additional Services shall be provided by D-B only when authorized by Owner, and shall be paid for by Owner in accordance with the terms of this Agreement, in addition to the DB’s compensation for Basic Services:

- (a) Providing financial feasibility or other special studies.
- (b) Providing services relative to future facilities, systems, and equipment, which are not intended to be constructed during the Construction Phase.
- (c) Providing interior design and all other similar services required for or in connection with the selection, procurement or installation of movable furniture, furnishings, and related equipment if not expressly stated in this Agreement.
- (d) Providing consultation concerning replacement of any work damaged by fire, natural causes or forces majeure during the course of construction.
- (e) Retaining services of a competent surveyor or registered engineer or to provide any special inspections or tests, as required by code or prudent practice, during the Construction Phase.

(f) Providing additional services arising from the default of the D-B or the default of any of its Subcontractors.

(g) Providing assistance required by the Owner in any judicial, quasi-judicial, administrative, or legislative hearings or proceedings relating to the Project.

(h) Providing staff, professional and otherwise, when directed by Owner, to perform tasks and duties assigned as necessary to prevent slippage in progress schedule and/or timely completion of the construction Work.

(i) Providing other reasonable services.

(j) If the Owner and the D-B agree on more extensive Design representation at the site during the Construction Phase than is described in "Exhibit B - Scope of Services", the D-B shall provide one or more full-time Design Representatives. Such full-time Design Representatives shall be selected, employed and directed by the D-B, and the D-B shall be compensated for such services as mutually agreed in writing between the Owner and the D-B. Any full-time Design Representatives or replacements shall be subject to prior approval by the Owner. The Owner reserves the absolute right to reject or require replacement of any Design Representatives.

6.1.3.3 For all Additional Services, D-B's compensation will be computed using one or more of the following:

- (a) Mutually agreed upon adjustments to the Fixed Fee computed using the hourly rates as listed in "Exhibit C - Design and Pre-Construction Services Hourly Rates Summary",
- (b) A negotiated Fixed Fee amount, or
- (c) Other mutually agreed upon basis.

6.1.3.4 Additional Services must be approved by Owner in writing prior to commencement of the services.

6.1.4 Hourly Rates applicable to Design and Pre-Construction Phase Services under this Agreement are contained in "Exhibit C - Design and Pre-Construction Services Hourly Rates Summary".

6.2 Construction Phase Services and Guaranteed Maximum Price

6.2.1 Construction Phase Fee. The Construction Phase Fee, as defined in "Exhibit A - General Conditions", shall be a Fixed Fee, but initially established as _____ percent (_____%) of the Direct Construction Cost, and later when the GMP is established, as a Fixed Dollar Fee, subject to any cost or credit adjustments prescribed by Article 9.4 of *Exhibit A - General Conditions*.

6.2.2 Guaranteed Maximum Price. D-B shall provide a Guaranteed Maximum Price (GMP) for a complete functional project as described in “Exhibit B - Scope of Services”, and is to be established in compliance with the “Exhibit A - General Conditions”. The GMP is comprised of the Cost of the Work, including Contingencies and Allowances (each as defined in “Exhibit A - General Conditions”), and the Construction Phase Fee. Unless otherwise provided in the Contract Documents, Design-Builder’s Guaranteed Maximum Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.2.3 If the GMP requires an adjustment due to changes in the Work, the cost of such changes shall be priced as described in Article 9.4 of “Exhibit A - General Conditions”.

6.2.4 For Owner-caused construction delays, either agreed to or awarded, D-B will provide all the necessary extended Construction General Conditions for a daily sum as provided for in Articles 8.1.3 and 9.4 of “Exhibit A - General Conditions”. The specific amount of extended Construction General Conditions will be determined by the Owner on a case-by-case basis prior to issuance of a change order and must be determined to be fair and reasonable to the satisfaction of the Owner and the Design-Builder.

Article 7 Procedure for Payment

7.1 Progress Payments.

7.1.1 For Design and Pre-Construction Services, Design-Builder shall submit to Owner on the last business day of each month beginning with the first month after the Date of Commencement, Design-Builder’s Application for Payment based on the percentage complete agreed to by the Owner of the total Design and Pre-Construction Services, in accordance with the Contract Documents.

7.1.2 Payment for Design-Builder’s Construction Services, shall be made in accordance with Article 6 of “Exhibit A - Design-Build General Conditions”. All costs, which exceed the GMP and are not authorized by change order, are to be paid by the D-B and not the Owner.

7.1.3 Owner shall make payment on Design-Builder’s properly submitted and accurate Application for Payment within fourteen (14) days after Owner’s receipt and approval of each monthly Application for Payment in accordance with the Contract Documents, but in each case less the total of payments previously made, and less amounts properly withheld under the Contract Documents. Failure to submit a proper or accurate invoice suspends the running of the time for payment of the invoice.

7.2 Interest. Payments properly due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest as provided by law.

7.3 Record Keeping and Finance Controls. With respect to all Work performed by Design-Builder, its Subcontractors and Consultants, under this Agreement, Design-Builder, its Subcontractors and Consultants, shall keep full and detailed accounts and

exercise such controls as may be necessary for proper financial management, using accounting and control systems approved by the Owner. During performance of the Work and for five (5) years after Final Payment, the Design-Builder shall retain and shall also require all Subcontractors and Consultants to retain for review and/or audit by the Owner all correspondence, meeting minutes, memoranda, electronic media, books, accounts, reports, files, time cards, material invoices, payrolls, and evidence of all communications, direct and indirect costs and all other matter related to the Work. Upon request by the Owner, a legible copy or the original of any or all such records shall be produced by the Design-Builder at any time during or after the Work as the Owner may request. The Design-Builder shall submit to the Owner upon request all payrolls, reports, estimates, records and any other data concerning Work performed or to be performed and concerning materials supplied or to be supplied, as well as Subcontractor or Consultant payment applications or invoices and such Subcontractor's or Consultant's progress payment checks. The requirements of this Section shall be provided for in all contracts between the Design-Builder and its Subcontractors and Consultants.

Article 8 Termination for Convenience

8.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate the Agreement. In such event, Owner shall pay Design-Builder for all Work executed, and for cost or expense necessarily incurred in connection with the Work, and reasonable costs and expenses attributable to such termination, including demobilization costs, and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants.

8.2 During its work under this, Design-Builder agrees that it will not unilaterally undertake any irreversible commitment or make any non-cancelable agreement for the provision of future goods, materials, or services and for which the Owner would or may be responsible should the Owner exercise its rights to terminate this Agreement for the convenience of the Owner in accordance with Section 8.1 above. During the course of the Work, when Design Builder determines that irrevocable commitments for future goods, materials, or services are necessary for the efficient and timely completion of the Project, Design-Builder shall notify the Owner of its opinion and the reasons therefor. However, no such commitments shall be made without the prior written authorization of the Owner, which shall not be unreasonably withheld.

Article 9 Representatives of the Parties; Authority

9.1 Owner's Representatives.

9.1.1 Owner designates **Chris Coulter, Executive Director, ASU, Capital Programs Management Group, ASU, PO Box 875512, Tempe AZ 85287-5512**, as the "Owner's Senior Representative", which individual has the authority and responsibility for avoiding

and resolving disputes under Section 10.2.2 of “Exhibit A - Design-Build General Conditions”.

9.1.2 Owner designates **Ed Soltero, Assistant Vice President and University Architect, ASU, PO Box 875512, Tempe AZ 85287-5512** as its “Project Representatives”, which have the authority and responsibility set forth in the Contract Documents.

9.2 Design-Builder’s Representatives.

9.2.1 Design-Builder designates **individual’s name and title, firm name and complete address** as Design-Builder’s “Senior Representative”, which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.2 of “Exhibit A - Design-Build General Conditions”.

9.2.2 Design-Builder designates **individual’s name and title, firm name and complete address** as Design-Builder’s “Representative” which individual has the authority and responsibility set forth in the Contract Documents.

9.2.3 Design-Builder designates **individual’s name and title, firm name and complete address** as Design-Builder’s “Construction Superintendent”, which individual has the authority responsibility set forth in the Contract Documents.

9.2.4 Design-Builder’s Representatives and Construction Superintendent as approved by the Owner, shall not be replaced without the Owner’s prior written approval.

Article 10 Insurance and Bonds

10.1 Insurance. Design-Builder shall procure in accordance with the Contract Document the insurance coverages as defined in the General Conditions. Insurance certificates shall be submitted to Owner prior to Owner’s issuance of a Notice to Proceed.

10.2 Bonds. Design-Builder shall provide Performance and Payment Bonds for One Hundred (100%) percent of the Guaranteed Maximum Price stated herein, underwritten by a Surety licensed in the State of Arizona and acceptable to the Owner, utilizing the forms established in “Exhibit A - Design-Build General Conditions - Attachment 1”. Bonds shall be submitted to Owner prior to Owner’s issuance of a Notice to Proceed with any construction work.

Article 11 Other Provisions

11.1 Other provisions, if any, are as follows: Consultants and Subcontractors submitted initially and approved by the Owner shall not be replaced without the Owner’s prior written approval. Any additional costs due to an approved change shall not be the Owner’s responsibility and will not increase the Guaranteed Maximum Price.

Design-Builder represents that it has the necessary financial resources to fulfill its obligations under the Contract Documents, and has the necessary corporate approvals to execute the Agreement, and perform the Work described herein.

DESIGN-BUILDER:

Design-Builder Company Name
By Its Authorized Representative

OWNER:

Arizona Board of Regents
on behalf of Arizona State University

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

Design-Build General Conditions
dated November 1, 2020

(xx pages)

EXHIBIT B

Design-Build Scope of Services
dated month - day - year
(xx pages)

EXHIBIT C

Design-Build Firm Name
Design and Pre-Construction Services Hourly Rates Summary
dated month - day - year

(tbd pages)

EXHIBIT D

**Form of Pre-Construction Services Amendment
(TEMPLATE)**

(1 page)

EXHIBIT E

**Form of GMP Amendment
(TEMPLATE)**

(2 pages)

EXHIBIT F

Cost of the Work

**Design-Builder to provide a specific Cost of the Work
for each GMP Amendment
dated month - date - year**

(tbd pages) - (final document to be included with GMP Amendment)

EXHIBIT G

LIST OF CONSTRUCTION DOCUMENTS

**Construction Documents necessary to define Scope of Work and Deliverables for
the Construction Phase Services, including plans, designs, drawings,
specifications and other required Contract Documents
dated month - date - year**

(tbd pages) - (final document - to be included with GMP Amendment)

EXHIBIT H

STATEMENT OF ALL CLARIFICATIONS AND ASSUMPTIONS

dated month - date - year

(tbd pages) - (final document - to be Included with GMP Amendment)

EXHIBIT J

SCHEDULE OF MAJOR MILESTONES

dated month - date - year

(tbd pages) - (final document - to be included with GMP Amendment)