Date (type in) Issued: _________________

Request for Qualifications Number (If Applicable): _________________

OWNERS

ARIZONA BOARD OF REGENTS

for and on behalf of

ARIZONA STATE UNIVERSITY

DESIGN PROFESSIONAL


SEPTEMBER, 2006 EDITION
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APPENDIX A

Design Professional Agreement Between Owner and Design Professional

Specific Terms and Provisions of the Design Professional Agreement

1. Section 1:

1.1 Job Order Project Title: ____________________________________________________________

1.2 Job Order Project Number: _______________________________________________________

1.3 Job Order Project Location: _______________________________________________________

1.4 Job Order Project Scope: _________________________________________________________

1.5 Job Order Criteria: _______________________________________________________________

1.5 Job Order Contractor: _____________________________________________________________

2. Section 3.4(iv):

During the Design Phase Design Professional SHALL PROVIDE THE FOLLOWING CHECKED AND INITIALED design services. Items that are not checked will NOT be performed.

(Architectural Program)

Design Professional will prepare an Architectural Program. The Architectural Program shall consist of AT LEAST the following CHECKED AND INITIALED items:

___/___ 1. Locate and develop existing building drawings for remodeled areas.

___/___ 2. Required size, use, occupancy, and furnishings/equipment requirements of all spaces.

___/___ 3. Required relationships of spaces to other spaces.

___/___ 4. Required utility services and other infrastructure needs for all spaces and investigations into available utilities and other infrastructure.
5. Environmental requirements for all spaces.

6. Traffic/circulation requirements within and without the building and building service requirements.

7. Tabulation of all net assignable areas.

8. Explanation of probable required non-assignable spaces.

9. Calculation of probable gross building area(s).


11. Telecommunications analysis for voice, data and video.

12. Job Order Site analysis, including utilities, circulation, service, orientation, adjacent structures, etc

All of the above shall be presented in an 8 1/2" X 11" written PROGRAM DEVELOPMENT SUBPHASE REPORT. __________(______) copies of the REPORT shall be required for review and approval.

(minimum Schematic Design Documents)

1. Job Order Site Plan (Scale: 1" = 40'-0").

   a. Preliminary architectural Job Order Site plan.

2. Job Order Site Survey (Scale: 1/16" = 1'-0"). Survey of Job Order Site conditions pursuant to Owner's instructions.

3. Soil boring data and consultant's foundation recommendations, if appropriate. Report on subsurface Job Order Site conditions pursuant to Owner's instructions.

4. Structural Plan(s) showing proposed bay arrangements, materials: (Scale: Plan - 1/8" = 1'-0"; Details, Sections 3/8" = 1'-0").

   a. Typical interior framing details showing intended materials

   b. Typical exterior framing detail.

   c. Typical column, foundation schedule.

   d. Vibration Isolation Review.

   e. Section(s).

5. Schematic Floor Plans (Scale: 1/8" = 1'-0").

   a. Using existing building plans and indicated new work, including demolition.

   b. New work, all floor levels

   c. Remodeled areas of existing structures, if any, including demolition, and

   d. Existing building drawings for remodeled areas

6. Exterior elevations
7. Roof details.
8. Diagrammatic building sections (Scale: 1/8" = 1'-0").
9. Typical wall sections to show materials, relationships, construction intent.
10. Typical key architectural details (Scale: 3/8" = 1'-0").
11. Room material and equipment outline.
12. Schematic narrative of design rationale, proposed construction, code analysis, structural systems. Possible review with ASU Public Arts and Design Review Council.
13. Preliminary mechanical equipment room layouts (major equipment only) (Scale: 1/8" = 1'-0").
14. Preliminary one-line HVAC duct layouts and/or preliminary mechanical piping diagram (Scale: 1/8" = 1'-0").
15. Preliminary one-line electrical distribution diagrams (Scale: 1/8" = 1'-0").
16. Preliminary one-line telecommunication distribution diagrams for voice, data and video (Scale: 1/16" = 1'-0").
17. Preliminary draft of Job Order Project Manual including Outline specifications (marked up for Job Order Project) and product cut-sheets.
18. Narrative descriptions of proposed alternative mechanical system(s) electrical system(s), special systems and alternatives being evaluated, recommended or required.
19. Perform an annual energy consumption analysis and develop a summary of the usage of electrical (KW/h/yr.), chilled water (Ton Hrs./yr.), and steam (lbs./yr.) used under normal building operation. Provide a computer printout as back-up.
20. Telecommunications system infrastructure including voice, data and video.

DELIVERABLES: ______ copies of drawing sets, specification and product cut-sheets shall be required for review. Additional drawing sets as required for progress review and submission to local, state and federal code and approved agencies.

(minimum Design Development Documents)

Design Professional will prepare Design Development Documents. The Design Development Documents shall consist of AT LEAST the following CHECKED AND INITIALED items.

1. Job Order Site Survey (Scale: 1" = 40' - 0") and annotated survey to show items for demolition, removal or relocation

2. Job Order Site Plan (Scale: 1/16" = 1' - 0"):
   a. Final contours/grading.
   b. Paving, sidewalk, curb, fence, parking, and other Job Order Site improvements (showing location and overall dimensions). Construction staging areas.
   c. Retaining walls and details.
3. Foundation Plans (Scale: 1/8" = 1' - 0")
   a. Footing and foundation sizes, reinforcing, elevations.
   b. Below grade concrete wall thickness.
   c. Waterproofing, damp-proofing, drainage - standard details, types.

4. Structural Framing Plans, including (Scale: 1/8" = 1' - 0"):
   a. Horizontal and vertical member size, sample reinforcing.
   b. Typical floor and roof construction details, thicknesses.
   c. Typical exterior wall supports, bracing, ties, reinforcing.
   d. Lateral bracing methods, location.
   e. Fireproofing - NFPA designation.
   f. Vibration isolation or other special details.
   g. Design live and dead loads tabulated for all floors, areas, and roofs.

5. Exterior wall elevations, all planes (Scale: 1/4" = 1' - 0").

6. Typical wall sections (Scale: 1/2" = 1' 0").

7. Typical roofing and sheet metal details (Scale: 3/8" = 1' - 0").

8. Floor plans, all levels and roofs (Scale: 1/8" = 1' - 0").
   a. Partition type identification.
   b. Smoke and fire compartmentalizing.
   c. Built-ins and fixed equipment shown and noted.
   d. 1/4" scale furniture and movable equipment layouts, for ALL spaces.

9. Stair and elevator details, types (Scale: 3/8" = 1' - 0").

10. Room finish and door schedule for typical areas/spaces.

11. Miscellaneous specialties and equipment schedule.

12. Fixed equipment schedule, locations, service requirements.

13. Plumbing work, plans (Scale: 1/8" = 1' - 0").
   a. Fixture schedule, locations.
   b. Equipment schedule, locations.
   c. Waste and vent riser diagram with types, locations, key sizes.
   d. Water piping, locations (sizes for pipes larger than 1").
14. Roof drainage system and location
15. Fire protection systems.
16. Mechanical systems (Plan Scale: 1/8" = 1' - 0").
   a. Equipment schedule, locations, sizes, types.
   b. Chilled, condenser, hot water, steam, and condensate piping systems, locations, riser diagrams.
   c. Equipment connections and supports - standard details.
17. HVAC piping, locations (sizes for pipes larger than 1")(Scale: 1/8" = 1' - 0").
18. Power distribution diagram (Plan Scale: 1/8" = 1' - 0").
   a. Power distribution equipment schedule, locations.
   b. Feeder sizes.
   c. Emergency generator size, locations.
   d. Uninterruptible power supply equipment size, locations if required.
   e. Grounding - standard details (A/E).
19. Interior lighting and power, plans details (Scale: 1/8" = 1' - 0").
   a. Fixture and switch locations with identification.
   b. Typical receptacle and power outlet locations.
   c. Special requirements noted.
20. Motor control schedule with starter and circuit sizing.
21. All telecommunication (voice, data and video) systems and equipment, fire alarm systems, security systems, energy Management systems.
22. Telecommunication (voice, data and video) distribution diagrams in accordance with "Arizona State University New Construction Guidelines and Specifications for Telecommunication Services."
27. Description of proposed alternates and cost estimates for each.
28. Based on the design requirements, revise/update the annual Energy Consumption Analysis for the building. Submit the summary results along with the Design Documents.
DELIVERABLES. ______________ (___________) copies of drawing sets, specification and product cut-sheets shall be required for review. Additional drawing sets as required for progress review and submission to local, state, and federal code and approved agencies.

(mimimum Construction Documents)

Design Professional will prepare Construction Documents. The Design Development Documents shall consist of AT LEAST the following CHECKED AND INITIALED items:

1. Civil Engineering Drawings (Scale: 1" = 30'-0" min.)
   a. Complete engineering plans showing building location, paving, grading, utilities, easements, tunnels, retention areas, drainage, rights-of-way, etc.

2. Job Order Site Survey (Scale: 1" = 40'-0"), including proposed staging areas.

3. Landscaping Drawings (Scale: 1" = 30'-0" min.) if appropriate or required:
   a. Complete planting plans and plant schedule.
   b. Complete irrigation plans.
   c. Complete landscape lighting if differs from general Job Order Site lighting.
   d. Planting details.
   e. Complete landscaping and irrigation specifications.

4. Architectural Job Order Site Plan (Scale: 1/16" = 1'-0"): 
   a. Final contours/grading.
   b. Building location, paving, sidewalk, curb, fence, parking, and other Job Order Site improvements (showing location and overall dimensions). Construction staging areas and construction access roads.
   c. Retaining walls and details.
   d. Property lines, including R.O.W. and easements.

5. Exterior wall elevations, all planes (Scale: 1/8" = 1'-0"). Indicate expansion and control joints.

6. Typical wall sections and details (Scale: 1/2" = 1'-0" min.).
   a. Show all caulking and sealant details and flashing details.
   b. Masonry anchoring and reinforcement.

7. Typical roofing and sheet metal details (Scale: 3/8" = 1'-0").
   a. Details specific to this Job Order Project.

8. Floor plans (Scale: 1/8" = 1'-0" or 1/4' as required), including all work.

9. Interior elevations.

10. Finish Schedule.
11. Miscellaneous specialties and equipment schedule.

12. Fixed equipment schedule, locations, service requirements.

13. Description and details of proposed add-altornerates and Cost Estimates for each.

14. Composite Job Order Site drawings: it shall be the responsibility of the consultant to coordinate the design of the architectural, structural, plumbing, HVAC and electrical work so that interferences among and within the several trades will be avoided.


16. Foundation plans (Scale: 1/8" = 1'-0"):
   a. Footing and foundation sizes, reinforcing, elevations, and schedule.
   b. Below grade concrete wall thickness, wall openings, knock-out panels, beam pockets, and pipe chases.
   c. Waterproofing, damp-proofing, drainage - standard details, types.
   d. General notes.
   e. Any special foundation requirements, including de-watering, pilings, caissons, shoring, etc.

17. Structural Framing Plans, including (Scale: 1/8" = 1'-0"):
   a. Horizontal and vertical member sizes and schedules w/all connection details.
   b. All reinforcing types and sizes in concrete members.
   c. All floor and roof construction details, thicknesses, openings, depressions and slopes.
   d. All exterior wall supports, bracing, ties, reinforcing.
   e. Lateral bracing methods, location.
   g. Expansion joints and control joints.
   h. Isolation or other special details.
   i. Design live and dead loads tabulated for all floors, areas, and roofs.
   j. Design calculations.
   k. General notes.

18. Plumbing work, plans (Scale: 1/8" = 1'-0"):
   a. Fixture schedule, locations (including all handicapped fixtures in accordance with Arizona State Law requirements).
   b. Equipment schedule, locations (Scale: 1/4" = 1'0"). Equipment room layouts, with means of access for larger size equipment.
c. Waste and vent riser diagram with types, locations, key sizes.
d. Water piping, locations (sizes for pipes larger than 1”), diagrams.
e. Water and gas meters (sizes and locations).

19. Roof drainage system and locations.

20. Storm drain calculations, retention and other means of collecting rain water.

21. Fire protection systems.
   a. Complete alarm systems.
   b. Complete sprinkler layouts with risers and head locations (coordinate fully with number 8, a through d).
   c. Fire extinguishers.
   d. Backflow preventer.

22. Mechanical systems (Plan Scale: 1/8" = 1'-0"):
   a. Equipment schedule, locations, sizes, types.
   b. Chilled, condenser, hot water, steam, and condensate piping systems, locations, riser diagrams.
   c. Manual and automatic dampers and fire dampers required by code.
   d. Equipment connections and supports - standard details.
   e. Outlets, grills, registers properly selected and sized (indicating cfm).
   f. Fixture schedules.
   g. Flow diagrams; control diagrams.
   h. Equipment room layouts (Scale: 1/4" = 1'0").
   i. Submit heating and cooling load calculations as per ASHRAE.
   j. HVAC plans - equipment room layouts to show location and size of major equipment to scale, means of access for larger size equipment and its replacement, sizes of and locations of air intakes and discharge openings. In critical locations, complimentary drawings shall be prepared, indicating equipment of all trades involved.

23. HVAC piping, locations (sizes for pipes larger than 1") Anchors, guides, supports, expansion joints and loops. (Scale: 1/8" = 1'-0").

24. Plumbing and HVAC piping modifications, locations (sized for pipes larger than 1”), anchors, guides, supports, expansion joints and loops (Scale 1/8" = 1'-0").

25. Power distribution diagram (Plan Scale: 1/8" = 1'-0"): 
   a. Power distribution equipment schedule, locations.
   b. Feeder sizes.
c. Emergency generator size, locations.

d. Un-interruptible power supply equipment size, locations if required.

e. Grounding - standard details (A/E).

26. Exterior lighting and power, plans details (Scale: 1/8" = 1'-0"):

a. Fixture and switch locations with identification.

b. Typical receptacle and power outlet locations.

c. Lighting fixture schedule.

d. Riser diagrams from utility source to all equipment showing service switches and disconnects, metering, switchboards, power and lighting panels, motor controls, etc.

e. All cable and wire sizes and conduit sizes.

f. Special requirements noted.

27. Motor control schedule with starter and circuit sizing.

28. All telecommunication (voice, data and video) systems and equipment, fire alarm systems, security systems, energy management systems.


30. Telecommunication distribution diagrams in accordance with "Arizona State University New Construction Guidelines and Specifications for Telecommunication Services."


32. Fire protections systems needed.

33. Renovation Job Order Projects. Clearly differentiate between new and existing construction; visit the Job Order Site; examine existing documents; request that test pits and observation openings in existing structures be made for determining design and cost.

DELIVERABLES.
(______) copies of drawing sets, specification and product cut-sheets shall be required for review. Additional drawing sets as required for progress reviews and submission to local, state and federal code and approved agencies.

3. Section 8.5:

[NOTE TO USERS OF THIS DOCUMENTS: Insert the applicable minimum coverage per occurrence from the middle column below in the first set of blanks and the minimum aggregate amount from the chart below in the second set of blanks.]

Professional liability or errors and omissions insurance with minimum limits of ________________ ($________________) each occurrence, claim, wrongful act or loss and an unimpaired aggregate limit of $______________ ($________________), with respect to the DP Contract Documents.

Minimum Required Insurance Limits
Based on Total Construction Costs

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<th>Construction Budget</th>
<th>DP Professional Liability (E&amp;O) Minimum Coverage</th>
<th>Minimum Aggregate</th>
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<td>above $40,000,000</td>
<td>$6,000,000</td>
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4. **Section 13.1.2:**

[NOTE TO USERS OF THIS DOCUMENT: Please complete the blanks in Section 13.1.2. If not applicable, please insert “NOT APPLICABLE”]

13.1.2 DP Basic Compensation shall be computed on the following basis ____________________________________________________________________

5. **Section 13.1.3:**

[NOTE TO USERS OF THIS DOCUMENT: Please complete the blanks in Section 13.1.3. If any particular blank is not applicable, please insert “NOT APPLICABLE” in that blank.]

13.1.3 When DP Basic Compensation is based on a stipulated sum, the payments of DP Basic Compensation shall be allocated to each subphase as follows:

- Program Development Subphase ___%
- Schematic Design Subphase ___%
- Design Development Subphase ___%
- Construction Documents Subphase ___%
- Bidding and Bid Award Phase ___%
- Construction Phase ___%
- Closeout and Occupancy Phase ___%

6. **Section 13.2.2:**

[NOTE TO USERS OF THIS DOCUMENT: Please complete the blanks in Section 13.2.2. Please see Section 5 for a list of types of DP Additional Services to assist in drafting the insert in the first blank below. If not applicable, please insert “NOT APPLICABLE”]

13.2.2 DP will provide the following DP Additional Services:

For performing the above specified DP Additional Services (services beyond the services specified as DP Basic Services), the DP’s compensation shall be as follows:
7. Section 13.2.3:

[NOTE TO USERS OF THIS DOCUMENT: Please complete the blanks in Sections 13.2.3. If not applicable, please insert “NOT APPLICABLE”]

13.2.3 For DP Additional Services in retaining consultants, including surveyors, engineers and others whose work does not fall within the DP Basic Services, as and when separately approved in writing by Owner, Owner will be charged and will pay the actual cost to DP for such services multiplied by a factor of _________________.

8. Section 14:

SECTION 14. JOB ORDER PROJECT SPECIFIC PROVISIONS

[NOTE TO USERS OF THIS DOCUMENT: Please complete the blank in Section 14. If not applicable, please insert “NOT APPLICABLE”. If there are Job Order Project specific provisions, they must be reviewed by Hank Traeger or another OGC attorney as to appropriateness of the proposed provisions.]

9. Exhibit B:
[NOTE TO USERS OF THIS DOCUMENT: Please complete the blank below. If not applicable, please insert "NOT APPLICABLE"].

Required DP Consultant Field Administration and Observation

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

DESIGN PROFESSIONAL:

________________________________________________________________________
By: ____________________________
Name: __________________________ (Printed)
Title: __________________________
Date: __________________________

OWNER:

ARIZONA BOARD OF REGENTS
for on behalf of
ARIZONA STATE UNIVERSITY

________________________________________________________________________
By: ____________________________
Name: __________________________ (Printed)
Title: __________________________
Date: __________________________

OWNER JOB ORDER PROJECT MANAGER

Approval by Owner’s Facilities Capital Program Management Group Job Order Project manager:

________________________________________
(Signature)
AGREEMENT BETWEEN OWNER
AND
DESIGN PROFESSIONAL
(Job Order Contracting Construction Services)

NOTE: The information or contract provisions that go in the numbered blank spaces in this agreement and the exhibits are in the respective numbered paragraph in Appendix A.

AGREEMENT BETWEEN OWNER AND DESIGN PROFESSIONAL, entered into as of ____________, 20__, by and between the Arizona Board of Regents, for and on behalf of Arizona State University ("Owner") and _______ ("Design Professional" or "DP").

SECTION 1. JOB ORDER PROJECT ("Job Order Project")

SECTION 2. GENERAL

2.1 The Operating Manual (Job Order Contracting Construction Services) ("Operating Manual") attached hereto as Exhibit A and is incorporated herein by reference. Design Professional agrees to perform all obligations of Design Professional under the Operating Manual.

2.2 This agreement is the DP Agreement as defined in the Operating Manual.

2.3 “DP Contract Documents” means the following and their respective exhibits, attachments and appendices:

- This Design Professional Agreement (Job Order Contracting Construction Services)
- The Operating Manual
- Appendix A to this Agreement
- The Design Submission Documents for the Job Order Project
- The Construction Documents
- Any construction cost estimates prepared by DP for the Job Order Project
- Any written modifications of the foregoing executed by Owner and DP
- Any Owner’s Request for Qualifications for Design Professional ("DP RFQ") and all addenda thereto
- Any proposal or submission of qualifications as required by the DP RFQ
- Owner’s notice of award

2.4 The DP Contract Documents are complementary and shall be interpreted in harmony so as to avoid conflict. In the event of any inconsistency, conflict or ambiguity, the DP Contract Documents shall take precedence in the order in which they are listed in the definition of that term above.

2.5 The DP Contract Documents form the entire agreement between Owner and DP relating to each Job Order Project, are hereby incorporated herein by reference and by incorporation herein are as fully binding on the parties as if repeated herein. The DP Contract Documents supersede all prior discussions and negotiations. The DP Contract Documents may be amended or modified only in writing executed by Owner and DP.

2.6 If not specifically defined, terms, words and phrases in the DP Contract Documents will have their ordinary and common meaning, with undefined words, phrases and abbreviations interpreted consistent with construction and design industry standards and technical and trade meanings.

2.7 All terms defined in the Operating Manual or in other DP Contract Documents will have the same meanings when used herein. The following terms shall have their respective designated meanings when used in the DP Contract Documents.
“Contractor” means (i) generally, an individual or a legal entity that has contracted with Owner to provide Job Order Contracting Construction Services under agreements and documents that include, among others, the Operating Manual and (ii), as to a Job Order Project, the Job Order Contracting Construction Services contractor named in the Appendix A for that Job Order Project.

“DP Basic Services” means for the Job Order Project all obligations and activities of the DP in the DP Contract Documents and compliance with all terms and conditions in the DP Contract Documents applicable to the DP, but excluding the services specifically described in Sections 5 and 13.2 as DP Additional Services.

“DP Additional Services” means for the Job Order Project the obligations and activities of the DP, if any, described in Section 13.2 of this Agreement, as it may be amended and modified from time to time in writing executed by DP and Owner.

“DP Basic Compensation” means for each Job Order Project the compensation provided in Appendix A for the DP Basic Services. DP Basic Compensation includes the fees of all DP Consultants, unless and to the extent Owner has agreed separately in writing to pay part of all of the fees of such DP Consultant.

“Design Submission Documents” means for the Job Order Project any Program Development documents, any Schematic Design documents, any Design Development documents, the Construction Documents and any other documents prepared by DP, any DP Consultant or any other person at DP’s direction for Owner.

"Job Order Project Criteria" mean the Job Order Project criteria listed in Item 1 in Appendix A.

SECTION 3. AGREEMENT OF DESIGN PROFESSIONAL AND OWNER

3.1 DP agrees to perform all obligations and activities of the DP under the DP Contract Documents and to comply with all terms and conditions applicable to DP under the DP Contract Documents.

3.2 All Design Submission Documents shall conform to the Owner Design Standards, which are in an Appendix to the Operating Manual.

3.3 Owner agrees to perform all obligations and activities of Owner under the DP Contract Documents and to comply with all terms and conditions applicable to Owner under the DP Contract Documents.

3.4 DP Basic Services:

(i) shall be rendered in phases consisting of the Design Phase (which includes of the Program Development subphase, the Schematic Design subphase, the Design Development subphase and the Construction Documents subphase) and Construction Phase.

(ii) shall include the actions of the DP described in the DP Contract Documents. DP understands and agrees that the role of DP during the Construction Phase is primarily as a consultant and advisor to provide services upon request by Owner or Owner Representative as set forth in the Operating Manual;

(iii) shall, during the Design Phase, include cooperation, coordination, collaboration, communication, consultation and other interaction with Contractor and Owner as Contractor and Owner go through the process in the Operating Manual to develop the Job Order for the Job Order Project.

(iv) shall include architectural, landscaping, civil, structural, mechanical and electrical engineering services for each subphase of the Design Phase to the extent prescribed in Appendix A. The phases and subphases are to be performed in the sequence set forth in Sections 3.4(i) above. Under no circumstances shall DP proceed with the next phase or subphase of the DP Basic Services without prior written authorization from Owner.

(v) In addition, during the Design Phase and the Construction Phase DP will provide such assistance and additional services (including, without limitation, interaction with Owner and Contractor) on the Job Order Project as reasonably requested by Owner.

3.5 As to the Job Order Project Owner and DP shall consult as to whether to retain surveyors, engineers, or other consultants in connection with the following items. After the consultation, Owner will make a determination and shall retain and pay for the surveyors, engineers or other consultants, unless Owner and DP agree otherwise.
(i) A survey of existing Job Order Site conditions. A complete and accurate survey of the Job Order Site and existing improvements including but not limited to the grades and lines of streets, pavements, and adjoining properties, contours of the Job Order Site, and full information as to sewer, water, gas, electrical service, telephone lines, or other utilities.

(ii) A report on subsurface investigations. Professional recommendations regarding local conditions accompanied by test borings, or test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion, and resistivity tests including necessary operations for determining subsoil, air and water conditions, and chemical, mechanical, laboratory or other tests.

(iii) As-built information in possession of Owner concerning any existing improvements that will remain on the Job Order Site and that will be incorporated in the Job Order Project, to which the Job Order Project will be attached or with which the Job Order Project will be inter-connected.

(iv) Any other tests.

In addition to the above information, DP shall be responsible for obtaining information concerning conditions of the Job Order Site typically obtained within the design professional industry to assess conditions for similar projects and shall advise Owner of any such information obtained by DP that may be significant to the Job Order Project.

As to each Job Order Project, Owner will deliver to DP a copy of the surveys, reports, test results, and any other information described in this Section 3.5. Such items, any other information concerning the Job Order Site delivered by Owner to DP, and all information DP is obligated to obtain on its own initiative are referred to as the “DP Job Order Site Information”.

DP shall thoroughly acquaint itself with all DP Job Order Site Information.

By making each submission of any Design Submission Documents (including, without limitation, the Construction Documents) for the Job Order Project DP represents and warrants to Owner that DP has examined and evaluated the DP Job Order Site Information and has taken the DP Job Order Site Information into account in preparing the Design Submission Documents (including, without limitation, the Construction Documents).

DP shall have the right to rely upon surveys, soil test reports, other test reports and other information obtained by Owner. However, DP shall carefully examine all surveys, soil test reports, other test reports and other information whether obtained by DP or Owner. DP shall promptly report to Owner any errors, omissions or inadequacies or reasonably suspected errors, omissions or inadequacies in such surveys, soil test reports, other test reports and other information of which DP becomes aware as a result of such examination or otherwise and of any disagreement DP may have with the conclusions of such surveys, soil test reports, other test reports and other information. DP and any DP Consultants shall make themselves available to the soils engineer and any other person retained by Owner to prepare any surveys, soils test reports, other test reports or other information.

3.6 At commencement of the Job Order Project, Owner will advise DP of the amount within Owner’s Job Order Project budget that is available to pay the costs of the Job Order Work.

3.7 Regardless of whether DP will be preparing cost estimates for the Job Order Project, Owner may request DP to consult with Owner or with Owner and Contractor as Owner and Contractor work on pricing of the Job Order Project. In addition, DP will consult with Owner and Contractor on any other matters, as requested by Owner, for the Job Order Project.

3.8 Design Professional shall submit to Owner Design Submission Documents as required by Item 2 in Appendix A. All Design Submission Documents are subject to review and approval by Owner. After of each scheduled submission, Design Professional will, if requested by Owner, meet with Owner or with Owner and Contractor to confer about the submission. As promptly as practicable after each submission of Design Submission Documents, Owner will approve or request changes in the Design Submission Documents. Unless the changes requested by Owner are either outside the scope of the Job Order Project Criteria or would cause the cost of the Job Order Work to exceed the portion of Owner's Job Order budget available to pay costs of the Job Order Work, DP shall make the requested changes at its own cost and at no additional cost to Owner.
3.9 Program Development Subphase

(i) The DP obligations in this Section 3.9 apply only if there are Program Development Design Services required under Item 2 in Appendix A. DP will provide the Program Development Design Services indicated in Item 2 in Appendix A, if any.

(ii) DP shall review Owner's Job Order Project Criteria to ascertain the basic requirements for the Job Order Project, including but not limited to the following criteria: (a) identified units of facility need; (b) projected enrollment or activity; (c) references to relevant standards appropriate to comparable institutions; (d) discussion of locational determinants; (e) projected utilization for any classrooms or teaching laboratories; (f) estimated net-to-gross ratios; and (g) specified special physical requirements affecting cost.

(ii) After reviewing the Job Order Project Criteria DP shall meet with Owner and identified facilities users to gain an in depth understanding of Job Order Project needs and provide initial feedback to all attendees.

(iii) An Architectural Program, if any, shall cover the items indicated in Item 2 in Appendix A for review by Owner and Contractor and for Owner's approval. The Architectural Program shall expand and define the Job Order Project Criteria. Such program shall include all Job Order Site conditions affecting the Job Order Project.

3.10 Schematic Design Subphase

(i) The DP obligations in this Section 3.10 apply only if there are Schematic Design Services required under Item 2 in Appendix A.

(ii) DP shall provide Owner with a preliminary evaluation of the requirements of the Job Order Project in light of the amount within the Job Order Project Budget available for costs of the Job Order Work.

(iii) DP shall review with Owner and Contractor alternate methods and approaches to the design and construction of the Job Order Project and recommend an approach and jointly decide with Owner and Contractor the method best suited to Owner's requirements and the Job Order Project.

(iv) Based upon the Architectural Program or Owner's Job Order Project Criteria, as applicable, the discussions with the Owner and the Contractor, the amount within the Owner's Job Order Project budget available for costs of the Job Order Work, the DP Job Order Site Information, DP shall prepare Schematic Design Documents (SDDs) to the extent indicated in Appendix A, which will consist of drawings and other documents depicting the scale and relationship of Job Order Project components, for review with Owner and Contractor and for Owner's approval.

(v) Schematic Design Documents (SDDs), if any, shall consist of at least the items indicated in Item 2 in Appendix A.

(vi) DP shall work in a collaborative, cooperative, communicative and coordinated manner with Contractor in developing items referred to in Item (v) above. If agreement by DP and Contractor is not attainable, DP and Contractor shall promptly refer the matter to Owner Representative, and Owner Representative will make the final determination on the matter.

3.11 Design Development Subphase

(i) The DP obligations in this Section 3.11 apply only if there are Design Development Design Services required under Item 2 in Appendix A. Based on the Schematic Design Documents (SDDs), any amendments approved by the Owner to the Architectural Program, and Owner's Job Order Project Criteria, as applicable, and on the amount within Owner's Job Order Project budget available for costs of Job Order Work, DP shall prepare Design Development Documents (DDs) to the extent indicated in Item 2 in Appendix A for review with Owner and Contractor and for Owner's approval. The Design Development Documents shall consist of drawings and other documents depicting the scale and relationship of Job Order Project components as may be appropriate.

(ii) The Design Development Documents, if any, shall consist of at least the items indicated in Item 2 in Appendix A.

(iii) DP shall work in a collaborative, cooperative, communicative and coordinated manner with Contractor in...
developing items referred to in Item (ii) above. If agreement by DP and Contractor is not attainable, DP and Contractor shall promptly refer the matter to Owner Representative, and Owner Representative will make the final determination on the matter.

3.12 Construction Documents Subphase

(i) The DP obligations in this Section 3.12 apply only if there are Construction Documents Design Services required under Item 2 in Appendix A. Based upon the approved Design Development Documents (DDs), the approved Schematic Design Documents or Owner's Job Order Project Criteria, as applicable, and any amendments of any kind approved by Owner, DP shall prepare detailed Construction Documents (CDs) setting forth the requirements for the construction of the entire Job Order Project, including complete Drawings and Specifications and the other items listed in Item 2 in Appendix A. DP must be aware of, and conform to, the order of precedence provisions under the heading “Job Order Drawings and Specifications” in Section 7 of the Operating Manual.

(ii) The Construction Documents shall consist of at least the items indicated in Item 2 in Appendix A.

(iii) All drawings and specifications included in the Construction Documents shall bear the dated signature and seal of DP. Except as expressly provided in the DP Contract Documents, DP and DP Consultants shall be fully responsible for all design provided by them for the Job Order Project.

(iv) DP shall file all documents and obtain all approvals required for design approval by governmental authorities having jurisdiction over the Job Order Project and/or designated by Owner. Owner will sign applications and pay applicable fees. DP shall also assure that the Job Order Project meets all applicable statutory requirements for public buildings.

SECTION 4. DESIGN PROFESSIONAL RESPONSIBILITY

DP shall be responsible for and shall indemnify, hold harmless and, if elected by Owner, defend Owner, the Arizona Board of Regents, and the State of Arizona from and against any and all claims, demands, losses, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' and paralegal fees and costs and expenses of administrative proceedings and litigation and appeals) arising or resulting from any errors or omissions in the documents prepared by DP, any DP Consultant or any other person at DP's direction for Owner (“Errors and Omissions Amounts”).

For all purposes of this Section 4, the other provisions in this Agreement and the other DP Contract Documents the phase, "documents prepared by DP, any DP Consultant or any other person at DP's direction for Owner", means the Construction Documents, the other Design Submission Documents and all of the following documents submitted to Owner in connection with the Job Order Project, regardless of the degree, if any, of DP’s actual involvement in preparation of the documents:

(i) all documents prepared by DP;
(ii) all documents prepared by any DP Consultant; and
(iii) all documents prepared by any other person at DP's direction.

DP acknowledges that errors and omissions or either in the documents prepared by DP, any DP Consultant or any other person at DP’s direction for Owner can result in claims, demands, losses, damages, liabilities, costs and expenses for Owner and the others named above. Owner acknowledges that no set of design documents can be completely free from errors and omissions. Therefore, notwithstanding the assignment of responsibility to DP and DP’s agreement to indemnify and defend above, Owner and the others named above agree to absorb and agree to not make claims against Design Professional for Errors and Omissions Amounts selected by Owner up to an aggregate amount equal to two percent (2%) of the actual costs of the Job Order Work on the Job Order Project (“Owner’s Share of Errors and Omissions Amounts”). This is not a release of the obligations to indemnify and defend; it is only an agreement by Owner to not make claims for the Owner’s Share of Errors and Omissions Amounts. Design Professional shall indemnify and defend as provided above for any and all Errors and Omissions Amounts in excess of the Owner’s Share of Errors and Omissions Amounts.

DP acknowledges and agrees that the contractual obligations of DP under this Section 4 (i) are in addition to DP’s responsibility and liability under applicable law for errors and omissions in the documents prepared by DP, any DP
Consultant or any other person at DP’s direction for Owner, (ii) are not a substitute for or waiver of responsibility and liability under applicable law, and (iii) shall not affect or impair any responsibility or liability under applicable law of DP, any DP Consultant’s or any other person that prepared documents at DP’s direction. In addition, the agreement by Owner and others in this Section 4 to absorb and to not make claims for the Owner’s Share of Errors and Omissions Amounts (I) shall apply only to DP’s contractual obligation under this Section 4 to be responsible for and to indemnify and to defend as to Errors and Omissions Amounts, and (II) shall not affect or impair the responsibility and liability under applicable law for errors or omissions in the documents prepared by DP, any DP Consultant or any other person at DP’s direction for Owner. However, to be consistent with the limitation on DP’s contractual responsibility for Errors and Omissions Amounts above in this Section 4, Owner agrees that the aggregate amount Owner will collect (in respect of any errors or omissions in the documents prepared by DP, any DP Consultant or any other person at DP’s direction for Owner) from DP and DP’s professional liability insurers under this DP Agreement and under any and all applicable law will not exceed an amount equal to (A) Errors and Omissions Amounts, less (B) Owner’s Share of Errors and Omissions Amounts. This is not a release of responsibility and liability; it is only an agreement by Owner to limit the amount collected by Owner.

Any claims or disputes between DP and Owner related to this Section 4 will be resolved as provided in Section 11 of this Agreement.

Owner shall deliver to DP a statement of the amount that is two percent (2%) of the actual costs of the Job Order Work and a initial or updated list of Errors and Omissions Amounts that Owner has absorbed or will absorb in whole or in part:

(i) Whenever there is a consensus by DP and Owner that an error or omission in the documents prepared by DP, any DP Consultant or any other person at DP’s direction for Owner has occurred and a consensus on the respective Errors and Omissions Amount;

(ii) Whenever a final determination is made by Owner (not disputed by DP) that an error or omission in the documents prepared by DP, any DP Consultant or any other person at DP’s direction for Owner has occurred and a final determination is made on the respective Errors and Omissions Amount; or

(iii) Whenever a final determination is made under the process in Section 11 of this Agreement that an error or omission in the documents prepared by DP, any DP Consultant or any other person at DP’s direction for Owner has occurred and a final determination is made under the process in Section 11 on the respective Errors and Omissions Amount

DP and Owner will cooperate in the resolution of all matters covered by this Section 4 so as to minimize any detrimental impact upon the Job Order Project. However, such cooperation shall not be deemed a waiver of any rights Owner may have relating to DP.

DP agrees that involvement of Contractor, Subcontractors and Owner during the Design Phase (including, without limitation, recommendations by Contractor, Subcontractors or Owner as to the design and DP incorporation of such recommendations into Design Submission Documents or other documents) or during the Construction Phase, in no way relieves Design Professional of responsibility, obligations and liability relating to errors and omissions in the documents prepared by DP, any DP Consultant or any other person at DP’s direction for Owner.

DP also agrees that review, comment, approval and acceptance by Owner wherever required in the DP Contract Documents shall not relieve DP of responsibility, obligations and liability (i) for errors and omissions, or (ii) for compliance with the DP Contract Documents.

DP agrees that DP shall have the same legal responsibility to Owner and the others covered by the above indemnity as Owner and the others covered by the above indemnity have, or may have, to others arising out of, or resulting from, any errors or omissions in the documents prepared by DP, any DP Consultant or any other person at DP’s direction for Owner. Without limiting the foregoing, the above obligation to indemnify and defend includes claims, demands, losses, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys’ and paralegal fees and costs and expenses of administrative proceedings and litigation and appeals) made against Owner or any other covered by the above indemnity or incurred by Owner or any other covered by the above indemnity in respect of Owner or any other covered by the above indemnity legal responsibility to others, arising from any errors or omissions in the documents prepared by DP, any DP Consultant or any other person at DP’s direction for Owner.

SECTION 5. ADDITIONAL SERVICES
5.1 The following additional services shall be provided only when authorized by Owner in writing in advance of performance and shall be paid for by Owner in addition to the DP's Basic Compensation.

5.1.1 Providing financial feasibility or other special studies.

5.1.2 Providing services relative to future facilities, systems, and equipment, which are not intended to be constructed during the Construction Phase.

5.1.3 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 contemplated by the DP Contract Documents.

5.1.4 Providing consultation concerning replacement of any work damaged by fire or natural causes or forces majeure during the Construction Phase.

5.1.5 Retaining services of a competent surveyor or engineer to provide any special inspections or tests, as required by code or prudent practice, during the Construction Phase.

5.1.6 Providing extraordinary services made necessary by the default of Contractor.

5.1.7 Providing assistance required by Owner in judicial, quasi-judicial, administrative, or legislative hearings or proceedings arising out of the design and/or construction agreement(s) when such proceedings do not relate in any way to the actions or omissions of DP.

5.2 If Owner and DP agree on more extensive representation at the Job Order Site than is described in the DP Contract Documents (including, among others, the Operating Manual), DP shall provide one or more full-time Job Order Project Representatives. Such full-time Job Order Project Representatives shall be selected, employed and directed by DP, and DP shall be compensated for such services as mutually agreed in writing between Owner and DP.

5.3 Any full-time DP Job Order Project Representative or replacement shall be subject to prior approval by Owner. Owner reserves the absolute right to reject or require replacement of any DP Job Order Project Representative.

5.4 DP shall not engage, contract with or use the services of any DP consultant ("DP Consultant") without obtaining the prior written approval of Owner. DP shall submit to Owner for its approval a proposal of the scope of services to be provided by each DP Consultant, with the latter's acknowledgment thereof. No provision of the DP Contract Documents and no approval by Owner of the scope of services to be provided by DP Consultants shall be construed as an agreement between Owner and any DP Consultant or in any way affect the responsibilities of DP under the DP Contract Documents or applicable law. Unless otherwise agreed to in writing by Owner, the fees of any DP Consultants shall be deemed covered by the DP Basic Compensation to be paid by Owner to DP.

SECTION 6.  REIMBURSABLE EXPENSES

All services, travel, and supplies necessary or useful to DP in carrying out the DP Contract Documents are included in the DP Basic Compensation and shall not be separately reimbursable unless specifically identified and approved by Owner in writing in advance of being incurred.

SECTION 7.  DESIGN PROFESSIONAL’S ACCOUNTING RECORDS

7.1 DP’s records pertaining to its services on the Job Order Project shall be kept on a generally recognized accounting basis and shall be available to Owner or its authorized representative upon request for five (5) years from the date of Final Payment to Contractor for the Job Order Project.
7.2 DP shall retain and require all DP Consultants to retain, for inspection and audit by Owner or the State of Arizona all books, accounts, reports, files, and other records relating to the bidding and performance of the DP Contract Documents for a period of five (5) years after its final completion. Upon request by Owner, the original or a legible copy of the originals of all such records shall be produced by DP at the address designated by Owner. The cost of any copying requested by Owner or made necessary to DP by Owner’s request for production of originals shall be paid by Owner.

SECTION 8. INSURANCE AND INDEMNITY

8.1 Without limiting any liability or any other obligations of the Design Professional either:

(i) DP shall obtain and maintain and DP shall cause each DP Consultant to obtain and maintain the insurance coverages listed below and DP shall comply and cause each DP Consultant to comply with the requirements of this Section 8; or

(ii) DP shall obtain and maintain the insurance coverages listed below covering the DP and each DP Consultant and DP shall comply with the requirements of this Section 8.

Coverage will be provided with forms and insurers authorized to do business in the State of Arizona in forms acceptable to Owner until all of Design Professional’s obligations under the DP Contract Documents are satisfied. All insurers must be authorized to do business in the State of Arizona by the Arizona Department of Insurance and possess a current AM Best, Inc. rating of at least A - VII - (minus).

8.2 Worker's Compensation Insurance. Worker's compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Design Professional, its employees, or both, engaged in the performance of services under the DP Contract Documents. In addition, employer's liability insurance with the minimum limit of $500,000 for each accident, $500,000 disease for each employee, and $1,000,000 disease policy limit. Evidence of qualified self-insurance status satisfactory to and approved by Owner may suffice for this section.

8.3 General Liability Insurance. Commercial general liability insurance with minimum limits of $1,000,000 per occurrence, and minimum unimpaired Products and Completed Operations aggregate and General Aggregate minimum limits of $2,000,000 issued on an occurrence basis. The policy shall include coverage for Bodily Injury, Broad Form Property Damage (including completed operations); Personal Injury; Blanket Contractual Liability; Products and Completed Operations, which coverage shall extend for one year past acceptance, cancellation or termination of the services or work defined in the DP Contract Documents; and Fire Legal Liability. Said policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, or any provision which would serve to eliminate third-party action over claims. In the event the General Liability insurance policy is written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of the work or services as evidenced by annual certificates of insurance delivered to Owner.

8.4 Automobile Liability Insurance. Commercial/business automobile liability insurance with minimum limits of $1,000,000 combined single limit per occurrence, with respect to claims arising from the ownership, maintenance or use of any auto assigned to or used in the performance of the DP Contract Documents.

8.5 Professional Errors & Omissions Insurance. Professional liability or errors and omissions insurance with minimum limits of (3) (3) each occurrence, claim, wrongful act or loss and an unimpaired aggregate limit of $ (3) (3) with respect to the DP Contract Documents. The Retroactive Coverage Date (if the policy is written on a “claims made” form) shall be the same as the effective date of the DP Contract Documents. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the scope of work of the DP Contract Documents. In the event that the professional liability or errors or omissions insurance is written on a “claims made” basis, coverage shall be maintained for two (2) years past completion and acceptance of the work or services as evidence by annual certificates of insurance delivered to Owner.

8.6 Policy Requirement. The policies required by Sections 8.3 (General Liability) and 8.4 (Automobile Liability) shall be endorsed to include “the State of Arizona, the Arizona Board of Regents (ABOR), Arizona State University, their agents, regents, officers, and employees as additional insureds as to the acts or omissions of the Design Professional and its officers, employees, and agents” and shall stipulate that the insurance afforded Design Professional shall be
primary insurance and that any self-insurance or other insurance carried by the State of Arizona, the Arizona Board of Regents (ABOR), Arizona State University, their agents, officers, or employees, if any, shall be excess and not contributory to the insurance provided by Design Professional.

8.7 Proof of Insurance. An original certificate of insurance evidencing the coverages required herein and acceptable to Owner and any additional documentation reasonably requested by Owner (including, without limitation, policy endorsements) to assure compliance with this Section 8 shall be filed with Owner as evidence that policies providing the required coverages’ conditions of limit are in full force and effect prior to Design Professional performing any work on the Job Order Project. All of the above conditions shall be clearly shown on each certificate. Such certificates shall identify the DP Contract Documents or be an annual or periodic certificate stating that it covers any and all work performed by Design Professional during said period and shall contain provisions that coverage afforded under the policies will not be canceled or non-renewed and that there will be no reduction in the amount of coverage by endorsement to the policy until at least thirty (30) days prior written notice has been given to Owner. The certificates for insurance for the coverages required by Sections 8.3 and 8.4 shall contain a waiver of subrogation as required in Section 8.10 and statement that the following are additional insureds under the policy to the extent of the acts and omissions of DP and its officers, employees and agents: the State of Arizona, the Arizona Board of Regents, Arizona State University and their officers, employees and agents. Certificates of insurance must reference ASU project number and project name. Certificates of insurance should be addressed as follows:

Purchasing and Business Services  
Construction Group  
Arizona State University  
P.O. Box 875212  
Tempe, Arizona 85287-5212

Owner reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the policies and/or endorsements required in the DP Contract Documents. Owner shall not be obligated to review same or to advise DP of any deficiencies in such policies and endorsements, and such receipt shall not relieve DP from, or be deemed waiver of, Owner’s right to insist on strict fulfillment of DP’s obligations under the DP Contract Documents.

8.8 Failure to Provide or Maintain Insurance. Failure on the part of Design Professional to procure or maintain the required insurance shall constitute a material breach of the DP Contract Documents upon which the Owner may immediately terminate the DP Contract Documents, or at its discretion procure new or renew such insurance (except professional errors and omissions insurance) and pay all premiums in connection therewith, and all monies so paid by Owner shall be repaid by Design Professional to Owner upon demand, or Owner may offset the cost of such premiums together with interest at the appropriate rate against any money due Design Professional from Owner. Costs for coverages maintained by Design Professional in excess of those required shall not be charged to Owner without prior written approval of Owner.

8.9 Authorization to Obtain Information. Owner may, and Design Professional hereby authorizes Owner to, request and receive directly from insurance companies utilized by Design Professional in meeting the insurance requirements any and all information reasonably considered necessary in the sole discretion of Owner.

8.10 Waiver. Insurers providing required insurance coverages hereby waive all rights of subrogation and all other rights to recover against the State of Arizona, the Arizona Board of Regents, Arizona State University and their agents, regents, officers and employees. Each required insurance policy and each certificate of insurance shall contain a waiver of subrogation by each insurer providing required insurance coverages. This Section 8.10 does not apply to the insurer providing professional liability or errors and omission insurance.

8.11 Claim Reporting. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the Owner.

8.12 Self-insurance. The policies specified herein may provide coverage, which contain deductibles or self-insured retention. Such deductibles and/or self-insured retentions shall not be applicable with respect to the coverage provided to Owner under such policies. DP shall be solely responsible for deductible and/or self-insured retention, and Owner, at its option, may required DP to secure the payment of such deductible or self-insured retention by a surety bond or an irrevocable and unconditional letter of credit.
8.13 General Indemnity by Design Professional. Design Professional shall indemnify, defend and hold harmless Owner, the State of Arizona, the Arizona Board of Regents, Arizona State University and their officers, regents, directors, employees and agents from and against any and all claims, lawsuits, liabilities, losses, damages, costs and expenses (including, without limitation, attorney’s fees and litigation costs and expenses) to the extent arising from any negligent acts or omissions (including, without limitation, willful misconduct) of DP, DP Consultants and their respective officers, employees, agents, subcontractors or independent contractors in the course of the Job Order Project. This indemnity does not cover errors or omissions in any of the documents prepared by DP or DP Consultants for Owner. Those errors and omissions are covered by Section 4 herein. This indemnity shall not be construed to include claims, lawsuits, liabilities, losses, damages, costs and expenses (including, without limitation, attorney’s fees and litigation costs and expenses) to the extent arising from: (i) any violation of Environmental Law or OSHA by DP or any DP Consultant relating to the Job Order Project; (ii) any claim by any officer, employee, agent, independent contractor or authorized representative of DP or any DP Consultant of personal injury, death or property damage arising from any failure by DP or any DP Consultant to comply with Environmental Law or OSHA or from any failure by DP or any DP Consultant to comply with Section 13 of the Operating Manual; or (iii) any release of any Hazardous Substance on Owner’s property to the extent caused by DP or any DP Consultant. DP hereby agrees to comply (and agrees that DP will get DP Consultants to comply) with all of the requirements applicable to Contractor in Section 13 of the Operating Manual to the extent such requirements are applicable to the work and the activities of DP and DP Consultants.

8.14 Intellectual Property Indemnity by Design Professional. Design Professional shall indemnify, defend and hold harmless Owner, the State of Arizona, the Arizona Board of Regents, Arizona State University and their officers, regents, directors, employees and agents from and against any and all claims, lawsuits, liabilities, losses, damages, costs and expenses (including, without limitation, attorney’s fees and litigation costs and expenses) to the extent arising from any claim that the documents or any part of the documents prepared by DP, any DP Consultant or any other person at DP’s direction for Owner or that the Job Order Project or any part of the Job Order Project constructed in accordance with the documents prepared by DP, any DP Consultant or any other person at DP’s direction for Owner infringe on any proprietary rights or United States patent or copyright rights now or hereafter issued or existing (including, without limitation, willful misconduct) of Owner, the State of Arizona, the Arizona Board of Regents, Arizona State University or any of their officers, regents, directors, employees and agents.

Please see Section 13 of the Operating Manual for definitions of Environmental Law, OSHA, Hazardous Substance, Hazardous Waste and CMAR Release. The indemnity in this Section 8.13 shall include, without limitation, any claims, lawsuits, liabilities, losses, damages, costs and expenses (including, without limitation, attorney’s fees and litigation costs and expenses) to the extent arising from: (i) any violation of Environmental Law or OSHA by DP or any DP Consultant relating to the Job Order Project; (ii) any claim by any officer, employee, agent, independent contractor or authorized representative of DP or any DP Consultant of personal injury, death or property damage arising from any failure by DP or any DP Consultant to comply with Environmental Law or OSHA or from any failure by DP or any DP Consultant to comply with Section 13 of the Operating Manual; or (iii) any release of any Hazardous Substance on Owner’s property to the extent caused by DP or any DP Consultant. DP hereby agrees to comply (and agrees that DP will get DP Consultants to comply) with all of the requirements applicable to Contractor in Section 13 of the Operating Manual to the extent such requirements are applicable to the work and the activities of DP and DP Consultants.

SECTION 9. OWNERSHIP OF DOCUMENTS

9.1 The plans, drawings, specifications, notes, reports, renderings, final models, design concepts and images, and all other documents and items prepared and furnished by DP, any DP Consultant or any other person at DP’s direction for Owner shall be the property of Owner, including, without limitation, the right to use same or any part of them on Owner’s other projects without additional cost to Owner. DP shall maintain file copies of those documents, drawings and/or other products required by law or the standards of professional practice.

9.2 In the case of future reuse of the Construction Documents by Owner, DP’s name and seal shall be removed, and DP shall not be liable to Owner. Owner agrees to add DP as an additional insured under Owner’s self-insurance program for this sole purpose.

9.3 By execution of the DP Contract Documents, DP assigns to Owner all copyright ownership and other intellectual property interest in the Schematic Design Documents, the Design Development Documents, the Construction Documents and all other documents prepared by DP, any DP Consultant or any other person at DP’s direction for Owner and in the completed Job Order Project (including, without limitation, rights under the United States Architectural Works Copyright Protection Act of 1990 (17 U.S.C.A 101, et seq.), as hereafter amended) and further agrees to execute, and to cause any DP Consultant and any other person that prepared documents at DP’s direction for Owner to execute, any separate assignment agreement necessary to implement such assignment, except that this assignment shall not include DP’s standard specifications and details used in such documents (“DP’s Standard Specifications and Details”).
9.4 DP grants to Owner a royalty-free, non-exclusive, unlimited and worldwide license to use DP’s Standard Specifications and Details in any manner Owner determines in any project of Owner and in any project of any third party on Owner’s property.

SECTION 10.  NO ASSIGNMENTS

DP shall not assign, sublet or delegate its obligations under the DP Contract Documents without the prior written consent of Owner.

SECTION 11.  DISPUTES AND REMEDIES

11.1 Except as otherwise provided in Section 11.3, DP and Owner hereby agree that all disputes and disagreements and claims and controversies relating to the Job Order Project involving Owner or DP and all claims made by Owner against DP and by DP against Owner in respect of the DP Contract Documents, including, without limitation, controversies based on breach of contract, mistake, misrepresentation, contract modification or rescission, errors or omissions in the documents prepared by DP, any DP Consultant or any other person at DP’s direction for Owner, or any other claim which arises under or by virtue of the DP Contract Documents shall be resolved in the following manner. Initially, appropriate representatives of Owner and DP shall meet and attempt to resolve the matter. If there is no resolution, the matter shall be handled in accordance with the applicable portions of Arizona Board of Regents Policy Section 3-809, as amended or superseded from time to time (“ABOR Policy Section 3-809”), which at that point shall be the parties’ sole remedy. By submitting a proposal or its qualifications to perform Design Services and also by executing the DP Contract Documents, DP agrees to be bound by ABOR Policy Section 3-809 and the other procedures described in this Section 11 and waives any objections to those procedures.

11.2 Unless otherwise agreed in writing, DP shall carry on the services under the DP Contract Documents and maintain its progress during resolution of any disputes or disagreements and during any claims and controversy proceedings, and Owner shall continue to make payments to DP in accordance with the DP Contract Documents to the extent the payments are not the subject of the dispute, disagreement, claim or controversy.

11.3 Any dispute, disagreement, claim or controversy involving DP or any DP Consultant and also involving a Contractor or any Subcontractor of a Contractor shall be handled as provided for such matters in the JOC Contract Documents (defined in the Operating Manual) as to matters between Owner and Contractor, even if the matter involves Design Professional or any DP Consultant. As to such matters DP agrees to be subject to the procedures in the JOC Contract Documents.

11.4 DP and Owner agree that all other parties involved in any claim, controversy, dispute or disagreement relating to the Job Order Project may be made parties to any process, proceeding or litigation, and to this end, both DP and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Job Order Project, and DP will require all DP Consultants to include appropriate provisions in all contracts they execute with other parties in connection with the Job Order Project, requiring attendance and participation in any such process, proceeding or litigation. DP and Owner expressly agree that any dispute resolution proceeding initiated pursuant to the DP Contract Documents may be joined or consolidated with any proceeding involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. Both DP and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Job Order Project, and DP will require all DP Consultants to include appropriate provisions in all contracts they execute with other parties in connection with the Job Order Project, to require such joinder or consolidation.

11.5 Any dispute, disagreement or ambiguity concerning the duties or obligations of DP as described in the DP Contract Documents and the duties or obligations of any other person or legal entity providing services or materials or construction on the Job Order Project shall be resolved as provided in this Section 11.

SECTION 12.  TERMINATION OR SUSPENSION
12.1 **Owner** may suspend or terminate the Job Order Project at any time without cause and in **Owner's** absolute and sole discretion. If **Owner** terminates the Job Order Project, **Owner** will have the right to suspend or terminate this Agreement and the other DP Contract Documents. Upon written notice of suspension or termination **DP** shall immediately cease all work and not incur any further costs or expenses except as expressly permitted by **Owner** in writing. If the Job Order Project is suspended for more than one calendar year through no fault of **DP**, **DP** shall be paid for work actually performed and the DP Contract Documents shall terminate. Otherwise, **DP** shall recommence work upon written notice from **Owner** and the DP Contract Documents shall remain in full force and effect.

12.2 **Owner** may terminate this Agreement and the other DP Contract Documents without penalty or further obligation pursuant to **Arizona Revised Statutes Section 38-511** if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement and other DP Contract Documents on behalf of **Owner** is or becomes, at any time while the DP Contract Documents or any extension of the DP Contract Documents is in effect, a consultant to **DP** with respect to the subject matter of the DP Contract Documents or an employee of **DP**.

12.3 If funds are not appropriated by the Legislature of the State of Arizona to pay for the Job Order Project or if appropriated funds become unavailable, **Owner** may delay design and/or construction for a period up to six months, after which date if no appropriated funds are made available by the Legislature, this Agreement and the other DP Contract Documents shall terminate at the option of **Owner**.

12.4 **Owner** may, by written notice to **DP**, terminate this Agreement and the other DP Contract Documents if it is found by **Owner** that improper gratuities, in the form of entertainment, gifts or otherwise, were offered or given by **DP** or any agent or representative of the **DP** to any officer or employee of **Owner** or State of Arizona.

12.5 In the event of termination which is not the fault of **DP**, **Owner** shall pay to **DP** only the compensation properly due for services properly performed and accepted by **Owner** on the Job Order Project prior to the termination date and any reimbursable expenses incurred as provided hereunder. Any post-termination wrap-up costs must be approved by **Owner** in writing in advance of their accrual or expenditure or **DP** specifically waives all rights to claim such costs.

12.6 This Agreement and the other DP Contract Documents may be terminated by **Owner** for default upon the **DP** failure to cure a material breach by **DP** within seven (7) days after written notice by **Owner** to **DP** specifying the nature of the default. This Agreement and the other DP Contract Documents may be terminated by **DP** only for failure by **Owner** to pay any amount due and payable upon **Owner** failure to cure the failure of payment within thirty (30) days after written notice by **DP** to **Owner** specifying the failure of payment.

12.7 Each payment obligation of **Owner** created hereby is conditioned upon the availability of funds which are appropriated or allocated for the payment of such an obligation. If funds are not allocated and available for the continuance of **DP’s** services, the DP Contract Documents may be terminated by **Owner** at the end of the period for which funds are available. **Owner** shall notify **DP** at the earliest possible time if **DP’s** services will or may be affected by a shortage of funds. No penalty shall accrue to **Owner** in the event this provision is exercised, and **Owner** shall not be obligated or liable for any further payments or for any damages, including lost profit, as a result of termination under this Section 12.7.

12.8 As of the termination date, all Drawings, Specifications, and other design, bidding or contract administration documents shall be surrendered forthwith by **DP** to **Owner**.

**SECTION 13. COMPENSATION FOR THE DESIGN PROFESSIONAL’S SERVICES**

13.1 **Payment of DP Basic Compensation Services and of any Reimbursable Expenses**

13.1.1 Payments for DP Reimbursable Expenses to the extent covered under **Section 6** and DP Basic Compensation shall be made monthly, within thirty (30) days after **Owner** receives **DP’s** properly itemized statement for Basic Services and any authorized Reimbursable Expenses in such form and accompanied by such supporting documentation as **Owner** may direct. If **Owner** determines that any amounts requested by **DP** are not due or are not sufficiently documented, **Owner** will furnish the **DP** with notice of the reasons for withholding payment along with **Owner’s** payment on account of the balance of the statement.

13.1.2 (4)
13.1.3 (5) 

13.1.4 When any portions of the Job Order Project are deleted or otherwise not constructed, compensation for such portions of the Job Order Project shall be payable to the extent services are performed on such portions, in accordance with the schedule set forth in Section 13.1.3 based on (i) the lowest bona fide bid or negotiated proposal, or (ii) if no such bid or proposal is received, the most recent Owner approved estimate of construction costs for such portions of the Job Order Project.

13.1.5 Additive and deductive alternates that are not awarded, which involve changes in design (as opposed to substitutions or additions which, in the judgment of Owner, do not involve design changes), will be paid for as a component of DP Basic Compensation during the Construction Phase. Notwithstanding the foregoing, unless otherwise agreed to in writing by Owner, DP shall not be entitled to any additional compensation or reimbursement in connection with the Job Order Project for any alternates developed because the Job Order Project cannot be completed in full within the portion of Owner's Job Order Project budget available for payment of Job Order Work.

13.1.6 If and to the extent that the time initially established for the Construction Phase of the Job Order Project is exceeded or extended through no fault of DP, as determined by Owner, DP Basic Compensation for DP Basic Services required for such extended Construction Phase shall be computed as set forth in Section 13.2 for DP Additional Services.

13.1.7 DP shall pay to each DP Consultant within thirty (30) days of receipt of DP's monthly payment from Owner, that amount properly due and payable to said DP Consultant for services performed within the payment period. DP shall, by an appropriate agreement with each DP Consultant, require each DP Consultant to make payments to its sub-consultants in a similar manner. Upon request of Owner, DP shall furnish documentary evidence of compliance with these payment provisions.

13.2 Payment for DP Additional Services

13.2.1 Payments for DP Additional Services shall be made monthly, within thirty (30) days after Owner receives DP's properly itemized statement for DP Additional Services in such form and accompanied by such supporting documentation as Owner may direct. If Owner determines that any amounts requested by DP are not due or are not sufficiently documented, Owner will furnish DP with notice of the reasons for withholding payment along with Owner's payment on account of the balance of the statement.

13.2.2 (6) 

13.2.3 (7) 

SECTION 14. JOB ORDER PROJECT SPECIFIC PROVISIONS

(8)

SECTION 15. MISCELLANEOUS

15.1 No deductions shall be made from DP's compensation on account of liquidated damages or other amounts withheld from payments to Contractor.

15.2 Payments that have not been made to DP within thirty (30) days of the due date shall thereafter bear interest at the contract rate prevailing in the State of Arizona, as established at Arizona Revised Statutes Section. § 44-1201, as amended or superseded.

15.3 A listing of the key employees assigned directly to the Job Order Project on a day-to-day basis as well as alternates (replacements) has been furnished to and approved by Owner prior to award of the services contract to DP. Any substitutions of assigned personnel shall have prior, written approval by Owner and shall be proposed from the list of acceptable alternates. No changes of personnel will be allowed so long as approved personnel remain employees of
DP and capable of performing the required services.

15.4 DP shall make a good-faith effort to obtain not less than 15% of the services performed under the DP Contract Documents are performed by a small business, which is a business that is independently owned and operated and that either has one hundred (100) full-time employees or fewer or had gross annual receipts of Four Million Dollars ($4,000,000) or less in its last fiscal year. DP shall report to Owner the value of the services performed under this provision during each phase of the Job Order Project. Documentation evidencing DP’s compliance with this provision shall be furnished in a format acceptable to Owner as a condition precedent to payment for services rendered on subsequent phases of the Job Order Project or for final payment, as applicable.

15.5 Neither DP nor Owner may without the written consent of the other, assign, transfer, or sublet any portion or part of the DP’s services under the DP Contract Documents or the obligations required by either DP or Owner under the DP Contract Documents.

15.6 The provisions of the DP Contract Documents shall be binding upon the parties, their employees, agents, heirs, successors and assigns.

15.7 Interpretation of the DP Contract Documents and any and all claims, controversies, disagreements and disputes arising under or in connection with the Job Order Project, the DP services, the DP Contract Documents shall be governed by the law of the State of Arizona, without giving effect to conflicts of law principles. No suit or action shall be commenced by any claimant other than in the Arizona Superior Court in Maricopa County, Arizona, and only after all contractual and administrative claims, controversies, dispute and disagreement resolution procedures have been fulfilled. By submitting a proposal or its qualifications and also by executing the DP Contract Documents, DP agrees to be bound by Section 3-809 of the Arizona Board of Regents Policy containing procedures claims controversies, disagreements and disputes and waives any objections to those procedures.

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

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

15.10 The headings used in the DP Contract Documents are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

15.11 Whenever the DP Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered or sent by registered or certified mail, postage prepaid to the address indicated at the end of this Agreement, three (3) days after mailing; or (iii) if transmitted by facsimile, at the time stated in a machine generated confirmation that notice was received at the number of the intended recipient.

15.12 If funding for this Job Order Project is dependent on the sale of revenue bonds or other debt instruments and if bonds or other instruments are not sold or proceeds are not available for this Job Order Project, Owner may terminate the DP Contract Documents. If such a termination occurs, Owner shall reimburse DP for services rendered and non-cancelable commitments made prior to the termination on the same basis as if Owner had terminated without cause under Section 12.1.

15.13 In connection with the performance of DP services under the DP Contract Documents, DP agrees to comply with all applicable state and federal law, rules, regulations and executive orders, including, without limitation, those governing employment opportunity, immigration, nondiscrimination and affirmative action (including, without limitation the Federal Americans With Disabilities Act and Arizona Executive Order 99-4).

15.14 Any failure of Owner to make a decision within the time limit set forth shall not be construed as acquiescence in all or any part of any DP claim for relief.
15.15 DP shall comply with Owner's current policy regarding sexual harassment. The Owner prohibits sexual harassment by any person on Owner's premises or at any Owner-affiliated functions.

15.16 The DP Contract Documents represent the complete and integrated agreement between Owner and DP and supersede all prior negotiations, representations or agreements, either written or oral. The DP Contract Documents may be amended only by written instrument signed by both Owner and DP.

15.17 To the extent required by Section 35-214, Arizona Revised Statutes, DP agrees to retain all records relating to the DP Contract Documents. DP agrees to make those records available at all reasonable times for inspection and audit by Owner or the Auditor General of the State of Arizona during the term of the DP Contract Documents and for a period of five (5) years after the completion of the DP Contract Documents. The records shall be provided at Arizona State University, Tempe, Arizona, or another location designated by Owner upon reasonable notice to DP.

15.18 Each party acknowledges that it has had an opportunity to review the DP Contract Documents with counsel and this document shall not be construed against any party that is determined to have been the drafter of the document.

15.19 None of the DP Contract Documents and the JOC Contract Documents shall be construed or interpreted to create any contractual relationship between the Contractor or any Subcontractor, on the one hand, and the DP or any DP Consultant, on the other hand.

15.20 Nothing in the DP Contract Documents shall be construed or interpreted to give any third party any claim or right of action against Owner, DP or Contractor which does not otherwise exist without regard to the DP Contract Documents.

**DESIGN PROFESSIONAL:**

By: ________________________________
Name: ______________________________
(Printed)
Title: ________________________________
Date: ________________________________

Address for notices to DP: ________________________________

FAX: ________________________________

**OWNER:**

ARIZONA BOARD OF REGENTS
for on behalf of ARIZONA STATE UNIVERSITY

By: ________________________________
Name: ______________________________
(Printed)
Title: ________________________________
Date: ________________________________

Addresses for notices to Owner:

______________________________

______________________________

FAX: ________________________________

With a required copy to:
Paul J. Ward, Esq.
General Counsel
Office of General Counsel
P.O. Box 872003
Tempe, AZ 85287-2003
FAX: (480) 965-0984
EXHIBIT A

Operating Manual for Construction Manager at Risk Job Order Projects

[NOTE: Insert a copy of the Operating Manual (Job Order Contracting Construction Services)]
EXHIBIT B

Required DP and DP Consultant Field Administration and Observation

(9)