



**DESIGN PROFESSIONAL AGREEMENT
(JOB ORDER CONTRACTING
CONSTRUCTION SERVICES)
(SINGLE PROJECT FORM)**

Date (type in) Issued: _____

Request for Qualifications Number (If Applicable): _____

OWNER

**ARIZONA BOARD OF REGENTS
for and on behalf of
ARIZONA STATE UNIVERSITY**

DESIGN PROFESSIONAL

SEPTEMBER, 2006 EDITION

Buyer's Name

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- /___ 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).
- /___ 10. Code analysis, fire protection analysis and Americans with Disabilities Act analysis.
- /___ 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)

/___ **Design Professional will prepare Schematic Design Documents. The Schematic Design Documents shall consist of AT LEAST the following CHECKED AND INITIALED items.**

- /___ 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."
- / 23. Code analysis, fire protection analysis and Americans with Disabilities Act analysis.
- / 24. Proposed cash allowances.
- / 25. Draft Job Order Project Manual
- / 26. Outline specifications (marked-up for Job Order Project).
- / 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.

(minimum 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-alternates 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.
- 15. Complete specifications, C.S.I. (Construction Specifications Institute) format.
- 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.
 - f. Fireproofing - N.F.P.A. designation.
 - 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, compoJob Order Site 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
- /___ 29. Final Job Order Project Manual
- /___ 30. Telecommunication distribution diagrams in accordance with "Arizona State University New Construction Guidelines and Specifications for Telecommunication Services."
- /___ 31. Analysis of code compliance and Americans with Disabilities Act compliance.
- /___ 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

Construction Budget	DP Professional Liability (E&O) Minimum Coverage	Minimum Aggregate
\$0 - \$1,000,000	Value of Job Order Project budget minimum \$1,000,000	\$2,000,000
\$1,000,000 to \$5,000,000	\$1,000,000	\$2,000,000
\$5,000,000 to \$10,000,000	\$2,000,000	\$3,000,000
\$10,000,000 to \$20,000,000	\$3,000,000	\$3,000,000
\$20,000,000 to \$30,000,000	\$4,000,000	\$4,000,000
\$30,000,000 to \$40,000,000	\$5,000,000	\$5,000,000
above \$40,000,000	\$6,000,000	\$6,000,000

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")

(1)

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 to delineate and define the general design of the entire Job Order Project, including size and character of architectural, structural, mechanical and electrical systems, materials, and any other Job Order Project elements 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 phrase, "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
- (ii) 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 .

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 to the extent arising or alleged to have arisen from the negligent acts or omissions (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**.

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, 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, rights under the United States Architectural Works Copyright Protection Act of 1990 (17 U.S.C.A 101, et seq.), as hereafter amended).

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 businesses 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)
