



ARIZONA STATE UNIVERSITY
EXHIBIT A
DESIGN-BUILD AGREEMENT GENERAL CONDITIONS

December 31, 2021 Edition

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ARTICLE 1

GENERAL ARTICLES

1.1 Mutual Obligations

1.1.1 Owner and Design-Builder commit, at all times, to cooperate fully with each other, and proceed on the basis of trust and good faith to permit each party to realize the benefits afforded under the Contract Documents, which benefits include the satisfactory and timely completion of the Project and all obligations required by the Contract Documents.

1.2 Basic Definitions

Contract Documents are those documents noted under Article 2 of “**STANDARD FORM AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER ON THE BASIS OF A GUARANTEED MAXIMUM PRICE**” (the “Agreement”) and also include, but are not limited to, the Agreement, amendments, change orders, these General Conditions, any supplementary or special conditions referenced in the Agreement and any other items stipulated to as being included in the Contract Documents, including the complete design as accepted by the Owner.

1.2.1 *Construction Documents* are the plans and specifications prepared by the Design-Builder for the Project, approved by the Owner, and incorporated into this Agreement by reference after such approval, to be used to construct the Project. The Construction Documents shall set forth in detail all items necessary to complete the construction of the Project in accordance with the Contract Documents (subject to their completion following commencement of the Construction Phase). All amendments and modifications to the Construction Documents must be approved by the Owner prior to incorporation into this Agreement.

1.2.2 *Construction General Conditions* means all **on-site** Project-specific job costs of Design-Builder not itemized elsewhere in the Contract Documents to support complete construction of the project.

Construction General Conditions shall initially be calculated based on an itemized description of costs, shared by the Owner for review during GMP negotiations, then shall be fixed as a dollar amount as mutually negotiated and agreed by the Parties in writing, subject to any cost or credit adjustments prescribed by these General Conditions Article 9.4. Construction General Conditions will be reimbursed as a category of Work within the Schedule of Values based on negotiated amounts, as agreed to by Owner.

Design-Builder’s Construction General Conditions-type charges may not be listed in the Subcontractors’ Schedule of Values, nor will such charges be paid by the Owner.

All excluded expenses the Design-Builder incurs while performing and completing the Project are not reimbursable as Construction General Conditions, and must be paid out of the Construction Phase Fee.

1.2.3 *Cost of the Work* consists of those items of Work which are paid for by the Owner to the Design-Builder, and consists of those categories of costs set forth as allowable on “Exhibit F - Cost of the Work”. The *Estimated Cost of the Work* is the difference between the Guaranteed Maximum Price and the accepted fixed General Conditions and Construction Phase. The *Actual Cost of the Work* is the aggregate amount of actual costs chargeable to the Owner under the provisions of

“Exhibit F - Cost of the Work”, up to the *Estimated Cost of the Work* plus General Conditions and Construction Phase Fee.

1.2.4 *Owner* means the Arizona Board of Regents for and on behalf of the Arizona State University acting by and through the Arizona State University.

1.2.5 *Design-Builder* means the Design-Builder and all persons and entities identified as members of the Design-Build Team in the Design-Builder’s response to the Owner’s RFQ for this project. Except as otherwise provided herein, members of the Design-Build Team shall be treated as Subcontractors or Design Consultants, as the context may require, within the areas of their involvement in the Project.

1.2.6 A *Design Professional* is a qualified professional properly licensed in the State of Arizona, as required for the services provided, procured or employed by anyone under contract with Design-Builder to furnish design services required under the Contract Documents.

1.2.7 *Construction Phase* is defined as including but not limited to the following Subphases: construction administration, closeout and warranty, and may include some activities that occur after Final Completion.

1.2.8 *Construction Phase Fee* includes all direct and indirect costs of Design-Builder providing off-site management, supervision and support for the completion of the Work during the Construction Phase, plus associated overhead and profit. The Construction Phase Fee shall initially be calculated as a percent of Direct Construction Cost only, and then shall be fixed as a dollar amount as mutually negotiated and agreed to by the Parties in writing, subject to any cost or credit adjustments prescribed by these General Conditions Article 9.4.

1.2.9 *Design Submissions or Design Documents* are the drawings, specifications, cost estimates and other documents that are submitted for Owner’s approval to conclude the services required by the Agreement.

1.2.10 *Hazardous Conditions* are defined as any unusual materials, to include any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or which handling, remediation, or disposal are regulated by applicable Legal Requirements.

1.2.11 *Legal Requirements* include all applicable federal, state and local rules, laws, codes, ordinances and regulations of any government or quasi-government entity having jurisdiction over the Project, the practices involved in the Project, or any Work performed in connection with the Project, including regulations, policies and practices of the Arizona Board of Regents.

1.2.12 *Project Criteria* are developed by or for Owner to describe Owner’s program, requirements and objectives for the Project, including use, space, price, time, site, and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder’s performance of its Work. The Project Criteria may include conceptual documents, design criteria, performance requirements, and other Project specific technical materials and requirements prepared by or for Owner.

1.2.13 *Punch List* means those minor items of Work identified and listed by Design-Builder and agreed to by Owner to be completed by Design-Builder after Substantial Completion and prior to Final Completion, which do not prevent the Project from being fully used for the purpose for which it is

intended and which will not prevent the issuance of a certificate of occupancy or a favorable review by the State Fire Marshal.

1.2.14 *Savings* is the difference, if any, between the Guaranteed Maximum Price and the Actual Cost of the Work plus the General Conditions and the Construction Phase Fee, and shall be allocated as set forth in Article 6.

1.2.15 The *Site* is the land and other areas on which the Project is located.

1.2.16 A *Subcontractor* (of any tier) is any person or entity who performs a portion of the Work directly on behalf of the Design-Builder, including any material, men and suppliers, and shall include all employees, agents and authorized representatives of such entities.

1.2.17 *Substantial Completion* is the date on which Design-Builder's Work, or an agreed upon portion of the Work, is sufficiently complete so that Owner can occupy and utilize the Project, or a portion thereof, for the purposes for which it was intended. All Work must be complete except for minor cosmetic corrections. Beneficial Occupancy by Owner of Project does not automatically constitute Substantial Completion.

1.2.18 The *Work* is comprised of all design, other related services and construction activities required to complete the Project as defined by the Contract Documents, including procuring and furnishing all materials, equipment, services, and labor reasonably inferable from the Contract Documents, or from prevailing trade usage and custom.

1.2.19 *Beneficial Occupancy* is that point in which the Design-Builder's Work, or a portion of, is sufficiently complete to allow the Owner to legally occupy and utilize the project for its intended purpose. At this point, additional work by the Design-Builder may be required to achieve proper Substantial Completion.

1.2.20 *Final Completion* is defined as 100% completion, including all punch lists, Close-Out Documents and Owner training/start up activities.

ARTICLE 2 DESIGN-BUILDER'S SERVICES AND RESPONSIBILITIES

2.1 General Services

2.1.1 Design-Builder's Representative shall supervise all work and attend all meetings. During the Construction Phase, Design-Builder's Representative and Superintendent shall be at the Site at all times when work is being performed, and shall have the necessary expertise and experience required to properly supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder as to all matters. Design-Builder's Representative may only be replaced with the mutual agreement of Owner and Design-Builder.

2.1.2 Design-Builder shall provide Owner, on a monthly basis, a written status report detailing the progress of the Work, including whether the Work is proceeding according to Schedule, an updated

Critical Path Method (CPM) Schedule, copies of the construction superintendent's daily site reports, identification of any discrepancies, conflicts, or ambiguities existing in the Contract Documents that require resolution, whether health and safety issues have arisen in connection with the Work, and whether other items exist that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Guaranteed Maximum Price and within the Contract Time(s).

2.1.3 Design-Builder shall prepare and submit a Logic Net Critical Path Method (CPM) Schedule for the work in the Agreement and a detailed cost estimate in CSI or systems format that includes a quantity and a cost for every item in the estimate to the Owner for approval. The CPM shall include adequate Owner review time for Design Submission Documents three (3) weeks, Government Agency reviews and all necessary approvals. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required and all necessary shutdowns or suspensions of Owner or separate vendor activities on the site. The schedule shall be revised as required by conditions and progress of the Work, but Design-Builder shall not be relieved of its obligations to complete the Work within the Contract Time(s). Owner's review of the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences, and techniques of construction, except as limited and defined elsewhere in the Contract Documents.

2.1.4 The parties will meet after execution of each part of this Agreement to discuss issues affecting the administration of the Work, and to implement the necessary procedures, including submittals and Owner site activity schedules, to permit the parties to perform their obligations under the Contract Documents.

2.1.5 With respect to all Work performed by Design-Builder and its Subcontractors and Consultants, Design-Builder, its Subcontractors and Consultants, shall keep full and detailed accounts and exercise such cost controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and subject to review by Owner. During performance of the Work and for five (5) years after Final Payment, the Design-Builder shall retain and shall also require all Subcontractors and Consultants to retain for review or audit, or both, by the Owner all correspondence, meeting minutes, memoranda, electronic media, books, accounts, reports, files, time cards, material invoices, payrolls, and evidence of all communications, direct and indirect costs and all other matters related to the Work. Upon request by the Owner, a legible copy or the original of any or all such records as are described above shall be produced by the Design-Builder at any time during or after the Work as the Owner may request. Upon request the Design-Builder shall submit to the Owner copies of all payrolls, reports, estimates, records, change order costs and data, and any other data concerning Work performed or to be performed, materials supplied or to be supplied, including Subcontractor or Consultant payment applications or invoices and such Subcontractor's or Consultant's progress payment checks. The requirements of this Article shall be provided for in all contracts between the Design-Builder and its Subcontractors and Consultants. The Owner may exercise its rights under this Paragraph as often as reasonably necessary in the Owner's sole judgment to assure the Owner has a complete and accurate understanding of all Project costs.

2.2 Design Professional Services

2.2.1 Refer to "Exhibit B - Scope of Services".

2.3 Payment to Sub-Consultants

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

2.4 Design Submissions

2.4.1 Based on the Contract Documents, Design-Builder shall submit all required Design Submissions to support the overall Project schedule, and to describe the Project's essential elements. The Design Submissions required in the Agreement will include drawings, specifications, cost estimates, and other documents, as outlined in "Exhibit B - Scope of Services". At the time of the scheduled Submissions, Design-Builder and Owner shall meet and confer about the Submission, with Design-Builder identifying during the meeting, among other things, the evolution of the design and significant changes or deviations from the Contract Documents, or previously submitted Design Submissions, if any. Minutes of the meeting will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall have the opportunity to review the Design Submission and, within three (3) weeks share comments with Design-Builder, for incorporation into the design, and to achieve mutual agreement on the design by Owner and Design-Builder.

2.4.2 As necessary for the timely completion of the work, Design-Builder shall submit Construction Documents describing the requirements for construction of the Work, and reflecting a design which has been mutually agreed upon by Owner and Design-Builder. The parties shall have design review meetings to discuss the Construction Documents consistent with Article 2.4.1 above. Following the design review meetings Owner shall have the opportunity to review the Construction Documents and, within three (3) weeks, share comments with Design-Builder for incorporation into the Construction Documents, and to achieve mutual agreement on the Construction Documents by Owner and Design-Builder. Design-Builder shall proceed with construction in accordance with the current CPM Schedule, based on the final Construction Documents. Design-Builder shall provide Owner with AutoCAD, PDF, and/or word processing electronic files compatible with Owner's software of these documents, and any subsequent updates, as outlined in "Exhibit B - Scope of Services".

2.4.3 Owner's review of Design-Builder's Design Submissions is for the purpose of mutually establishing a conformed set of Construction Documents that is compatible with the Work. Owner's review of any Design Submission or the Construction Documents shall not be deemed to transfer any design or design-related liability or responsibility from Design-Builder to Owner, nor to waive any of Owner's rights.

2.4.4 Because this is a design-build project, Design-Builder may prepare and submit Design Submissions and Construction Documents piecemeal and in such sequence as shall assure the timely completion of the project.

2.5 Legal Requirements

2.5.1 Design-Builder shall perform all Work in accordance with all applicable Legal Requirements and shall provide all notices applicable to the Work.

2.5.2 The Guaranteed Maximum Price or Contract Time(s) of performance or both shall be adjusted to compensate Design-Builder for any unforeseeable changes in the Legal Requirements affecting the performance of the Work, including any revisions Design-Builder is required to make following Owner's approval of Design Submission.

2.6 Government Approvals and Permits

2.6.1 Unless otherwise provided in the Contract Documents, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

2.7 Design-Builder's Construction Phase Services

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or its Subcontractors all necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities, and other temporary facilities to permit Design-Builder to complete all construction of the Project consistent with the Contract Documents.

2.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill, quality and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.3 Subcontractor Selection.

2.7.3.1 Pre-Construction Phase. If the Owner determines that Integrated Project Delivery (IPD) or Building Information Modeling (BIM) objectives will benefit the Project and it is or will be to the advantage of Owner or the Project to select certain subcontracting trades to participate in the design process during the Pre-Construction Phase, then the following procedures will apply:

- a) Design-Builder will prequalify Subcontractors from the trades needed in the Pre-Construction Phase.
- b) Upon acceptance of the Owner, a Request for Qualifications (RFQ) is requested from pre-qualified Subcontractors by the Design-Builder. The RFQ will request additional qualification information in addition to pricing information, such as labor rates and overhead and profit factors.
- c) The Statement of Qualifications (SOQ) from the Subcontractors will be reviewed by a committee consisting of Design-Builder, Owner and design team members. The qualification and pricing information will be scored by a pre-determined weighted scoring system.
- d) The committee will develop a list of firms that will be interviewed.
- e) The Subcontractors will be interviewed and ranked, and the highest ranked Subcontractor will be selected to provide the services.

For Subcontractors selected for Design Phase Services involvement, the Design-Builder must establish to the Owner's satisfaction that the Subcontractor's price submission and subsequent construction costs are reasonable and appropriate, by following the procedures outlined in Article 2.7.3.3.

2.7.3.2 Construction Phase. The Design-Builder shall, with the assistance of the Owner, prepare the necessary and appropriate bidding information, bidding forms, and pre-qualification criteria for bidders; develop Subcontractor interest; establish bidding schedules; advertise for bids; and conduct pre-bid conferences to familiarize bidders with the bidding documents and management techniques and with any special systems, materials, or methods. The Design-Builder shall review all potential Subcontractors with the Owner and obtain Owner's approval of the pre-qualification of any Subcontractor in accordance with the Owner-approved Subcontractor Selection Plan. If the Design-Builder becomes aware, prior to any bid date, that less than three (3) pre-qualified Subcontractors plan to bid any portion of any Bid Package or that anticipated bids from previously approved or pre-qualified Subcontractors are likely to exceed the current Schedule of Values or estimate of Construction Cost, the Design-Builder shall promptly notify the Owner.

2.7.3.3 ABOR Policies. The Design-Builder's selection of any Subcontractor must comply with ABOR Policy 3-804B.4 and must be based on qualifications alone, or on a combination of qualifications and price selection, but shall not be based on price alone. The Design-Builder shall receive and open bids when advertised, prepare a bid analysis, conduct pre-award conferences, and notify the Owner concerning which bids from pre-qualified Subcontractors will be accepted and awarded. The Owner shall be notified of the time and place of all bid openings and shall be permitted to attend such openings with their representatives and guests. A proposal to accept other than a low lump sum bid shall be justified in writing by the Design-Builder with sufficient detail to satisfy Owner, and be subject to prior written approval by the Owner, with no increase in the GMP. When the Design-Builder proposes to accept a subcontract bid other than the low bid, the Design-Builder must justify such action in writing and obtain written approval from Owner before making the subcontract award. Once approved by Owner, no Subcontractor may be replaced by Design-Builder without Owner's prior approval and any change in cost to Design-Builder will not be a responsibility of Owner and there will be no increase in GMP or contract price by reason of such change of cost. Within thirty (30) calendar days after award, one fully executed subcontract for work or services on this Project shall be furnished to Owner together with all special or supplementary conditions applicable to the subcontract work.

All subcontracts shall be executed using AIA Form A401-2007 using Design-Builder's supplements as approved by Owner. This form shall be fully conformed to the provisions of this Agreement, including, but not limited to, the following changes:

- A. *Delete Paragraph 1.2 in its entirety.*
- B. *Delete from the first sentence of Paragraph 2.1 the words "the provisions of the edition of AIA Document A201 current as of the date of this Agreement apply to this Agreement pursuant to Paragraph 1.2 and".*
- C. *Delete Paragraph 3.2.5 in its entirety.*
- D. *Replace the word "Owner" from the first sentence of Paragraph 4.6 with the words "the State of Arizona, the Arizona Board of Regents and the Arizona State University".*

E. Add Paragraph 6.3.7 as follows:

“This Article 6 shall not be deemed a limitation of rights or remedies which the Subcontractor may have under Federal law or under applicable labor or material payment bonds unless such rights or remedies are expressly waived by the Subcontractor.”

F. Delete the wording “along with reasonable overhead and profit on the Work not executed” at the end of Paragraph 7.2.4.

G. In Paragraph 13.4(1), replace the word “Owner” with “the State of Arizona, the Arizona Board of Regents and the Arizona State University,” delete “Architect and Architect’s consultants and add “the State of Arizona, the Arizona Board of Regents and the Arizona State University,” after the word “Contractor” in Paragraph 13.4(2).

H. Delete Paragraphs 13.8.2, 13.8.3, and 13.9 in their entirety.

I. Add Paragraph 15.5 as follows:

“During performance of the Work and for five (5) years after Final Payment, Subcontractor shall retain and shall also require all of its Subcontractors to retain for review or audit, or both, by the Contractor or Owner, all correspondence, meeting minutes, memoranda, electronic media, books, accounts, reports, files, time cards, material invoices, payrolls, and evidence of all communications, direct and indirect costs and all other matters related to the Work. Upon request by the Contractor or Owner, a legible copy or the original of any or all such records as are described above shall be produced by the Subcontractor at any time during or after the Work as the Owner or Contractor may request. Upon request the Subcontractor shall submit to the Owner or Contractor, as appropriate, copies of all payrolls, reports, estimates, records, change order costs and data, and any other data concerning Work performed or to be performed, materials supplied or to be supplied, including payment applications or invoices and progress payment checks. The requirements of this Article shall be provided for in all contracts between the Subcontractor and its Subcontractors.”

J. Add Paragraph 15.6 as follows:

“All parts of the Prime Contract documents shall be considered part of this Subcontract by this reference as if attached hereto or repeated herein and the Subcontractor agrees to bind and obligate himself, in the performance of this Subcontract, to the Contractor by the same terms, conditions, undertakings and obligations that the Contractor is bound and obligated to the Owner by the Prime Contract but, in the event of conflict of the terms thereof with the terms hereof, the terms of the Prime Contract shall prevail. A copy of the Prime Contract is included with the bid documents.”

As evidence of compliance with this Article Design-Builder shall furnish to the Owner, within 30 days after award of the subcontract, one fully executed copy of each subcontract for this Project. Each copy shall consist of the subcontract agreement (Form A401) and all special or supplementary conditions applicable to the subcontract.

2.7.4 The Design-Builder shall provide the Owner with requirements and assignment of responsibilities for safety precautions and programs as required for the execution of the Work, temporary Project facilities and for equipment, materials and services for common use of Subcontractors and verify that all such information is included in the Construction Documents.

2.7.5 Design-Builder Self-Performance.

2.7.5.1 The Design-Builder must disclose to the Owner, prior to initiation of Construction Phase services, any portions of the Work that the Design-Builder desires to self-perform, and must secure written authorization from the Owner to consider self-performance.

2.7.5.2 If the Owner authorizes the Design-Builder to consider self-performance of any portion of the construction work, the following procedures will be followed. The Design-Builder must submit its qualifications to do the listed portion(s) of the construction work to the Owner and if the Owner is satisfied with Design-Builder's qualifications as to that portion of the construction work, the Owner will designate the Design-Builder as a pre-qualified Subcontractor for that portion of the construction work. A bid package for each portion of the construction work as to which Design-Builder is a pre-qualified Subcontractor will be prepared in the same manner and content as bid packages for Subcontractors in other trades. Design-Builder will submit a proposed price (the "Price Submission") for each of these portions of the construction work. This proposed price shall include labor rates, and certify that sub-sub trades and materials will be bid with a minimum of three pre-qualified bidders. Overtime for self-performed work shall be approved by Owner in writing in advance. Any and all change orders for self-performed work will include only Design-Builder overhead and profit, no Subcontractor overhead and profit will be allowed.

2.7.5.3 To evaluate the Design-Builder's Price Submission on self-performed work, Owner may do any or all of the following at the Owner's discretion: (i) engage an estimator selected by Owner to prepare an independent estimate of this portion of the construction work; (ii) engage other consultants to do a construction market study to confirm construction market impacts to the cost of this portion of the construction work, or (iii) take other action to evaluate the Design-Builder's Price Submission. In any event, Design-Builder is responsible to establish to the Owner's satisfaction that the Design-Builder's Price Submission is reasonable and appropriate. If the Owner is satisfied that the Design-Builder Price Submission is reasonable and appropriate, the Owner will advise the Design-Builder that the Design-Builder is selected as Subcontractor for the respective portion of the construction work.

2.7.5.4 If, at the conclusion of the review of the Design-Builder's proposed price, the Owner is not satisfied that the Design-Builder's Price Submission is reasonable and appropriate, the Owner will so advise the Design-Builder and the Design-Builder will proceed in the following manner: There will be a normal Subcontractor bid competition for selection of the Subcontractor to perform this portion of the construction work, in accordance with the procedures in Article 2.7.3.2, except that, notwithstanding any other provision of the Design-Builder Design Phase Services Contract Documents to the contrary, (i) the Design-Builder's Price Submission will be the Design-Builder's bid for that portion of the in the Subcontractor bidding process; (ii) the Design-Builder must obtain bids for that portion of the construction work from a minimum of two other pre-qualified Subcontractors, (iii) the Subcontractor bids for that portion of the construction work must be delivered to Owner rather than the Design-Builder, and (iv) the Owner will decide which Subcontractor bid to accept, in accordance with Article 2.7.3.2.

2.7.5.5 Design-Builder will not be allowed sub-contractor mark-ups on self-performed work Change Orders.

2.7.6 All required construction subcontractors that are not listed as part of the Design-Build Team in the RFQ submittals, shall be contracted with by Design-Builder only after submission to and approval by Owner of Design-Builder's selected subcontractor.

2.7.7 Design-Builder assumes responsibility for its Subcontractor's successful performance of their construction activities and any acts and omissions in connection with the performance of their work. Nothing in the Contract Documents is intended to create any legal or contractual relationship between Owner and a Subcontractor (of any tier). In addition, nothing in the Contract Documents shall be intended to, or deemed to create any third-party beneficiary rights.

2.7.8 Design-Builder is responsible for coordinating the activities of all Subcontractors. If Owner is performing other work with separate Contractors at the Project with separate contractors under Owner's control, Design-Builder agrees to cooperate and coordinate its Work with the work of Owner's separate contractors so that the Project can be completed in an orderly, efficient and coordinated manner reasonably free of significant disruption to any party.

2.7.9 Design-Builder shall keep the Site free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely, and so as not to interfere with the use of any adjacent land areas, including the reasonable aesthetic appearance of the jobsite and all storage/staging areas. Upon Substantial Completion, or if required for Beneficial Occupancy of the Work, or a portion of the Work, Design-Builder shall remove all debris, materials, wastes, equipment, machinery and tools from the Project to permit Owner to occupy the Project or a portion of the Project for the use in which it is intended.

2.7.10 Any changes affecting the previously approved Construction, shall receive prior written approval of the Owner.

2.7.11 Design-Builder shall deliver to the Owner, at the completion of the construction of the project, the Design Professional Project Closeout Phase Deliverables described in "Exhibit B - Scope of Services", and the Contractor Closeout Deliverables described in "Exhibit B - Scope of Services".

2.8 Budgeting and Guaranteed Maximum Price

2.8.1 The Design-Builder shall provide the Design and Pre-Construction Phase Services for the Design and Pre-Construction Phase Fee identified in the Agreement. That fee will be earned based upon the amount of Design Phase Work completed. That fee shall be billed and payable monthly as a percentage of completion of Design Phase Services. The Construction Phase Services of Design-Builder will be provided based upon an Open Book Cost of the Work, plus the separate Construction General Conditions and Construction Phase Fee for Design-Builder identified in the Agreement, which together comprise the GMP as set forth in Article 2.8.2 below.

2.8.2 As provided for in Article 1.3 of the Agreement and when the design has sufficiently progressed, the Design-Builder shall propose a GMP for the construction that is to be based on the Cost of the Work. The Design-Builder shall attach to the GMP a list of the Drawings and Specifications used by the Design-Builder in preparing and setting the GMP and also a "Statement of All Clarifications and Assumptions" that the Design-Builder used to supplement the information contained in the Drawings and Specifications Design-Builder has listed. The "Statement of All

Clarifications and Assumptions” may, at the discretion of Design-Builder, be shown in the form of Drawings or be in narrative form or a combination of both, but must in any event be complete and detailed.

2.8.3 The Owner will, at its sole discretion, have the option to accept the GMP submitted by Design-Builder, request that Design-Builder submit another GMP, or reject the GMP and terminate all contracts and agreements with the Design-Builder. In the event of such a termination the Design-Builder shall receive payment for services it has provided to date and other reasonable termination costs approved by Owner. In this situation, there shall be no amounts paid for any lost profits, lost opportunity or other similar costs.

2.8.4 Once accepted by the Owner, the GMP may be revised only by an approved amendment or change order.

2.8.5 For any Contingency within the GMP, the criteria for the development of that Contingency must be acceptable to the Owner. Thereafter, the Design-Builder must inform the Owner of any intended usage of the Contingency, with supporting itemized schedule and pricing documentation, to maintain complete records and confirm its appropriate use for the Project.

2.9 Design-Builder’s Responsibility for Project Safety

2.9.1 Design-Builder recognizes the importance of performing its Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at or in the vicinity of the Project, whether working or visiting the Project or Campus; (ii) all Work at or relating to the Project, including materials and equipment incorporated into the Project or stored on or off site; and (iii) all other property at the Project or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Manager with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. The Safety Manager shall make routine daily inspections of the Project site, and shall hold weekly safety meetings with Design-Builder’s personnel and its Subcontractors.

2.9.2 Design-Builder and its Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner specific safety requirements set forth in the Contract Documents, which do not violate any applicable Legal Requirements. Design-Builder will immediately report, in writing, any injury, loss, damage or accident to Owner’s Representative and all government or quasi-government authorities having jurisdiction over matters involving the Project or the Work.

2.9.3 Design-Builder’s responsibility for safety under Article 2.9 is not intended to in any way relieve Design-Builder’s Subcontractors (of any tier) from applicable obligations and responsibilities for complying with all Legal Requirements, including those related to health and safety matters, and taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

2.10 Design-Builder’s Warranty

2.10.1 Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder’s warranty obligation excludes defects caused by abuse, alterations, or unreasonable failure to maintain the Work by persons other than Design-Builder or others under Design-Builder’s control. Nothing in this warranty is intended to limit any manufacturer’s

warranty which provides Owner with greater warranty rights than set forth in this Article 2.10 or the Contract Documents. Design-Builder will provide Owner with all manufacturer's warranties upon Substantial Completion of each Phase of the Project. Design-Builder shall provide Owner a two (2) year warranty that will commence for all portions of the Project upon Substantial Completion and completion of any outstanding items in the final Commissioning Report(s) of each portion of the Work, as determined by the Owner under the Contract requirements. In addition, all statutory warranties related to latent defects will remain in force and are not limited by this provision.

2.11 Correction of Defective Work

2.11.1 Design-Builder agrees to promptly correct any Work that is found not to be in conformance with the Contract Documents. This obligation shall continue for a period of two (2) years from the date of Substantial Completion of each portion of the Work as determined by Contract.

2.11.2 Design-Builder, upon receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, shall, within seven (7) days (except in the case of an emergency which will require immediate response) commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to any other parts of the Work affected by the nonconforming Work. In the event Design-Builder fails to commence the necessary steps within seven (7) days, Owner, in addition to any other remedies provided under the Contract Documents, may at the end of the seven (7) day period provide Design-Builder with notice that (i) it will commence to correct such nonconforming Work with its own forces; and (ii) Design-Builder shall be responsible for all costs and expenses that Owner incurs in remedying any Work not in conformance with the Contract Documents, including any and all design professional fees incurred. Owner will notify Design-Builder if its intent to make such corrections at or before the commencement of the corrective work.

2.11.3 The two-year period referenced in Article 2.11.1 applies only to the Design-Builder's obligation to correct Work not in conformance with the Contract Documents, and is not intended to constitute a period of limitations with respect to any other rights or remedies Owner may have with respect to Design-Builder's other obligations under the Contract Documents. Design-Builder acknowledges that, for purposes of statutes of limitations, Owner is an instrumentality of the State of Arizona, acting in its sovereign capacity.

2.12 Security Review

2.12.1 Any software, device, or hardware that will connect via Wi-Fi network or hardwire to the ASU network will require an ASU Security Review.

ARTICLE 3 OWNER'S SERVICES AND RESPONSIBILITIES

3.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.2 Owner's Representative shall be responsible for processing Owner-supplied information and approvals or rejections in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with reasonably

prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including errors, omissions or defects in the performance of its Work.

3.3 Owner shall provide reviews and approvals or rejections of Design Submissions and Construction Documents within three (3) weeks upon receipt of the documents as required in this Contract.

3.4 Owner is responsible for all work performed at the Project by separate contractors under its control. Owner shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to unreasonably interfere with, Design-Builder's ability to complete its Work in a timely manner and consistent with the Contract Documents.

ARTICLE 4 HAZARDOUS CONDITIONS AND UNCONTEMPLATED PROJECT SITE CONDITIONS

4.1 Hazardous Conditions

4.1.1 It is the sole responsibility of ASU and its approved third party asbestos abatement contractor to properly remove and dispose of any Hazardous Materials in the Project identified as such in the Contract Documents by the Owner. Contractor, upon encountering any Hazardous Materials not identified in the Contract Documents, shall stop Work immediately in the affected area and notify Owner and, if required by applicable rules, all governmental or quasi-governmental entities with jurisdiction over the Project. Owner has responsibility to take the necessary measures required to properly remove and dispose of Hazardous Materials not identified in the Contract Documents as being the responsibility of the Contractor.

4.1.2 Design-Builder will be entitled, in accordance with the provisions of these General Conditions, to an adjustment in the GMP or Contract Time(s) of performance, or both, to the extent that the Design-Builder's costs or time of performance have been adversely and materially impacted by the presence of unforeseen or undisclosed Hazardous Materials.

4.1.3 Owner is not responsible for Hazardous Materials introduced to the Site by Design-Builder, Subcontractors (of any tier) or anyone else for whom the Design-Builder is responsible unless provision of such Hazardous Materials are called for in the Contract Documents.

4.1.4 Design-Builder agrees to indemnify, defend and hold harmless Owner and others under Owner's control, and the officers, directors, employees and agents of each of them, from and against all claims, losses, liabilities, costs and expenses, including but not limited to attorney's fees and expenses, arising out of or resulting from Design-Builder's importation, improper handling, storage, abatement, removal or disposal of any Hazardous Materials by Design-Builder.

4.1.5 Releases of Hazardous Substances. Upon any release of any hazardous substance in connection with the Work, whether relating to a pre-existing condition or acts or omissions of Design-Builder, Design-Builder shall take immediate action reasonably necessary to contain the release and if the hazardous material release is not a Design-Builder release, Owner will pay Design-Builder the reasonable costs incurred by Design-Builder in taking such containment action. Owner may elect to have Design-Builder control and carry out any containment, clean-up, removal and remediation activity needed, provided that if the release is not a Design-Builder release, Owner will be responsible

to pay Design-Builder for such Design-Builder containment activities in accordance with Article 9.4 of these General Conditions, including allowance of additional Contract Time thereunder.

4.2 Uncontemplated Project Site Conditions

4.2.1 If Design-Builder encounters, during the performance of its Work, concealed or latent physical conditions or subsurface conditions at the Project which (i) materially differ from the conditions indicated in the Contract Documents; or (ii) are of an unusual nature which differ materially from the conditions ordinarily encountered and generally recognized as inherent in the Work provided hereunder, Design-Builder shall immediately provide written notice to Owner.–Design-Builder shall not disturb or modify such conditions without Owner’s prior written consent. Owner shall promptly investigate Design-Builder’s claim of an un-contemplated site condition.

4.2.2 If the conditions encountered by Design-Builder in Article 4.2.1 are determined to be un-contemplated project site conditions, Design-Builder will be entitled, in accordance with the provisions of these General Conditions, to an adjustment in its Guaranteed Maximum Price or Contract Time(s) of performance or both to the extent that Design-Builder’s cost or time of performance have been adversely and materially impacted by the un-contemplated conditions. Adjustments to Guaranteed Maximum Price will be for the actual direct cost impact to address un-contemplated conditions. Extensions of Contract Time(s) will be considered only when based upon submission of an updated CPM Schedule showing an actual unavoidable delay to the Project Critical Path.

4.2.3 In no event shall the Guaranteed Maximum Price be adjusted for conditions that could or should have been observed or determined by the Design-Builder during RFQ Process.

ARTICLE 5 INSURANCE AND BONDS

5.1 Design-Builder’s Bond Requirements

5.1.1 The Design-Builder, after acceptance of the GMP by the Owner and prior to the start of any Construction Phase Services by the Design-Builder, shall furnish to the Owner performance and payment bonds, satisfactory in form to the Owner each in a penal sum equal to one hundred percent (100%) of the GMP. These surety bonds in the form attached hereto as Attachment “1” to these General Conditions are not to be expressly limited as to time in which action may be instituted against the surety company. The bonds shall be furnished on Owner’s forms and shall be executed by a surety company authorized to do business in the State of Arizona and shall strictly comply with ABOR Policy 3-804E, which policy shall control in the event of any conflict of the Bonds, or either of them with the requirements of these General Conditions. Individual sureties and default type insurance will not be accepted by Owner as a substitute for the requisite Design-Builder performance and payment bonds.

5.1.2 The Owner may require each proposed Subcontractor whose initial subcontract amount will be \$100,000 or more to furnish a performance bond on Owner’s form or on a form approved by Owner, which provides equal or better coverage, for the full amount of its subcontract. This bond shall be obtained by the Subcontractor as a separate entity and the cost shall be included in the Subcontractor’s bid to the Design-Builder. Alternatively, in place of Subcontractor performance bonds, if approved in advance by the Owner, the Design-Builder may provide Subcontractor default protection that is equivalent or better than bonds provided by the Subcontractors. The cost of such bonds or default protection shall be included in the GMP.

5.2 Design-Builder's Insurance Requirements

5.2.1 The Design-Builder shall not commence any Work until it obtains all required insurance and bonds and furnishes satisfactory proof thereof to the Owner. The Design-Builder shall not permit Subcontractors to commence Work until insurance and bond requirements have been complied with by Subcontractor.

5.2.2 Insurance coverage assuring the adequacy of the Design-Builder's performance and warranty obligations shall be maintained for the full warranty period specified in Article 2.9.1 and any specific guarantee or warranty available by law.

5.3 Minimum Scope and Limits of Insurance

5.3.1 Without limiting any liabilities or any other obligations of the Design-Builder, the Design-Builder shall provide and maintain, and cause its Subcontractors to provide and maintain, insurance coverage in forms and with duly licensed or approved non-admitted insurers in the state of Arizona and rated at least A-VII in the current A.M. Best Company ratings. The Owner in no way warrants that the above-required minimum insurer rating or the following minimum coverages are sufficient to protect the Design-Builder or any Subcontractor from all insured or insurable risks or from potential insurer insolvency.

5.3.1.1 The Design-Builder shall cause its subcontractors engaged in the performance of services under this Agreement to provide and maintain appropriate types and amounts of insurance coverage and limits of liability, as determined by Design-Builder and agreed to by Owner, commensurate to the type of work to be performed and exposure to risk. Subcontractor coverage shall be maintained through Final Completion and additionally provided whenever performing services at the project site during the full warranty period. Design-Builder shall provide certification with each payment application that its subcontractors comply with this provision.

5.3.2 Worker's Compensation Insurance. Design-Builder shall procure and maintain worker's compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of the Design-Builder, its employees, or both, engaged in the performance of services under this Agreement. Design-Builder shall maintain coverage through Final Completion for all employees engaged in the performance of services under this Agreement, and shall maintain coverage through the full warranty period specified herein for all employees that perform services at the Project Site after Final Completion, and during the full warranty period.

Worker's Compensation	Statutory
Employer's Liability	
Each Accident	\$1,000,000
Disease – Each Employee	\$1,000,000
Disease – Policy Limit	\$1,000,000

The policy shall contain a waiver of subrogation against the State of Arizona, the Arizona Board of Regents, the Arizona State University, and their officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Design-Builder.

This requirement shall not apply to: Separately, each contractor or Subcontractor that is exempt under A.R.S. 23-901, and when such contractor or Subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

5.3.3 Commercial General Liability Insurance. The policy shall be an occurrence form policy and shall include coverage for bodily injury, broad form property damage (including completed operation), personal injury (including coverage for contractual and employee acts), and blanket contractual products. Said policy shall contain a severability of interest provision, and shall not contain any provision which would serve to eliminate third-party action over claims.

• General Aggregate	\$2,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Blanket Contractual Liability – Written and Oral	\$1,000,000
• Fire Legal Liability	\$ 50,000
• Each Occurrence	\$1,000,000

Design-Builder shall maintain coverage through Final Completion for Design-Builder and all Subcontractors engaged in the performance of services under this Agreement. Design-Builder shall maintain coverage through the full warranty period specified herein for Design-Builder and all Subcontractors that perform services at the project site after Final Completion, during the full warranty period.

The policy shall be endorsed to include the following additional insured language: "The State of Arizona, the Arizona Board of Regents, the Arizona State University, and their officers, officials and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Design-Builder".

The policy shall contain a waiver of subrogation against the State of Arizona, the Arizona Board of Regents, the Arizona State University, and their officers, officials, and employees for losses arising from work performed by or on behalf of the Design-Builder.

Design-Builder agrees that for any project within the City of Phoenix limits it will, in addition to the limits set forth above, procure and maintain a minimum limit for General Aggregate of its Commercial General Liability Insurance policy of at least \$5,000,000. Worker's Compensation Insurance, Commercial General Liability Insurance and Business Automobile Liability Insurance policies shall name the City of Phoenix as an additional insured and will include a waiver of subrogation against the City of Phoenix. This requirement to add the City of Phoenix is in addition to the standard required endorsement as additional insured and waiver of subrogation in each insurance policy listed herein.

5.3.4 Business Automobile Liability Insurance. Design-Builder shall procure and maintain commercial/business automobile liability insurance with a minimum, combined single limit for bodily injury and property damage of not less than \$1,000,000.00 each accident with respect to the Design-Builder's owned, hired, or non-owned vehicles assigned to or used in performance of the services.

If Hazardous Materials or wastes are to be transported, the Commercial Automobile Liability insurance shall be endorsed with the MCS-90 endorsement in accordance with applicable legal requirements.

Design-Builder shall maintain the above-listed coverage through Final Completion for Design-Builder and all Subcontractors engaged in the performance of services under this Agreement. Design-Builder shall maintain the above-listed coverage through the full warranty period specified herein for Design-Builder and all Subcontractors that perform services at the project site after Final Completion, during the full warranty period.

The policy shall be endorsed to include the following additional insured language: "The State of Arizona, the Arizona Board of Regents, Arizona State University, and their officers, officials and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Design-Builder".

Policy shall contain a waiver of subrogation against the State of Arizona, the Arizona Board of Regents, the Arizona State University, and their officers, officials, and employees for losses arising from work performed by or on behalf of the Design-Builder.

5.3.5 Builder's Risk Insurance. Design-Builder shall provide and maintain, until written notice of Substantial Completion from the Owner, a Builder's All Risk Insurance Policy, which will protect the interests of the Owner and contractors of all tiers against loss as specified below. This policy shall provide coverage for 100% of the insurable value of the Work, including any Owner furnished work. The insurance shall provide replacement cost coverage for all real and personal property incorporated into the Work including engineered and Project specific false works and formings, while at the Project Site, off-site, or in transit. Coverage shall be extended to include soft costs (such as reasonable compensation for Design Professional, Owner and contractors' services and expenses required as a result of an insured loss, excluding any Liquidated Damages), extra expense, and expediting expense.

The insurance obtained under this Article 5.3.5 shall insure against "all risks" of direct physical loss or damage, including, without duplication of coverage, collapse, earthquake, flood, testing and startup, and ensuing damage as a result of faulty workmanship or material or both.

The policy shall name the State of Arizona, Arizona Board of Regents, and the Arizona State University as loss payee for all covered losses as their interests may appear.

The policy shall be endorsed waiving the carrier's right of recovery under subrogation against the Owner, Design-Builder and Subcontractors, for losses covered under the Builder's Risk policy.

The Design-Builder shall be responsible for the deductible on each loss and shall retain responsibility for any loss not covered by the Builder's Risk policy.

The Design-Builder shall be solely responsible for any required notice to or consent of the insurer providing the Builder's Risk coverage regarding a) a covered event or occurrence and b) occupancy of the Work, or a portion thereof, by the Owner.

This insurance shall not cover any contractor's equipment, including, but not limited to machinery, tools, equipment, or other personal property owned, rented, or used by the Design-Builder or Subcontractors in the performance of their work on the Work, which will not become a part of the Work to be accepted by the Owner.

5.3.6 Professional Liability Insurance.

Each Claim	\$3,000,000
Annual Aggregate	\$3,000,000

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this Contract and, except as set forth below, shall be an occurrence form policy.

In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Design-Builder warrants that any retroactive date under the policy shall be no later than the effective date of this Contract, and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time of Final Completion.

Design-Builder is required to maintain unimpaired aggregate limits for this insurance. In the event aggregate limits become impaired by claims or payments during the coverage term required by this Contract, Design-Builder shall notify Owner within 30 days of becoming aware of such impairment, and shall procure additional coverage to restore full aggregate limits. Any new coverage procured must have a retroactive date no later than the date the original limits became impaired.

Policy shall contain a waiver of subrogation against the State of Arizona, the Arizona Board of Regents, the Arizona State University, and their officers, officials, and employees for losses arising from work performed by or on behalf of the Design-Builder.

5.3.7 Umbrella/Excess Liability Insurance. Design-Builder shall procure and maintain Umbrella/Excess insurance covering General, Automobile and Employers Liability in excess of scheduled primary limits, with minimum policy limits as reflected in the table below.

The Umbrella/Excess insurance policy shall include a drop-down provision. In the event of the depletion or exhaustion of the Design-Builder’s underlying policy aggregate(s) by payment of loss, the umbrella/excess policy shall continue for subsequent losses as follows:

In the event of such depletion, it shall continue for subsequent losses as excess insurance over the amount of insurance remaining under the underlying insurance, subject to the policy limits.

In the event of such exhaustion it shall continue for subsequent losses as primary insurance excess of any retention specified in the excess policies.

Total Project Budget	Required Excess/Umbrella Limits
\$0 - \$2 M	\$0
\$2M - \$10M	\$2M per occurrence, \$2M aggregate
\$10M - \$25M	\$5M per occurrence, \$5M aggregate
\$25M - \$100M	\$10M per occurrence, \$10M aggregate
Greater than \$100M	\$25M per occurrence, \$25M aggregate

Design-Builder shall maintain Umbrella/Excess Liability coverage through Final Completion for Design-Builder and all Subcontractors engaged in the performance of services under this Agreement. Design-Builder shall maintain coverage through the two-year full warranty period specified herein for Design-Builder and all Subcontractors that perform services at the project site after Final Completion, during the two-year full warranty period.

5.3.8 Additional Insurance Requirements. The policies required in Articles 5.3.3 (Commercial General Liability), 5.3.4 (Business Automobile Liability), 5.3.5 (Builder's Risk Insurance) shall include, or be endorsed to include, the following provisions:

The State of Arizona, the Arizona Board of Regents, the Arizona State University, and their officers, officials and employees wherever additional insured status is required. Such additional insured shall be covered to the full limits of liability purchased by the Design-Builder, even if those limits of liability are in excess of those required by this Contract.

The Design-Builder's insurance coverage shall be primary insurance with respect to all other available sources, except for Worker's Compensation insurance. Any self-insurance or other insurance carried by the State of Arizona, the Arizona Board of Regents, and the Arizona State University, their officers, or employees, if any, shall be excess and not contributory to the insurance provided by the Design-Builder.

Coverage provided by the Design-Builder shall not be limited to the liability assumed under the indemnification provisions of this Contract.

5.3.9 Proof of Insurance. Design-Builder shall provide to the Owner certificates of insurance (ACORD form or equivalent approved by the Owner) evidencing the coverages required herein as proof that the policies providing the required coverages are in full force and effect prior to the Design-Builder's performing any work on the premises of the Owner. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All of the above conditions shall be clearly shown on each certificate. Such certificates shall identify this Agreement or be an annual or periodic certificate stating that it covers any and all projects or work performed by the Design-Builder during said period. Coverage afforded under the policies will not be canceled, terminated or materially altered until at least thirty (30) days' prior written notice has been provided by the Design-Builder to the Owner as evidenced by a return receipt signed by the Owner. Certificates of insurance should be addressed as follows:

Arizona Board of Regents, State of Arizona and the Arizona State University
Purchasing Construction
PO Box 875212
Tempe, AZ 85287-5212

Owner has 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 this Agreement. Owner shall not be obligated to review same or to advise Design-Builder of any deficiencies in such policies and endorsements, and such receipt shall not relieve Design-Builder from, or be deemed waiver of, Owner's right to insist on strict fulfillment of Design-Builder's obligations under this Agreement.

5.3.10 Failure to Provide or Maintain Insurance. Failure on the part of the Design-Builder to procure or maintain the required insurance shall constitute a material breach of this Agreement upon which the Owner may immediately terminate this Agreement, or at its discretion procure new or renew such insurance and pay all premiums in connection therewith, and all monies so paid by the Owner shall be repaid by the Design-Builder to the Owner upon demand, or the Owner may offset the cost of such premiums together with interest at the statutory legal rate against any money due the Design-Builder from the Owner. Costs for coverages maintained by the Design-Builder in excess of those required hereunder shall not be charged to the Owner unless otherwise agreed to and included in the GMP.

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

5.3.12 Waiver. Design-Builder and its insurers providing the coverages above shall and do hereby waive all rights of recovery against the State of Arizona, the Arizona Board of Regents, The Arizona State University, and their officers and employees.

5.3.13 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 Owner.

5.3.14 Self-Insurance. The policies specified herein may provide coverage, which contains deductibles or self-insured retentions. Such deductibles and/or self-insured retentions shall not be applicable with respect to the coverage provided to Owner under such policies. The Design-Builder shall be solely responsible for deductible and/or self-insured retention, and Owner, at its option, may require the Design-Builder to secure the payment of such deductible or self-insured retention by a surety bond or an irrevocable and unconditional letter of credit.

5.3.15 Cancellation of Insurance. In the event any insurance coverage required in their Article 6 for the Work is canceled, reduced, or terminated, Design-Builder agrees to provide notice to Owner and replace the insurance without any lapse of protection to Owner. If such coverage is not replaced, or Design-Builder fails to meet any of the requirements for insurance listed above, Owner may at its option immediately terminate the Agreement between Owner and Design-Builder, or in Owner's discretion, procure or renew such missing insurance coverage and pay the premiums therefore. Any such premium amounts paid by Owner shall be repaid by Design-Builder upon demand, or Owner if not paid, may offset the premium cost plus interest at the legal rate from Design-Builder's Final Payment under the Agreement. Except for the Builder's Risk coverage, the Owner's exercise of its option to occupy and use completed portions of the Work shall not relieve the Design-Builder of its obligation to maintain insurance required under the insurance provisions of this Agreement until the date of Final Completion and/or the expiration of the warranty period as specified in 5.3.2, 5.3.3, 5.3.4, and 5.3.7 above.

5.3.16 Contractual Obligations. The stipulation of insurance coverages in this Article 5.3 or elsewhere, shall not be construed to limit, qualify, or waive any liabilities or obligations of Design-Builder, assumed or otherwise, under this Agreement.

5.4 Owner's Liability Insurance

5.4.1 The Owner, at its option, may purchase and maintain such insurance as will protect it against claims which may arise from operations under the Contract.

ARTICLE 6 PAYMENT

6.1 Guaranteed Maximum Price; Savings

6.1.1 The Owner shall pay the Design-Builder for the Design-Builder's performance of this Agreement and the Design-Builder shall accept the Actual Cost of Work (as defined herein) plus the

General Conditions and the Construction Phase Fee; provided, however, that the sum of the Actual Cost of Work plus the General Conditions and the Construction Phase Fee shall not exceed the GMP as originally fixed or as adjusted from time to time as provided in these General Conditions.

6.1.2 Savings shall be calculated and paid upon Final Completion of the Work. All Savings shall be distributed with 100% allocated to Owner. Savings returned to the Owner shall not include return of the General Conditions or the Construction Phase Fee for the amount of the Savings, but shall include appropriate percentage of bonds and insurance premiums and taxes attributable to the Savings amount. Allocations to GMP for Allowance and Contingency items that remain unused upon Final Completion shall be returned 100% to the Owner.

6.2 Schedule of Values

6.2.1 Before execution of an Amendment to the Agreement authorizing a Guaranteed Maximum Price, and commencement of Work in the Construction Phase, the Design-Builder shall submit to the Owner, and the parties shall agree upon, a schedule of values, generally similar to the sample format in "Exhibit F – Cost of the Work", setting forth the various portions of the Work, and the portions of the Guaranteed Maximum Price allocated to each portion. This schedule of values shall be used as a basis for payment as the Work progresses. Those portions of the schedule of values allocable to work performed by Subcontractors of the Design-Builder shall be finalized as and when the Subcontracts are executed. "Bidding Contingency" may be used for buyout of Subcontracts, and shall, upon approval by the Owner, be available for later use by the Design-Builder as Construction Contingency for reallocation to other line items as provided for in these General Conditions.

6.3 Applications for Progress Payment

6.3.1 The Design-Builder shall email to the Owner's Project Manager on the last business Day of each month a sworn application for progress payment, in a format identical to the Schedule of Values approved under Article 6.2.1 above. Each such application for payment shall be based on the Schedule of Values and be in an amount determined by the percentage of completion of the Work in the month being billed. It shall show the percentage of completion of each category of the Work performed in the billing period. The payment application shall be accompanied (as separate documents) by (a) an updated CPM Schedule and narrative schedule update report as provided for herein, and (b) conditional lien waivers from each Subcontractor or supplier entitled to progress payment thereunder. In addition, the Design-Builder shall provide the following documentation upon specific request by Owner: a) a written accounting in a form agreed to by Design-Builder and Owner of the Cost of Work completed, and b) a report by the Design-Builder on Subcontractor buy-out status, contract sums, and Subcontractor pay applications.

6.3.2 The Design-Builder Construction Phase Fee shall be paid monthly in accordance with the percentage of completion of the Work. The Construction General Conditions shall be paid monthly based on percentage of work complete. The amount approved and paid for progress achieved in the month billed for shall not constitute final acceptance of the Work and is subject to final adjustment at the time of final acceptance and Final Payment so as to fully comply with, and not exceed, the GMP.

6.3.3 The Owner, within seven (7) days after receipt of the Design-Builder's application for progress payment, and no later, will either a) advise the Design-Builder that the application is approved or b) issue specific written findings setting forth those items in detail in the estimate of the Work in the pay

application that are not approved for payment under the contract. Any items that are not specifically identified by the Owner as not approved, with written detailed findings, shall be deemed approved.

6.3.4 As to any items not approved for payment, the Owner may withhold an amount from the progress payment to be made for the time period billed for a sufficient sum to pay the expenses Owner reasonably expects to incur in correcting the deficiency set forth in the written finding issued by the Owner.

6.4 Payment and Retainage

6.4.1 Within fourteen (14) days following the receipt of the Design-Builder's properly submitted and accurate payment application, and the issuance of the Owner's written detailed findings of items not approved, if any, the Owner shall pay to the Design-Builder the amount due on the progress payment application. However, the payment shall be limited to 90% of the approved value of the construction work in place and the value of materials suitably stored in accordance with Article 6.7.1 below of these General Conditions during the month being billed. The remaining 10% shall be retained by the Owner until the Contract is 50% complete at which time the retainage shall be reduced to no more than 5%; provided that: (a) the Design-Builder is making satisfactory progress on the Contract; and (b) in the Owner's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the Owner shall pay the Design-Builder 95% of the value of the construction work and materials on approved progress billings, unless and until it determines satisfactory progress is not being made, at which time the 10% Retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of construction work in place and materials stored. The Owner's determination concerning the satisfactory progress of the Work for retainage adjustment purposes shall be final.

6.4.2 Within sixty (60) calendar days after the issuance of the Certificate of Final Completion and receipt by Owner of all other documents required from Design-Builder by the Contract Documents, all retained amounts shall be paid to Design-Builder as part of Final Payment provided however: a) the Final Payment shall not become due from Owner until the Design-Builder delivers to the Owner all items set forth in Article 6.13, including full and final unconditional releases in statutory form from all Subcontractors and major Suppliers acknowledging that they have received payment in full; any claim filed thereafter shall be the responsibility of the Design-Builder, and b) if any claim does remain unsatisfied after all payments are made by Owner, the Design-Builder shall immediately upon demand refund to the Owner all monies that the latter may be compelled to pay in discharging such unsatisfied claim including all costs, interest and attorneys' fees.

6.4.3 Design-Builder may, at its option, furnish a substitute security in lieu of the 10% retainage. If Design-Builder elects to exercise this option, all the provisions of Subsection 3-804.F of the University Procurement Code shall apply to this Project.

6.5 Early Release of Subcontractor Retainage

6.5.1 If a Subcontractor has completed its portion of the Work (including all Punch list items) pursuant to any given Subcontract, the Design-Builder may request the Owner to disburse the Retainage allocable to such Subcontractor, after delivering to the Owner any necessary consent to such disbursement from such Subcontractor's surety, in a form reasonably satisfactory to the Owner. If the Owner is reasonably satisfied that the Subcontractor's Work has been completed in accordance with the Contract Documents, the Owner shall disburse said Retainage to Design-Builder for payment

to the Subcontractor, and the two-year warranty period with respect to such Work shall commence at Final Completion of the Work.

6.6 Payment for On-Site and Off-Site Materials

6.6.1 Payment shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. Payment may be similarly made for materials and equipment suitably stored off the Site, conditioned upon the Design-Builder furnishing evidence to the Owner that (a) title to the materials and equipment will pass to the Owner upon payment therefor; (b) the materials and equipment are adequately insured; and (c) such other matters as the Owner may reasonably request in order to protect its interests.

6.7 Title to Construction Work

6.7.1 The Design-Builder warrants that title to all Construction Work covered by an Application for Payment shall pass to the Owner no later than the time of payment. The Design-Builder further warrants that upon submittal of an Application for Payment, all Construction Work for which Applications for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Consultants, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. Design-Builder shall provide unconditional waivers of lien from each Subcontractor or Consultant when requested by Owner.

6.8 Withholding of Payment

6.8.1 The Owner may withhold payment on account of an Application for Payment to the extent necessary to protect the Owner from loss because of:

6.8.1.1 Defective Work not remedied;

6.8.1.2 Third party claims filed or reasonable evidence indicating probable filing of such claims;

6.8.1.3 Failure of the Design-Builder to make payments of undisputed amounts to Consultants, or Subcontractors for labor, materials or equipment;

6.8.1.4 Damage to the Owner or a Separate Contractor caused by the fault or neglect of the Design-Builder to the extent not covered by insurance; or

6.8.1.5 Reasonable evidence that the Work will not be Substantially Completed within the Contract Time due to Un-excusable Delay, and that the unpaid balance of the Guaranteed Maximum Price would not be adequate to cover liquidated damages for the anticipated Un-excused Delay.

When the above reasons for withholding payment are removed, payment shall be made for amounts previously withheld. Prior to any withholding pursuant to this Article, the Owner shall meet with Design-Builder to discuss potential withholding, and attempt in good faith to resolve such issue without the need for withholding.

6.9 Failure of Payment

6.9.1 If the Owner does not pay the Design-Builder within fourteen (14) Days after the date established herein the Design-Builder may proceed as set forth in Article 11.3 below.

6.10 Substantial Completion

6.10.1 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is Substantially Complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of Punch List items. The Design-Builder shall proceed promptly to complete and correct Punch List items. Failure to include an item on the Punch List does not alter the responsibility of the Design-Builder to complete all work in accordance with the Contract Documents. Upon five (5) working days of receipt of the Punch List, the Owner and Design-Builder will jointly make an inspection to determine whether Substantial Completion has occurred. If it is determined by the Owner that the work or a portion thereof is Substantially Complete, the Owner shall issue the Certificate of Substantial Completion stating the date of Substantial Completion which shall be executed by the Owner and the Design-Builder.

6.11 Beneficial Occupancy

6.11.1 The Owner may occupy or use any completed or partially complete portion of the Construction Work at any time, provided such Beneficial Occupancy or use is authorized by public authorities having jurisdiction over the Construction Work. Such Beneficial Occupancy or use may commence whether or not the portion is Substantially Complete, provided the Owner and the Design-Builder have accepted, in writing, the responsibilities assigned to each of them for payment, security, maintenance, heat, utilities, damage to the Construction Work and insurance, and have agreed, in writing, concerning the period for correction of the Construction Work. Immediately prior to such Beneficial Occupancy, the Owner and the Design-Builder shall jointly inspect the area to be occupied in order to determine and record the condition of the Construction Work. Unless otherwise agreed, Beneficial Occupancy or use of a portion of the Construction Work shall not constitute acceptance of Work not complying with the requirements of the Construction Documents and does not establish the date of Substantial Completion.

6.12 Final Completion and Final Payment

6.12.1 Completion of all outstanding Work items noted in the Substantial Completion "Punch List" for the entire Work or portion thereof, completion of outstanding items in the Final Commissioning Report and other Contract requirements is required for Owner to certify Final Completion. The requirements include, but are not limited to, equipment operations training for Owner, and submission and approval by Owner of all Record and Close Out Documents such as record drawings and specifications, operation and maintenance instructions, maintenance agreements (if any), and extended transferable warranties.

6.12.2 Conditions Precedent to Final Payment. Neither final payment nor any final release of Retainage shall become due until the Design-Builder submits to the Owner:

6.12.2.1 An affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by the Owner) have been paid or otherwise satisfied;

6.12.2.2 A certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Owner;

6.12.2.3 Consent of Surety to final payment; and

6.12.2.4 If required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract Documents.

6.12.3 If after Substantial Completion of the Work, Final Completion is materially delayed through no fault of the Design-Builder or by the issuance of additional Change Orders or Change Directives by the Owner, the Owner may at its sole discretion, upon request of the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed. If the remaining balance for Work not fully completed is less than the Retainage, and if bonds have been furnished, the written consent of surety to payment of the balance for that portion of the Work fully completed shall be submitted by the Design-Builder to the Owner, and such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims by either the Design-Builder or the Owner.

6.12.4 Acceptance of final payment by the Design-Builder shall constitute a waiver of affirmative claims by the Design-Builder. The making of the final payment by the Owner shall constitute a waiver of claims by the Owner, except those arising from (a) liens, claims, security interests and encumbrances arising out of the Work after final payment; (b) latent defects arising after final payment; or (c) the terms of warranties required by the Contract Documents.

6.13 Allowances

6.13.1 The Design-Builder shall include in the GMP all Allowances stated in the Contract Documents. Items covered by Allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities against which the Design-Builder makes reasonable objection. Unless otherwise provided in the Contract Documents:

- a) Materials and equipment under an Allowance shall be selected by the Owner within a reasonable time frame as defined in the Owner approved Project CPM Schedule;
- b) Allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts;
- c) Allowances shall not include professional or construction fees, Construction General Conditions, or bond or insurance premiums;
- d) Allowances shall cover Design-Builder's costs for unloading and handling at the Site, labor, installation costs and other expenses;
- e) Whenever costs are more than or less than Allowances, the GMP may be adjusted accordingly by change order in accordance with provisions of Article 9. The amount of the change order shall reflect the difference between actual costs and the Allowances plus Fee on such difference in accordance with Article 9 hereof if the actual costs are greater than the Allowances.

6.14 Contingency

6.14.1 The Design-Builder and the Owner acknowledge that the Guaranteed Maximum Price contains a line item for a “Bidding Contingency or Construction Contingency”. On a monthly basis, after finalization (i.e., “buyout” or subcontractor contract issuance) of a line item, the Schedule of Values will be adjusted to reflect the actual amount. Contingencies shall not be carried in line item amounts after finalization. The Bidding Contingency, upon approval of the Owner, shall be for the Design-Builder’s use and shall be increased by amounts not expended on other line item bid packages and shall decrease by additional amounts required to be expended on other line item bid packages. Following completion of all contract execution by Subcontractors (Project finalization), Bidding Contingency shall become Construction Contingency and Design-Builder may use this Construction Contingency for legitimate unforeseen construction expenses, subject to Owner’s review or approval, at Owner’s discretion.

Design-Builder shall submit detailed monthly reports to Owner indicating how the Construction Contingency was used in the reporting period, and the status of the Construction Contingency. The Owner has the authority to reject any use of the Construction Contingency after it has been submitted if the Owner believes in its reasonable judgment that some or all of the amount included in the use of the Construction Contingency is not a legitimate expense for the Project. Upon the Owner’s rejection of a Construction Contingency use, the Design-Builder will thereupon credit the Construction Contingency amount back to the Construction Contingency in the next subsequent payment request. Any amounts remaining in “Bidding Contingency or Construction Contingency” at Final Completion shall be deemed Savings and will be allocated to Owner as such. Should the “Bidding Contingency or Construction Contingency” be exhausted prior to award of all the bid packages, any subsequent overruns in bid package costs shall be the Design-Builder’s sole responsibility, with no additional compensation due thereon from the Owner.

6.14.2 Contingency shall not be used for General Conditions unless approved in writing by the Owner.

6.14.3 Upon award of each bid package, the difference between the Design-Builder’s estimated Cost of the Work contained within the bid package, exclusive of contingency, versus the actual award cost thereof as determined by the bidding and award of the package shall be promptly calculated. If the award cost exceeds the Design-Builder’s estimated cost in the GMP, any necessary portion of the Bidding Contingency shall be applied, subject to Owner’s approval, to cover any overrun and any underrun amount shall be used to increase the Bidding Contingency.

6.14.4 Design-Builder will include an explicit requirement that change orders between Design-Builder and the Subcontractors will be priced consistent with the requirement of Article 10 of these General Conditions with adequate itemized change order pricing regardless of whether or not there is a comparable change order between Design-Builder and the Owner. In addition, Design-Builder shall retain, and make available to Owner upon request, all bid documents including requests for proposals, requests for quotes, and bid responses from both successful and unsuccessful bidding Subcontractors.

6.14.5 Any amounts remaining in Contingency at Final Completion shall be Savings and will be distributed per Article 6.1.

ARTICLE 7 INDEMNIFICATION

7.1 Proprietary Rights, Patent and Copyright Infringement

7.1.1 Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation thereof or use of the Work or any part thereof, constitutes infringement of any proprietary rights, patent or copyright, now or hereafter issued (“Proprietary Rights”). Owner agrees to give prompt notice in writing to Design-Builder of any such action or proceeding and to provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including attorney’s fees, awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder further agrees to keep Owner informed of all developments in the defense of such actions.

7.1.2 In the event that Owner is enjoined from the operation or use of the Work, or any part thereof in connection with any infringed Proprietary Rights, Design-Builder shall at its sole expense take reasonable steps to procure the right or license to operate or use the Work. If Design-Builder cannot so procure the aforesaid right within a reasonable time, Design-Builder shall then, promptly, at Design-Builder’s option and at Design-Builder’s expense (i) modify the Work so to avoid infringement of any patents, or copyrights; or (ii) replace said Work with Work that does not infringe or violate any such Proprietary Rights.

7.1.3 Articles 7.1.1 and 7.1.2 above shall not be applicable to any action or proceeding based on infringement or violation of a proprietary rights, patent or copyright (i) relating solely to a particular process or the product of a particular manufacturer specified by Owner and such processes or products which are something other than that which has been offered or recommended by Design-Builder to Owner; or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work.

7.1.4 In addition to the other obligations of Design-Builder under this Article 7.1, Design-Builder will be responsible for delays and for increases in the cost of the work associated with or arising out of any claim of infringed Proprietary Rights.

7.2 Indemnification

7.2.1 Design-Builder shall indemnify, defend, save and hold harmless the State of Arizona, the Arizona Board of Regents, and the Arizona State University and their officers, officials, agents, and employees (hereinafter referred to as “Indemnatee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as “Claims”) for bodily injury or personal injury (including death), or loss or damage to property caused, or alleged to be caused, by the acts or omissions of Design-Builder or any of its owners, officers, directors, agents, employees, or Sub-consultants, arising out of performance of the Work or this Agreement, or in connection with the Project or defects in the Work, or any materials supplied. This indemnity includes any claim or amount arising out of or recovered under the Workers’ Compensation Law or arising out of the failure of such Design-Builder or contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is agreed that Design-Builder will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Design-Builder agrees to waive all rights of subrogation against the State of Arizona, the Arizona Board of Regents, the Arizona State University, and their officers, officials, agents and employees for losses arising from the work performed by the Design-Builder for the State of Arizona.

ARTICLE 8 TIME

8.1.1 Both the Design-Builder and Owner recognize that any time limits set forth in the Contract Documents are of the essence of this Agreement. Design-Builder agrees that, consistent with the times set forth in Article 5 of the Agreement, it will commence performance of the Work, achieve Substantial and Final Completion of the entire Work and achieve, any interim milestones for Substantial and Final Completion dates.

8.1.2 If Design-Builder is delayed in the performance of its Work based upon a Critical Path analysis of the current Owner accepted Critical Path Method (CPM) Schedule due to unforeseeable acts, omissions, conditions, events, or circumstances beyond its control or prevention and due to no Legal fault of its own or those for whom Design-Builder is responsible under the terms of the Contract Documents, the time for Substantial Completion of the Work, and to the extent applicable, any interim milestones or Substantial Completion dates for portions of the work shall be reasonably extended by written Change Order. By way of example only, such acts, omissions, conditions, events, and circumstances which would entitle Design-Builder to an extension of the Contract Time(s), include acts or omissions of Owner, or anyone under Owner's control, including separate contractors, changes ordered in the Work by Owner, un-contemplated project site conditions, wars, floods, labor disputes, unusual delay in transportation, and unusually adverse weather conditions.

8.1.3 Design-Builder shall be entitled to an appropriate adjustment of its Guaranteed Maximum Price for extended Construction General Conditions only for mutually determined delays as defined in 8.1.2 directly caused by the actions or inactions of the Owner.

ARTICLE 9 CHANGES TO THE CONTRACT PRICE AND TIME

9.1 Change Order

9.1.1 A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

- 1.** The scope of the change in the Work;
- 2.** The amount of the adjustment to the Guaranteed Maximum Price; and
- 3.** The extent of the adjustment, if any, to the Contract Time(s) of performance set forth in the Contract Document.

9.1.2 All such changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents, and Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments, as applicable. No Guaranteed Maximum Price adjustment on account of a Change Order shall include the Design-Builder's or Subcontractor's profit, fee, home office overhead or a formula allocation of indirect costs unless otherwise specifically allowed hereunder except as allowed by Article 9.4.3 of these General Conditions.

9.2 Change Directives

9.2.1 A Change Directive is a written order prepared and signed by Owner, directing a change in the Work prior to agreement on adjustment in the Guaranteed Maximum Price or the Contract Time(s) of performance or both. Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work and advise the Owner of the Design-Builder's agreement or disagreement with the proposed method of adjustment for the Guaranteed Maximum Price or the Schedule or both.

9.2.2 Owner and Design-Builder shall negotiate, in good faith and as expeditiously as possible, the appropriate adjustments for the change in the Work and such agreement shall be effective immediately and recorded by preparation and execution of an appropriate Change Order.

9.3 Minor Changes in the Work

9.3.1 Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents providing (i) such changes do not involve an adjustment in the Guaranteed Maximum Price or Contract Time(s) of performance; (ii) such changes do not materially and adversely affect the Work, including the design, quality, aesthetics, performance and workmanship required by the Contract Documents; and (iii) Design-Builder promptly informs Owner, in writing, of any such changes, obtains Owner's written concurrence (which shall not be withheld unreasonably), and records such changes on the As-Built Documents maintained by Design-Builder.

9.4 Price Adjustment

9.4.1 After this Agreement is signed, modifications in the Guaranteed Maximum Price, the Contract Time(s) or scope of the Work may only be made by written Change Order or Change Directive.

9.4.2 By written Change Directive at any time, the Owner may make any changes within the general scope of the Contract or issue additional instructions; require additional or modified Work or direct deletion of Work. The Design-Builder shall not proceed with any change involving an increase or decrease in cost or time without prior written authorization from the Owner and shall proceed in accordance with the procedures set forth in this Article. The Owner's right to make changes shall not invalidate this Contract or relieve the Design-Builder of any liability. Any requirement of notice to the Surety shall be the responsibility of the Design-Builder. If the Design-Builder proceeds with any change involving an increase or decrease in cost or time without written authorization as required by this paragraph, the Design-Builder hereby waives all rights or claims Design-Builder may have as a result of the change.

9.4.3 The cost of or credit to the Owner resulting from a change in the Work shall be determined in one or more of the following ways:

- a) By unit prices stated in the Contract Documents;
- b) By cost, as defined below, and described in Attachment "2" to these General Conditions, properly itemized and supported by sufficient data reduced to meaningful unit prices for each assembled component of the Work in order to facilitate evaluation. Such costs shall be itemized by crafts as defined within the Schedule of Values, submitted in a format approved by the Owner, and limited to items directly allocable to the change in the Work:
 - 1) Cost of materials, including delivery;

- 2) Cost of labor, fully-burdened, including, but not limited to, payroll taxes, social security, old age and unemployment insurance, vacation and fringe benefits required by agreement or routinely paid by Design-Builder, and worker's or workman's compensation insurance but excluding Subcontractor's labor;
- 3) Rental value of equipment and machinery to be established by rental receipts and not to exceed reasonable and customary rates for the locale of the Work. For owned equipment, Design-Builder must prove reasonable rental rate pursuant to actual ownership costs;
- 4) As a guideline, on a not-to-exceed ("NTE") percentage of Direct Construction Cost only basis, the following overhead, general conditions and fee percentages shall be utilized, and shall be fixed as a dollar amount, unless otherwise established in the Agreement, or otherwise mutually agreed upon and documented in the change order description:

Subcontractor Fee (profit):	5%
Subcontractor Overhead & General Conditions, NTE:	10%
Total Subcontractor Markups, NTE:	15%
Design-Builder Fee (overhead & profit), approximately or as per Design-Builder Agreement:	5%
Design-Builder General Conditions, NTE or as per Design-Builder Agreement:	5%
Total Design-Builder Markups, NTE:	10%

- 5) The Agreement may involve situations where larger amounts of Overhead and Construction General Conditions are needed to address extenuating site-related circumstances.
 - 6) Subcontractor pricing to Design-Builder, specifically as regards, and in support of Design-Builder Change Order with Owner, shall contain, at a minimum, same level of detail as Design-Builder provides in items 1) through 4) above in this Article 9.4.3(b).
- c) Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to facilitate evaluations; provided that such lump sum shall not exceed that amount calculated under (b) above.

9.4.4 Any dispute regarding the pricing methodology or cost of a change shall not relieve the Design-Builder from proceeding with the change as directed by the Owner. The cost or credit to the Owner shall be determined by the Owner or its Representatives on the basis of the preceding subsection.

9.4.5 An Owner approved written Change Order shall be full and final settlement of all claims for direct, indirect, delay, disruption, inefficiency and any other consequential costs related to items covered or affected, as well as time extensions. Any such claim not presented by the Design-Builder for inclusion in the Change Order is irrevocably waived.

9.4.6 In the event that Owner and the Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or in the event of any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder agree to resolve the disagreement consistent with Article 10 of these General Conditions. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree, and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder directing Design-Builder to proceed and specifying Owner's interpretation of the services that are to be performed.

9.5 Emergencies

9.5.1 In any emergency affecting the safety of persons or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Guaranteed Maximum Price or Contract Time(s) of performance or both on account of emergency work shall be determined as provided in this Article.

ARTICLE 10 REQUESTS FOR CONTRACTUAL ADJUSTMENTS AND DISPUTE RESOLUTION

10.1 Requests for Contractual Adjustments and Relief. If either Design-Builder or Owner believe that the Contract Documents afford contractual rights or relief from events arising during performance of the Work, including Change Orders, adjustments and relief for the acts or omissions of the other party, or any other party under the control of the other party, for injury or damage to persons or property, or for events which affect the Guaranteed Maximum Price /or Contract Time(s), or both, the party requesting the adjustment or relief shall provide the other party written notice of its request, if possible, prior to incurring any loss, cost or expense, but in no event later than the times, if any, required by the specific provision(s) of the Contract documents, which form the basis of the party's request. In the absence of said times, such request shall, if possible, be made prior to incurring any loss, cost, or expense, but in no event later than ten (10) calendar days after (i) the occurrence of the event or circumstance giving rise to the request; or (ii) the party reasonably should have recognized the event or condition given rise to the request, whichever time is sooner. Such request shall be in writing, and include sufficient information to advise the other party of the circumstances or events giving rise to the request, the specific contractual adjustment or relief requested, and the basis of such request. Any relief or adjustment afforded any party shall be set forth in a written Change Order in accordance with Articles 8 and 9 herein.

10.2 Dispute Avoidance and Resolution

10.2.1 The parties are fully committed to working with each other throughout the Project, and agree to communicate regularly with each other at all times, including weekly on-site design and construction status meetings, so as to avoid or minimize disputes or disagreements. Design-Builder's Representative along with the Design Consultant and Design-Builder's Construction Superintendent shall attend weekly status meetings with the Owner's Representative. Design-Build Representative shall take minutes outlining the issues discussed, action responsibility, due dates and resolution and distribute them within 48 hours of each meeting. To the extent disputes or disagreements arise during the Project, both Design-Builder and Owner commit to resolving such disputes in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to

the Work. In the first instance, Design-Builder and Owner will attempt to resolve disputes and disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative.

10.2.2 In the event the dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, the Design-Builder's Senior Representative and Owner's Senior Representative shall meet within 48 hours to attempt to resolve the dispute or disagreement. The parties agree that prior to any meetings between the Senior Representatives, they will exchange with each other any relevant information that will assist the parties in resolving their dispute or disagreement. If the Senior Representatives after meeting in good faith determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties agree to submit the dispute or disagreement to the "Claims or Controversies" section under Arizona Board of Regents Policy 3-809. The parties agree to arbitrate disputes filed in Arizona Superior Court that are subject to mandatory arbitration pursuant to ARS § 12-133.

10.2.3 Design-Builder and Owner agree that all other parties involved in any dispute or disagreement can be made parties to the litigation, and to this end, both Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with this Project requiring attendance and participation in any such proceeding.

10.2.4 Subject to other provisions in the Contract Documents, Design-Builder shall continue to perform the Work, and Owner shall continue to satisfy its payment obligations to Design-Builder under the Contract Documents pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

10.3 Consequential Damages

10.3.1 Except as otherwise provided for herein, neither the owner nor the design-builder shall be liable to the other for any consequential losses or damages arising out of breach of contract, including but not limited to loss of profits.

ARTICLE 11 STOP WORK AND TERMINATION FOR CAUSE

11.1 Owner's Right to Stop Work

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend its Work.

11.1.2 Design-Builder may seek an adjustment of the Guaranteed Maximum Price or Contract Time(s) of performance or both under Article 9 of the General Conditions to the extent that its Work has been adversely impacted by any suspension or stoppage of work by Owner, unless actions or inactions of the Design-Builder are the cause of the Owner stopping the Work.

11.2 Owner's Right to Perform and Terminate for Cause

11.2.1 If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers; or the materials required by the Contract Documents or both; (ii) comply with applicable Legal Requirements; (iii) pay, without cause, its Design Consultants and Subcontractors; (iv) prosecute the

Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s) as may be adjusted; or (v) otherwise perform the Work and its obligations consistent with the Contract Documents so as to deprive Owner of the benefits afforded under the Contract Documents, Owner shall have the right, in addition to any other rights and remedies provided in the Contract Documents or by law, after seven (7) days written notice to Design-Builder and Design-Builder's failure to commence to cure the default within said time, to (i) perform and furnish through itself or through others any such labor, materials, or Work, and to deduct the cost thereof from any monies due or to become due to Design-Builder under the Contract Documents; or (ii) terminate the employment of Design-Builder for all or any portion of the Work, enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment scaffolds, tools, appliances, and other items thereon, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items; or (iii) both. In the event of such termination, Design-Builder shall only be entitled to be paid for all Work performed prior to its default. In the event Owner's cost and expense of completing Design-Builder's Work shall exceed the Guaranteed Maximum Price, then Design-Builder or its surety shall pay the difference to Owner. Such costs and expense shall include, not only the cost of completing the Work to the satisfaction of Owner and of performing and furnishing all labor, services, tools, equipment and other items required in the Contract Documents, but also losses, damages, costs and expense, including attorney's fees and expenses incurred in connection with the procurement and defending claims arising from Design-Builder's default, subject to the limitation set forth in Article 10.3.

11.2.2 The parties agree that in the event that Owner terminates the Agreement for cause and such termination is finally determined to be improper, the termination for cause will be converted to a termination for convenience and the provisions of Article 8 of the Agreement shall apply.

11.2.3 The parties agree that if Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code, such event may impair or frustrate Design-Builder's performance of its obligations under the Contract Documents. Accordingly, should such event occur, Owner shall be entitled to request Design-Builder, its trustee or other successor, to provide adequate assurance of future performance. If Design-Builder fails to comply with such request within ten (10) days after receiving notice of the request, Owner, in addition to any other rights and remedies provided by the Contract Documents or by law, shall be entitled to terminate the Agreement. Owner shall be entitled to perform and furnish through itself or through others any such labor, materials or equipment necessary for the completion of the Work and necessary to maintain the Contract Time(s) of performance, and to deduct the costs from any monies due or to become due Design-Builder under the Agreement pending receipt of adequate assurances of performance and actual performance in accordance herewith. In the event of such bankruptcy proceedings, the Contract Document shall terminate if Design-Builder rejects the Agreement or if there has been a default under the Agreement, and Design-Builder is unable to give adequate assurances that it will perform as provided in the Agreement or otherwise is unable to comply with the requirements for assuming the Agreement under the applicable provisions of the Bankruptcy Code.

11.3 Design-Builder's Right to Stop Work and Terminate for Cause

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or by law, either stop work or terminate the Agreement for cause upon Owners failure to pay an amount in excess of \$100,000 dollars properly due under Design-Builders Application for Payment.

11.3.2 Should the events set forth in Article 11.3.1 occur, Design-Builder shall provide Owner with written notice indicating that such condition set forth in Article 11.3.1 has occurred, and it is Design-Builder's intention to stop work or terminate the Agreement if said event is not cured within seven (7) days from Owner's receipt of Design-Builder's notice, unless the alleged cause of termination is cured. In the event that Design-Builder elects to stop work, it may later indicate its intention to terminate the Agreement by providing Owner with written notice that Design-Builder will terminate the Agreement within seven (7) days from receipt of Design-Builder's notice; unless the alleged cause of termination is cured.

11.3.3 In the event Design-Builder elects to stop Work under Article 11.3.2, Design-Builder shall be entitled to make a claim for adjustment to the Guaranteed Maximum Price and Contract Time(s) of performance to the extent it has been adversely impacted by the stoppage of Work. In the event that Design-Builder elects to terminate the Agreement for the reasons permitted under Articles 11.3.1, and 11.3.2, Design-Builder shall be entitled to recover the same costs it would be permitted to recover had Owner terminated this Agreement for its convenience under Article 8 of the Agreement. Owner's right to use the Contract Documents in the event Design-Builder terminates the Agreement will be governed by Article 4.2 of the Standard Form Agreement.

11.4 If the Contract is terminated for any reason, Design-Builder's agreements with its Design Consultants and Subcontractors shall, at Owner's option and without further action by Design-Builder, be assigned to Owner; provided, however, that Owner shall have no liability for any pre-existing acts, omissions or defaults by Design-Builder under such agreements and the sole recourse of the Design Consultants and Subcontractors shall be against Design-Builder.

ARTICLE 12 MISCELLANEOUS

12.1 Assignment Prohibited. Neither Design-Builder nor Owner shall without the written consent of the other parties assign, transfer, or sublet any portion or part of the Work or the obligations required by a party under the Contract Documents.

12.2 Successorship. The provisions of these General Conditions and the other Contract Documents shall be binding upon the Parties, their employees, agents, heirs, successors and assigns.

12.3 Governing Law. Interpretation of the Contract Documents and any and all disputes arising under or in connection with the Project, Work and Contract Documents shall be governed by Arizona Law. Any lawsuit or action arising out of, relating to or pertaining to this Agreement shall be brought in the Arizona Superior Court in the County in which the Owner is located, and only after all contractual and Arizona Board of Regents administrative procedures have been exhausted. By submitting a proposal, Design-Builder agrees to be bound by the Arizona Board of Regents' procurement code dispute resolution procedures and by execution of the Agreement waives any objections to those procedures.

12.4 Severability. If any provision or any part of a provision of the Contract Documents, or any legal authority mentioned herein, 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 Contract Documents, which shall remain in full

force and effect, to the fullest extent permitted by law, as if the unenforceable provision or part were deleted.

12.5 No Waiver. Except as otherwise provided herein, the failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance or timely performance of any of the obligations required by the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to any other performance or obligation.

12.6 Headings. The headings used in the General Conditions or used in any other Contract Document are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

12.7 Notice. Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice; (ii) if delivered or sent by registered or certified mail, postage prepaid to the address indicated in the Agreement; (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the number of the intended recipient.

12.8 Non-Appropriation; Non-Availability of Funds. If Owner's performance under this Agreement or funds available for this Project and/or Work are dependent upon (i) the appropriation or allocation of funds by the Arizona Legislature, and if the Legislature fails to appropriate or allot funds necessary for performance of the Project and/or Work, (ii) the sale of bonds or other similar instruments, and if such bonds or other instruments are not sold or proceeds are not available, or (iii) third party gifts, donations or grants, and if such gifts, donations or grants are not received in whole or in part by Owner; then Owner may provide notice of this to the Design-Builder, and either a) cancel this Agreement without further obligation of Owner except as set forth at the end of this paragraph, or b) delay the Project and/or Work for a period of up to six (6) months (without cost to the Owner), after which date if no such funds are legally available for performance of this Agreement, Owner may cancel this Agreement without further obligation of Owner, except as set forth at the end of this paragraph. If Owner cancels the Agreement pursuant to this Article 12.8, Owner shall reimburse Design-Builder for all services authorized and rendered prior to Owner's delivery to Design-Builder of notice of lack of funds pursuant to this Article, in the manner set forth in Article 2.8.3.

12.9 Conflict of Interest

12.9.1 This Agreement is subject to the provisions of Arizona Revised Statute §38-511 and the Arizona Board of Regents may, within three years after its execution, cancel this Agreement without penalty or further obligation if any person significantly involved in negotiating, drafting, securing or obtaining this Agreement for or on behalf of the Arizona Board of Regents becomes an employee in any capacity of any other party or a consultant to any other party with reference to the subject matter of this Agreement while the Agreement or any extension hereof is in effect.

12.10 Compliance and Legal Worker Requirements

12.10.1 The Parties shall comply with all applicable state and federal statutes and regulations governing equal employment opportunity, non-discrimination, and immigration. The aforesaid provisions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Design-Builder shall post in conspicuous places, available for employees and applicants for employment, notices to be provided

by the Owner, setting forth the provisions of this nondiscrimination clause and shall insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

12.10.2 Design-Builder warrants that it is in compliance with all federal immigration laws and regulations that relate to its employees. Pursuant to Arizona Revised Statutes § 41-4401, the Design-Builder warrants that it is in compliance with the state law requirement that employers in Arizona verify the employment eligibility of employees, hired after December 31, 2007, through the federal E-verify program or any successor program. Design-Builder shall be responsible for all costs associated with compliance with such programs. The warranty requirements of this Article shall apply to all Subcontractors, and the Design-Builder shall require each Subcontractor to warrant compliance with the provisions of this Article. This Article is not applicable where the Design-Builder is a governmental entity nor is the Design-Builder required to pass this provision through to Subcontractors and sub-subcontractors who are governmental entities.

12.10.3 Design-Builder will exclude from any direct participation in Design-Builder's performance under the Agreement, any unqualified persons. In addition, at the request of ASU, Design-Builder will, at Design-Builder's expense, conduct reference checks and employment, education, SSN trace, National Sex Offender Registry, and criminal history record checks (collectively, Screenings) on requested persons employed or contracted by Design-Builder to perform work under the Agreement. Design-Builder will maintain as part of the records Design-Builder is required to maintain hereunder, all Screening information and all documentation relating to work performance for each employee or contractor who performs work hereunder. Supplier will abide by all applicable laws, rules and regulations including the Fair Credit Reporting Act and any equal opportunity laws, rules, and regulations.

12.10.4 A breach of any of the warranties required under this Article shall be deemed a material breach of this Agreement subject to penalties, including termination for cause.

12.10.5 In addition to other audit provisions contained in this Agreement, the Owner retains the right to audit and inspect such documents of any Design-Builder or Subcontractor's employees who perform Work to ensure that the Design-Builder or Subcontractor is complying with the warranty requirements of this Article.

12.10.6 Design-Builder shall make a good faith effort to ensure that not less than 15% of the Work performed under this Agreement is performed by a small business as defined in A.R.S. §41-4401. The Design-Builder shall report to the Owner the dollar value of the Work performed under this provision. Upon Owner's request, documentation evidencing Design-Builder's compliance with this provision shall be furnished in a form acceptable to Owner as a condition precedent to final payment.

12.11 Assignment of Overcharge Claims. The Owner and Design-Builder recognize that in actual economic practice overcharges resulting from antitrust violations are in face borne by Owner. Therefore, the Design-Builder hereby assigns to Owner any and all claims for such overcharges that may vest in Design-Builder during performance of the Project and for three (3) years after final acceptance. The Design-Builder in all subcontracts shall require all Subcontractors to likewise assign all claims for overcharges to the Owner.

12.12 Equality. The Design-Builder and all Subcontractors shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and

prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

12.13 Sexual Harassment. The Design-Builder shall comply with the 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 or facilities.

12.14 Modification of Agreement. The Contract Documents may not be changed, altered, or modified in any way except in writing (by amendment or change order) and signed by a duly authorized representative of both Parties.

12.15 Veteran's Preference. Design-Builder agrees to provide preference in initial employment for U.S. veterans by:

- Adding points to the raw score of a numerically scored screening instrument, or
- Hiring a veteran if, at the conclusion of the search process, a veteran is one of a number of comparably qualified candidates

For purposes of this certification, "veteran" means: an honorably separated person (honorable or general discharge) who served on active duty (not active duty for training) in the Armed Forces:

- During any war declared by Congress;
- During the period April 28, 1952 through July 1, 1955;
- For more than 180 consecutive days, any part of which occurred after January 31, 1955, and before October 15, 1976;
- During the Gulf War period beginning August 2, 1990, and ending January 2, 1992; or
- For more than 180 consecutive days, any part of which occurred during the period beginning September 11, 2001, and ending on the date prescribed by Presidential proclamation or by law as the last day of Operation Iraqi Freedom; or
- In a campaign or expedition for which a campaign medal has been authorized, such as El Salvador, Lebanon, Granada, Panama, Southwest Asia, Somalia, and Haiti.

Medal holders and Gulf War veterans who originally enlisted after September 7, 1980, or entered on active duty on or after October 14, 1982, without having previously completed 24 months of continuous active duty, must have served continuously for 24 months or the full period called or ordered to active duty. Effective on October 1, 1980, military retirees at or above the rank of major or equivalent, are not entitled to preference unless they qualify as disabled veterans.

12.16 No Boycott of Israel. As required by ARS §§ 35-393 to 35-393.01, Entity certifies it is not currently engaged in a boycott of Israel and will not engage in a boycott of Israel during the term of this Contract.

12.17 ASU Weapons Policy. The university prohibits the use, possession, display, or storage of any weapon, explosive device, or fireworks on all land and buildings owned, leased, or under the control of the university or its affiliated or related entities, in all university residential facilities (whether managed by the university or another entity), in all university vehicles, and at all university or university-affiliate sponsored events and activities, except as provided in §12-781 of the Arizona Revised Statutes or unless written permission is given by the ASU Police Department (ASU PD). Notification by vendors to all persons or entities who are employees, officers, subcontractors,

consultants, agents, guests, invitees, or licensees of vendor (Vendor Parties) of this policy is a condition and requirement of the contract. Vendor further agrees to enforce this contractual requirement against all Vendor Parties.

12.18 Small Business and Small Disadvantaged Business. ASU is committed to the development of Small Business, Small Disadvantaged Business (SB & SDB), and Disadvantaged Business (DB) suppliers. If subcontracting is necessary, the successful contractor will make every effort to use SB & SDB in the performance of any contract resulting from this Request for Qualifications. A report will be required at the beginning of the project indicating the overall proposed extent of SB, SDB and DB participation; and at the conclusion of the project indicating the overall extent of SB, SDB and DB participation.

12.19 Supplemental Requirements. The requirements below apply to ASU's Capital Projects in excess of \$2,000,000.00. The Design-Builder will comply with the Owner's following requirements as they apply to Design-Builder and Subcontractors. Design-Builder and Subcontractors will complete ASU Certification Forms to be submitted with each pay application. Design-Builder will work with ASU Construction Purchasing Staff regarding completion of the forms and resolution of any problems. The instructions for completing the Supplemental Requirements Quarterly Form are located at [Purchasing Construction](#).

The requirements for the Design-Builder and each Subcontractor are:

- A. The Owner, the DESIGN-BUILDER, and each Subcontractor shall include small businesses and disadvantaged business enterprises in the design, engineering and construction of the Project so long as this would result in services that are comparable in quality and would not result in a material increase in costs of the Project.
 - a. A Disadvantaged business is a business that is a Woman Owned Business [WBE], or is a Minority Owned Business [MBE], or is a Veteran Owned Business (V), or is a Service Disabled Veteran Owned Business (SDV), or is a Disadvantaged/Disabled owned Business [DBE].
 - b. A Small Business can either be certified or can self-certify that they either have less than One Hundred (100) employees or were under \$4,000,000 in revenue in the previous year. They can be a Federally Certified Small Business.
- B. The Design-Builder and Subcontractor must comply with all state and Federal laws and employees need to be legal Arizona residents. The Design-Builder will provide Design-Builder and Subcontractor compliance by completing the Supplemental Requirements Quarterly Form.
- C. Health Insurance: The Design-Builder and each Major Subcontractor are required to provide health insurance for their full-time employees and to make health insurance coverage available to dependents and to employees who are not full-time, but are assigned to the project.

"Major Subcontractor" means the Subcontractors that, due to the nature of the construction work, comprise a critical or essential element of the construction such that the amount of the contract is equal to or greater than 10% or \$200,000 of the construction budget, whichever is greater. Examples, include, but are not limited to such trades as steel, concrete, plumbing, HVAC, and electrical, excavation/site work, or any other subcontractor trade that is a major subcontractor due to the nature of the construction work in an particular Project.

12.20 Waste Containers. Contractors using waste containers must use and order them through ASU Grounds Maintenance Department. Anytime a waste container is ordered a review will be done at

that time to see if a metal recycling container would also be applicable and if so, would be provided to the project at no charge as long as this container is not contaminated with other refuse.

12.21 Sustainability. Arizona State University is dedicated to acquiring products and services that meet Sustainability requirements for the purpose of judging Sustainability the following description applies:

A process of current or developing business practices and technologies that restore and enhance the environment by supplying products and services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance or disposal of the product or service.

12.22 ASU Sustainable Facility Policies. ASU has the following environmentally-friendly policies affecting university facilities:

1. The State of Arizona Governor's Executive Order 2005-05 mandates that all new state facilities achieve LEED Silver certification.
2. LEED Silver is the minimum standard for ASU new construction and major renovation projects with Platinum certification as the goal.
3. ASU has pre-determined LEED credits it usually obtains to assist in building design efficiency, as outlined in Section 3: 01 81 13 ASU Project Guidelines.
4. Compliance with certain LEED credits and sustainability specifications is required for all projects regardless of whether the project is required to achieve LEED Silver certification.
5. All landscape projects are to pursue qualification for Sustainable Sites certification and seek certification when OUA determines it to be appropriate.
6. All parking garages are to pursue qualification for ParkSmart certification and seek certification when OUA and Parking and Transit Services determine it to be appropriate.

12.23 Business Continuity Plan. If requested by ASU, Design-Builder will provide to ASU, within 30 days after such request, a comprehensive plan for continuing the performance of its obligations during a Public or Institutional Emergency (the Business Continuity Plan). The Business Continuity Plan, at a minimum, will address the following: 1) identification of response personnel by name; 2) key succession and performance responses in the event of sudden and significant decrease in workforce; 3) contingency plans for the Design-Builder to continue the performance of its obligations under the Agreement, despite the emergency and 4) if Design-Builder will store, have access to, or otherwise process any ASU Data, a data recovery plan that includes the following: identification of data recovery personnel by name, how ASU Data will be recovered, recovery point and recovery time objectives, and steps to be taken to recover ASU Data. If ASU requires a data recovery plan, upon ASU's request, Design-Builder will provide ASU with evidence that Design-Builder annually tests the data recovery plan. In the event of a Public or Institutional Emergency, Design-Builder will implement the applicable actions set forth in the Business Continuity Plan and will make other commercially practicable efforts to mitigate the impact of the event. For clarification of intent, Design-Builder will not be entitled to any additional compensation or extension of time by virtue of having to implement a Business Continuity Plan, unless otherwise agreed to by ASU in writing. A Public or Institutional Emergency means a natural or human made event that creates a substantial risk to the public, that causes or threatens death or injury to the general public, or that causes a significant disruption to the day-to-day business operations of ASU.

12.24 Gratuities. Design-Builder will not give or offer any gratuities, in the form of entertainment, gifts or otherwise, or use an agent or representative of Design-Builder to give or offer a gratuity, to any officer or employee of the State of Arizona with a view toward securing an agreement or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such Agreement. If ASU determines that Design-Builder has violated this section, ASU may, by written notice to Design-Builder, cancel the Agreement. If the Agreement is canceled by ASU pursuant to this section, ASU will be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the costs incurred by Design-Builder in providing gratuities.

12.25 No Waiver. No waiver by ASU of any breach of the provisions of the Agreement by Design-Builder will be construed to be a waiver of any future breach or bar ASU's right to insist on strict performance of the Agreement.

12.26 Parking. Design-Builder will obtain all parking permits and/or decals required while performing any work on ASU premises. If needed, Design-Builder should contact ASU Parking and Transit.

12.27 Campus Deliveries and Mall Access. Design-Builder will familiarize itself with ASU parking, campus delivery options, and loading zones. Not all campus buildings are directly accessible and some require Design-Builder to unload at lots or loading areas that may not be adjacent to the delivery or work location. As a result, Design-Builder must then transport Goods by using electric style golf carts, dolly, or other manual device across pedestrian malls. Many campuses include features and pedestrian malls that may have limited access for Design-Builder vehicle and carts. Walk-Only Zones prohibit access to all wheeled traffic during enforcement times, and deliveries or work requiring vehicular or cart access may need to be arranged outside of enforcement times. Click for details about parking permits, supplier permits, loading zones, mall access, and pedestrian mall restrictions.

12.28 Advertising, Publicity, Names and Marks. Design-Builder will not do any of the following, without, in each case, ASU's prior written consent: (i) use any names, service marks, trademarks, trade names, logos, or other identifying names, domain names, or identifying marks of ASU (ASU Marks), including online, advertising, or promotional purposes; (ii) issue a press release or public statement regarding the Agreement; or (iii) represent or imply any ASU endorsement or support of any product or service in any public or private communication. Any permitted use of ASU Marks must comply with ASU's requirements, including using the ® indication of a registered mark.

12.29 Tobacco Free. ASU is tobacco-free.

12.23 Complete Agreement. This Agreement constitutes the complete and integrated agreement between the Owner and the Design-Builder, and it supersedes all prior negotiations, representations or agreements, either written or oral.

ATTACHMENT 1

**Performance and Payment Bonds
(Templates)**

(2 Pages)

ARIZONA BOARD OF REGENTS PERFORMANCE BOND
PURSUANT TO BOARD OF REGENTS POLICY 3-804E
(Penalty of this bond must be 100% of the Contract Amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter called the Principal), as Principal, and _____ a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ (hereinafter called the Surety), as Surety, are held and firmly bound unto the Arizona Board of Regents, (hereinafter called the Obligee), in the amount of _____ Dollars (\$ _____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____ day of _____, 20____, to construct and complete a certain work described as Project Number _____ Project Name _____ which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said contract during the original term of said contract and any extension thereof, with or without notice to the Surety and during the life of any guaranty required under the contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; then the above obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Board of Regents Policy Section 3-804E, and all liabilities on this bond shall be determined in accordance with the provisions of the section, to the same extent as if copied at length herein.

The prevailing party in a suit on this bond, including any appeal thereof, shall recover as a part of his judgment such reasonable attorneys' fees as may be fixed by a judge of the Court.

Witness our hands this _____ day of _____, 20____.

PRINCIPAL SEAL

By: _____

SURETY SEAL

By: _____

Bond Number: _____

Agent Name & Telephone

Agent Address

Bonding Company & Telephone

Bonding Company Address

Arizona Board of Regents **PAYMENT BOND**
PURSUANT TO BOARD OF REGENTS POLICY 3-804E
(Penalty of this bond must be 100% of the Contract Amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter called the Principal), as Principal, and _____ a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ (hereinafter called the Surety), as Surety, are held and firmly bound unto the Arizona Board of Regents, (hereinafter called the Obligee), in the amount of _____ Dollars (\$ _____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____ day of _____, 20____, to construct and complete a certain work described as Project Number _____ Project Name _____ which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall promptly pay all monies due to all persons supplying labor or materials to him/her or his/her subcontractors in the prosecution of the work provided for in said contract, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Board of Regents Policy Section 3-804E, and all liabilities on this bond shall be determined in accordance with the provisions of the section, to the same extent as if copied at length herein.

The prevailing party in a suit on this bond, including any appeal thereof, shall recover as a part of his judgment such reasonable attorneys' fees as may be fixed by a judge of the Court.

Witness our hands this _____ day of _____, 20 ____.

PRINCIPAL SEAL

SURETY SEAL

By: _____

By: _____

Bond Number: _____

Agent Name & Telephone

Bonding Company & Telephone

Agent Address

Bonding Company Address

ATTACHMENT 2

Change Order Pricing Format

		<u>Work By Subcontractor</u>	<u>Work By Design-Builder</u>
a.	Cost of Materials	\$ 2,000.00	\$ 4,000.00***
b.	Cost of Labor	\$ 1,000.00	\$ 2,000.00***
c.	Rental Value of Equipment	\$ 250.00	\$ 500.00
d.	Subcontracted Work (from line k)	<u> </u>	<u>\$ 3,828.83</u>
e.	Subtotal	\$ 3,250.00	\$10,328.83
f.	Construction General Conditions (Subcontractor – assume 10% of line e & Design-Builder assume 5% of line e)*	\$ 325.00	\$ 516.44
g.	Subtotal	\$ 3,575.00	
h.	Subcontractor Fee (assumes 5% of line g)	<u>\$ 178.75</u>	
i.	Subtotal	\$ 3,753.75	
j.	Subcontractor Insurance (and bond, if applicable, assumes 2% of line i)**	<u>\$ 75.07</u>	
k.	Subtotal - Subcontracted Work	\$ 3,828.83	
l.	Direct Construction Cost		\$10,845.27
m.	Design-Builder Fee (assumes 5% of Direct Construction Cost per Design-Builder General Conditions' Article 1.2.8)		\$ 542.26
n.	Contractor Bonds and Insurance (assumes 2% of Direct Construction Cost)**		\$ 216.91
o.	Subtotal		\$11,604.44
p.	Tax (assumes 6% of line o)		<u>\$ 696.27</u>
q.	Total Cost of Change Order Work		\$12,300.70

* Construction General Conditions cannot exceed 10% of the total of material, labor, and equipment for Subcontractor work, and cannot exceed 5% to Design-Builder for the total of self-performed and Subcontractor work.

** Cannot exceed 2% without documentation of additional cost.

*** Design-Builder's self-performed work, if applicable.

Required Assumptions:

- (1) Not all Amendments or Change Orders will have work involving both Subcontractors and the Design-Builder. In each case, only the appropriate categories of costs and percentages will be utilized.
- (2) Deductive Amendments or Change Orders utilize the same format and method of cost/credit determination including application of all deductive fees and markups. Where a change involves both, added costs and credits, the net addition or credit amount shall be determined independently for each Subcontractor and the Design-Builder prior to the application of Fee, Bond and Insurance costs, and Tax.

Required Assumptions: (continued)

- (3) Payment for Bonds will be for the Design-Builder only, as required by the Contract Documents, unless the Owner has required bonding of Subcontractor(s) in accordance with the General Conditions. Unless otherwise indicated in the Contract Documents, Subcontractor liability insurance is required and such costs are allowable.
- (4) The final Change Order amounts shall be fixed dollar amounts (not percentages) and shall be rounded to the nearest whole dollar.
- (5) Entries for lines a., b., and c. shall be supported by and developed from documentation provided with the Amendment or Change Order cost proposal.
- (6) Entries for lines j., m., n. and p. shall be actual percentages based on and supported by records of the applicable Subcontractor and/or Design-Builder. The percentages shown above for these lines are assumed for purposes of illustration only.
- (7) Note that all percentages used in the sample calculation are for illustration purposes only. Actual percentages may vary per contract requirements.