



DATE: July 22, 2014

SUBJECT: **Design/Build Contract with a Guaranteed Maximum Price (DB w/GMP)**  
New North Residence Hall,  
University Park

TO: BBL / Nelson H2L2  
Gilbane / BJC / Newman  
Irwin & Leighton / EYP  
LF Driscoll & MGA Partners  
Massaro / WTW  
Mortenson / HKS  
PJ Dick / Perkins Eastman  
Poole Anderson / Hoffman Leakey / Noelker & Hull  
Turner / SMP  
Whiting-Turner / Ewing Cole

Congratulations, your team has been selected as one of the teams on the long list for the design and construction of the above referenced project. The Selection Committee will review responses to this Request for Proposals and identify a short list of three firms to be interviewed.

It is necessary that you provide us with the information requested in the **Proposal Submission Requirements** no later than **August 19, 2014 at Noon**. Please answer all of the questions in the order requested. This will provide uniform information on all firms for evaluation and ultimate presentation to the Board of Trustees. We encourage you to be as brief as possible without sacrificing accuracy and completeness. A document not exceeding 50, 8-1/2 x 11, single sided (25 double sided) pages should be more than adequate to provide the requested information. Please submit to my office **sixteen** copies of your proposal. I encourage you to visit the site and discuss the project with representatives of the user group in order to understand our goals and the major issues driving this project. Please contact Rich O'Donald, the Project Manager at 814-865-1333 or [reo100@psu.edu](mailto:reo100@psu.edu) with any project management questions and to schedule your site visit. Contact John Bechtel, Assistant Director of Design and Construction at 814-865-7079 or [jrb115@psu.edu](mailto:jrb115@psu.edu) with any Design/Build process or contract questions. Contact me if you have any campus planning, design or general process questions.

In order to help you understand the project, I am enclosing excerpts from the feasibility study done by Bohlin Cywinski Jackson. Finally, a copy of our Form of Agreement 1-DB-GMP is also enclosed; please review this agreement to ensure that your team accepts all terms and conditions as written. We expect design to commence in October 2014 with occupancy by fall semester of 2017.

**New North Residence Hall,  
University Park**

**Proposal Submission Requirements**

The following items of information must be supplied to the University. We have made no attempt to provide sufficient space below for you to fill in blanks but expect that you will provide the information requested on your own letterhead paper. **Failure to answer all questions will be reason for disqualifying your team from further consideration.** Please provide **sixteen** copies of all material submitted. The deadline for submission is **August 19, 2014 at Noon.**

1. Briefly outline your project specific Design-Build approach and processes.
2. Please clearly indicate any previous Design-Build projects completed by the proposed design and construction firms **as a team.**
3. Identify and discuss any additional design issues that, in your opinion, are the key drivers of this type of project and illustrate these with examples of your previous work.
4. Provide the qualifications and experience of the lead design and construction team members, **including key consultants**, to be assigned to this project. Provide a clear indication of the roles to be performed by each **individual.** Please be very specific regarding the personal involvement and on-site participation of each lead **individual.** An **organization chart** is preferred as a visual.
5. Please list all consultant firms proposed for this project:

Structural Engineers, Mechanical Engineers, Electrical Engineers, Site/Civil Engineers, Landscape Architects, Interior Designers, Cost Estimators, others.

Provide firm name, number of projects worked with your firm, total construction volume, number of personnel within each firm, and number of personnel with a professional registration.

6. Please highlight the experience of the Design-Build team members and any key consultants in the design and construction of facilities similar to the one proposed (college and other), completed or under construction during the past ten years. List for each the completion date, final construction cost and gross square feet provided, and be very specific about the services provided. Identify those specific projects included in the proposed design team experience listed in #4 above.
7. Provide 5 client references each, for the Design and the Build members, for projects of similar type and scope; please make sure that their email and telephone numbers are current.
8. Provide graphic examples of selected projects personally done by **the lead design architect**, including brief description and completion date.

9. Provide evidence of the team's commitment to sustainable design that is relevant to this type of project.
10. Please provide a proposed design and construction milestone schedule for this project in graphic form allowing three weeks for any necessary Penn State University reviews. Assume the programming and design process will start in October 2014 with occupancy by fall of 2017.
11. Outline the estimating and cost control methodology you plan to implement on this project.
12. Provide a draft site logistics plan for the project. Include a narrative to assist with our understanding of how you intend to control and access the project site during construction. Please recognize that the Agricultural Engineering Building renovation project is anticipated to be under construction during the same time period.
13. Provide a draft project specific BIM implementation plan outlining the uses of BIM throughout the design and construction process and list the benefits to both, the project and PSU.
14. Please list any additional IT applications other than BIM that you are planning to utilize on this project.
15. Outline your strategy to maximize MBE/WBE participation for consultants and contractors. What is your expected percentage of MBE/WBE contractor participation based on your experience and/or knowledge of building at PSU?
16. Provide a concise summary narrative as to why your team is best suited for this project.
17. Please provide a brief description of your approach to project safety (please include your current EMR). Does your team plan to utilize any Prevention through Design (PtD) techniques to improve both construction and building operations safety?
18. Please list any project claims that you have submitted in the past five (5) years on projects and provide a detailed explanation of the situation.
19. Integrated Project Delivery Principles.

PSU believes a more integrated project approach during all phases of a project will increase the likelihood of success, result in greater efficiencies, and ultimately provide a better solution. Please outline how you plan to incorporate (or not) the following IPD principles on this project: mutual respect and trust, early goal definition, co-location of project team, target value design, early contractor involvement (design-assist trades), extreme collaboration, transparency and open communication, and effective use of technology. Also, please share any experiences your proposed team members have on projects delivered in a more integrated approach (please be specific on the principles applied).

A decision regarding the firms to be interviewed will be made by **September 4, 2014** and posted to our web site. Interviews with the three short-listed firms will be held either the week of **September 8 or 15, 2014** at The Penn Stater Conference Center in University Park. Results of the interviews will be announced at the Board of Trustees meeting on **September 19, 2014** and posted to our web site.

We appreciate your cooperation and interest in preparing this material. By submission, you are confirming that you are able to meet all insurance and bonding requirements for the project.

Please do not hesitate to call me if you have any other questions.

Sincerely,

David Zehngut  
University Architect  
(814) 863-3158, E-mail dxz3@psu.edu

Enclosures

cc: Screening Committee Members

FOR PSU USE ONLY	
BUDGET #	_____
JOB #	_____
REFERENCE #	_____
CODE #	_____

FORM OF AGREEMENT 1-DB-GMP

THE PENNSYLVANIA STATE UNIVERSITY  
OWNER AND DESIGN-BUILDER w/ GMP  
AGREEMENT

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_  
in the year \_\_\_\_\_ by and between

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

hereinafter called the Design-Builder and THE PENNSYLVANIA STATE UNIVERSITY, a corporation created and existing under the laws of the Commonwealth of Pennsylvania, hereinafter called the Owner for the following project:

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

In consideration of the promises set forth herein, and with intent to be legally bound, the parties agree as follows:

ARTICLE 1: SCOPE OF WORK

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

ARTICLE 2: CONTRACT DOCUMENTS

- 2.1 The Contract Documents are comprised of the following:
  - 2.1.1 All written modifications, amendments, and change orders to this Agreement;
  - 2.1.2 This Agreement, including all exhibits and attachments, executed by Owner and Design-Builder;
  - 2.1.3 Written Supplementary Conditions, if any, to the General Conditions of Contract;
  - 2.1.4 The General Conditions of Contract;

- 2.1.5 Construction Documents prepared and approved in accordance with this Agreement;
- 2.1.6 Design-Builder's Deviation List, if any, contained in Design-Builder's Proposal, which shall specifically identify any and all deviations from Owner's Project Criteria;
- 2.1.7 Owner's Project Criteria;
- 2.1.8 Design-Builder's Proposal, except for the Deviation List, submitted in response to Owner's Project Criteria; and
- 2.1.9 The following other documents; if any:

### ARTICLE 3: INTERPRETATION AND INTENT

3.1 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof.

3.2 Terms, words, and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

3.3 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

### ARTICLE 4: OWNERSHIP AND USE OF WORK PRODUCT

4.1 All preliminary studies, Construction Documents, special requirements, cost estimates, and all other data compiled by the Design-Builder under this Agreement shall become the property of the Owner and may be used for any purpose desired by the Owner except to use for the construction of an identical facility not covered by this Agreement. The Design-Builder shall not be liable for any reuse of these documents by the Owner.

### ARTICLE 5: CONTRACT TIME

5.1 **Date of Commencement.** The Work shall commence within ten (10) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

#### 5.2 **Substantial Completion and Final Completion**

5.2.1 Substantial Completion of the entire Work shall be achieved no later than \_\_\_\_\_ ("Scheduled Substantial Completion Date").

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved as follows, if any:

5.2.3 Final Completion of the Work shall be achieved as expeditiously as reasonably practicable, and no later than \_\_\_\_ days after the date of Substantial Completion. Final Completion of the Work refers to the transfer of all close-out documentation and completion of all Punch List items.

5.2.4 All of the dates set forth in this Article 5 ("Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

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

5.4 **Liquidated Damages.** Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date established herein, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Design-Builder shall pay Owner \_\_\_\_\_ Dollars (\$\_\_\_\_\_) as liquidated damages for each day that Substantial Completion extends beyond the Scheduled Date. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties, and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving Substantial Completion. In the event that Liquidated Damages are not indicated herein, they may be mutually agreed-to at the establishment of the total, final Contract Price (establishment of the GMP amount), via a Change Order to this Agreement. If Liquidated Damages are not established, the Owner reserves the right to assess Actual Damages incurred.

## ARTICLE 6: COMPENSATION

6.1 **Design Phase Compensation.** Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer, and other taxes mandated by applicable Legal Requirements. The Components of the initial Contract Price are reflected in the attached Design-Builder proposal and are summarized as follows:

### 6.2 **Construction Phase Compensation, Guaranteed Maximum Price (GMP)**

6.2.1 GMP Proposal. At such time as the Owner and the Design-Builder jointly agree, the Design-Builder shall submit a GMP Proposal in a format acceptable to the Owner. The Design-Builder does not guarantee any specific line item provided as part of the GMP, but agrees that it will be responsible for paying all costs of completing the work which exceeds the GMP, as adjusted in accordance with this Agreement.

6.2.1.1 If the Design-Build Documents are not complete at the time the GMP Proposal is submitted to the Owner, the Design-Builder shall provide in the GMP for further development of the Design-Build Documents consistent with the Owner's Program. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which if required, shall be incorporated by Change Order.

6.2.2 Basis of Guaranteed Maximum Price. The Design-Builder shall include with the GMP Proposal a written statement of its basis, which shall include:

- a. A list of the drawings and specifications, including all addenda, which were used in preparation of the GMP Proposal;
- b. A list of allowances and a statement of their basis;
- c. A list of the assumptions and clarifications made by the Design-Builder in the preparation of the GMP Proposal to supplement the information contained in the drawings and specifications;
- d. The Date of Substantial Completion and the Date of Final Completion upon which the proposed GMP is based, and the detailed Schedule of Work upon which the Date of Substantial Completion and the Date of Final Completion is based;
- e. A schedule of applicable alternates;
- f. A schedule of applicable unit prices;
- g. A statement of additional services included, if any;
- h. The time limit for acceptance of the GMP Proposal;
- i. The Design-Builder's contingency;
- j. A statement of any work to be self-performed by the Design-Builder.
- k. A GMP Cost Summary
- l. A GMP Detailed Estimate
- m. A Site Utilization Plan
- n. Design-Builder Staff Cost Summary

6.2.3 Review and Adjustment to GMP Proposal. The Design-Builder shall meet with the Owner to review the GMP Proposal. If the Owner has any comments relative to the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall give prompt written notice of such comments or findings to the Design-Builder, who shall make appropriate adjustment to the GMP, its basis or both.

6.2.4 Acceptance of GMP Proposal. Upon acceptance by the Owner of the GMP Proposal, the GMP and its basis shall be set forth via a Change Order to this Contract.

6.2.5 Failure to Accept the GMP Proposal. Unless the Owner accepts the GMP Proposal in writing on or before the date specified in the GMP Proposal for such acceptance and so notifies the Design-Builder, the GMP Proposal shall not be effective. If the Owner fails to accept the GMP Proposal, or rejects the GMP Proposal, the Owner shall have the right to:

6.2.5.1 Suggest modifications to the GMP Proposal. If such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted.

6.2.5.2 Direct the Design-Builder to proceed on the basis of reimbursement without a GMP, in which case all references in this Agreement to the GMP shall not be applicable; or

6.2.5.3 Terminate the Agreement for convenience.

In the absence of a GMP, the Parties may establish a Date of Substantial Completion and a Date of Final Completion.

6.2.6 Pre-GMP Work. Prior to the Owner's acceptance of the GMP Proposal, the Design-Builder shall not incur any cost to be reimbursed as part of the Cost of the Work, except as provided in this Contract or as the Owner may specifically authorize in writing.

6.2.7 Design-Builder's Contingency. The GMP Proposal will contain, as part of the estimated Cost of the Work, the Design-Builder's Contingency, a sum mutually agreed upon and monitored by the Design-Builder and the Owner to cover costs which are properly reimbursable as a Cost of the Work, but are not the basis for a Change Order. The Design-Builder's contingency shall not be used for changes in scope or for any item that would be the basis for an increase in the GMP. The Design-Builder shall provide the Owner with a contemporaneous accounting of charges against the Design-Builder's Contingency, if applicable, with each application for payment.

6.2.8 Cost Reporting. The Design-Builder shall keep such full and detailed accounts as are necessary for proper financial management under this Agreement. The Design-Builder shall maintain a



complete set of all books and records prepared or used by the Design-Builder with respect to the Project. The Design-Builder's records supporting its performance and billings under this Agreement shall be current, complete and accurate and maintained according to Generally Accepted Accounting Principles. The Owner shall be afforded reasonable access during normal business hours to all the Design-Builder's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Agreement. The Design-Builder shall preserve all such records for a period of three years after the final payment or longer where required by law. Refer to Article 12.11 of the General Conditions of the Contract for the Right to Audit provision.

**6.3 Markups for Changes.** If the GMP requires an adjustment due to changes in the Work, the Design-Builder shall receive T.B.D Percent ( T.B.D.\_\_\_\_%) of any increase in Guaranteed Maximum Price as approved by the Owner.

**6.4 For Work Performed by Subcontractor:** The Subcontractor will be allowed a maximum markup for overhead and profit of 15% on labor only. The Subcontractor will be allowed a maximum markup for overhead and profit of 10% on material and equipment. The Design Builder will be allowed overhead and profit per Article 6.3. No other costs or markups will be permitted by any other tiered Contractor or Subcontractor.

#### ARTICLE 7: PROCEDURE FOR PAYMENT

**7.1 Progress Payments.** The Design-Builder shall each month submit to the Owner a statement in detail showing the amount of Work performed in the preceding calendar month. Payments shall be made on valuation of Work done based on an approved Schedule of Values to be submitted by the Design-Builder to the Owner of the quantities aggregating the total of the Contract, prior to the first application for payment. The Schedule of Values shall, when approved, be used as a basis for determining the percentage of the Contract sum comprising each Certificate of Payment. Note: All backup/substantiation of such costs shall be included with each Certificate of Payment.

**7.2 Retainage of Progress Payments.** Payment shall be made on the basis of 94% of the approved monthly schedule of Work performed as hereinbefore determined. The Owner may, at its sole discretion, reduce the amount to be retained at any time.

**7.3 Final Payment.** Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.6 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within forty-five (45) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.6.2 of the General Conditions of Contract.

**7.4 Record Keeping and Finance Controls.** With respect to changes in the Work performed on a cost basis by Design-Builder pursuant to the Contract Documents, Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access from time to time, upon reasonable notice, to Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to changes in the Work performed on a cost basis in accordance with the Contract Documents, all of which Design-Builders shall preserve for a period of three (3) years after Final Payment.

#### ARTICLE 8: TERMINATION FOR CONVENIENCE

**8.1** Upon ten (10) days written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

- 8.1.1 All executed Work.
- 8.1.2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontracts and Design Consultants.

**ARTICLE 9: REPRESENTATIVES OF THE PARTIES**

**9.1 Owner's Representatives**

- 9.1.1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: \_\_\_\_\_.
- 9.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: \_\_\_\_\_.

**9.2 Design-Builders Representatives**

- 9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: \_\_\_\_\_.
- 9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: \_\_\_\_\_.

**ARTICLE 10: BONDS AND INSURANCE**

**10.1 Insurance.** Design-Builder shall procure in accordance with Article 5 of the General Conditions of Contract the following insurance coverages:

The Design-Builder shall purchase from and maintain in a company or companies lawfully authorized to do business in the Commonwealth of Pennsylvania the following insurance. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

Before commencing the Work, the Design-Builder and any Subcontractors shall purchase and maintain at its own expense until final completion and acceptance of the Work, the following minimum insurance:

- a. Workers' Compensation for statutory obligations imposed by workers' compensation or occupational disease laws. Employers' Liability insurance shall be provided with a minimum limit of \$500,000.
- b. Automobile Liability insurance with the following minimum limits of liability:

Bodily Injury Liability  
and \$1,000,000 Combined Single Limit

Property Damage Liability

- c. Comprehensive General Liability including the Broad Form Endorsement or Commercial General Liability Insurance. Such policies shall show The Pennsylvania State University as an "additional insured", and shall include coverage for premises and operations, products and completed operations and contractual liability for all operations required to complete the Work, including, if applicable, coverage for damage caused by explosion, collapse, or damage to underground utilities with the following minimum limits of liability:

Bodily Injury Liability  
and \$5,000,000 Combined Single Limit  
Property Damage Liability

The products and completed operations liability insurance shall be provided for a period of two years after completion of the Work.

- d. Special Hazards - If there is a possibility of special hazards existing in the Work contemplated, such hazards shall be covered by endorsement to the policy or policies.

Information concerning reduction coverage shall be furnished by the Design-Builder with reasonable promptness in accordance with the Design-Builder's information and belief.

**10.2 Bonds and Other Performance Security.** Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

At the time of signing the Contract and before it become effective, or (as applicable) upon the establishment of the total, final Contract Price (establishment of the GMP amount), the Design-Builder and its surety, acceptable to the Owner, shall execute two bonds each in the amount of 100% of the contract price of the Work awarded to the Design-Builder. The Bonds shall be written by a Surety authorized to do business in the Commonwealth of Pennsylvania and shall be delivered to the Owner prior to award of Contract and within three (3) days of the Owner's request thereof. The Attorney-in-Fact who signs the Bonds must be a resident of the Commonwealth of Pennsylvania and shall file with each Bond a certified and effectively dated copy of the Attorney-in-Fact's Power of Attorney.

One bond shall be a performance bond covering the faithful performance by the Design-Builder of all covenants and agreements on the part of the Design-Builder contained in this Contract.

The other bond shall be a labor and material payment bond protecting all parties that have performed labor or supplied material on this Contract from suffering and any loss due to the failure of the Design-Builder to pay any or all obligations incurred under this Contract.

The Design-Builder shall pay all premiums for all bonds.

Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Design-Builder or Owner shall promptly furnish a copy of the bonds or shall permit a copy to be made.

**10.3 Professional Liability Insurance:**

The Design-Builder shall secure and maintain, either through itself or through the Professional, Professional Liability Insurance to protect against loss resulting from design errors and omissions, failure to coordinate the Construction Documents of the Project, and failure to execute the construction administration duties of the Project, which shall be as follows:

General Liability Insurance (not less than \$1,000,000), and Professional Liability Insurance with limits not less than \$1,000,000 or the total of the Design Fee portion of the Contract Price, whichever is greater. The Professional Liability Insurance shall include prior acts coverage sufficient to cover all services rendered by the Professional.

## ARTICLE 11: LIENS

The parties hereto have executed a Waiver of Liens / Stipulation Against Liens Agreement, and Design-Builder has purchased a payment bond which shall serve as a guarantee of payment for the work, services, labor, materials and/or equipment provided by any and all subcontractors. Design-Builder hereby specifically waives all lien rights of subcontractors, as that term is defined under the Pennsylvania Mechanics' Lien Law of 1963. Design-Builder hereby covenants, promises and agrees that no mechanics' or materialsmen's lien or claim, or any other lien or claim, will be filed or maintained on the Property, or any grounds or curtilages appurtenant thereto, or any other structure or property owned by the Owner, either by Design-Builder or any subcontractor, for or on account of any work, labor or materials supplied by any subcontractor in the performance of the Contract, or under any supplemental contract for extra work, in the erection, construction or completion of the improvements to the Property.

## ARTICLE 12: OTHER PROVISIONS

12.1 Other provisions, if any, are as follows:

12.1.1 **Prevailing Wage Act.** The Design-Builder is hereby notified that this Contract is subject to the provisions, duties, obligations, remedies and penalties of the Pennsylvania Prevailing Wage Act, Act No. 442, August 15, 1961 (P.L. 987), and as amended August 9, 1963, Act No. 342; and said Act is incorporated herein by reference as fully as though the same were here set forth at length.

12.1.2 **Prequalification/Bidding.** All trade packages will be competitively bid. The Design-Builder shall prequalify all bidders. The Design-Builder shall review bidders lists with Owner for approval before proceeding.

12.1.3 **Equal Employment Opportunity and Referral to Non-Discrimination Clause.** In performing the work or making or furnishing any article required by this Contract, the Design-Builder shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and all subsequent rules, regulations, and relevant orders of the Secretary of Labor. The Design-Builder will comply with all provisions of Executive Order 1972-1 or any regulations issued by the Pennsylvania Human Relations Commission, 16 Pa. Code, Chapter 49. The Non-Discrimination Clause as issued by the Pennsylvania Human Relations Commission is included below.

12.1.4 **Non-Discrimination Clause.** During the term of this Contract, Design-Builder agrees as follows:

- a. Design-Builder shall not discriminate against any applicant for employment or any independent Contractor or any other person because of race, color, religious creed, ancestry, national origin, age, or sex. Design-Builder shall not discriminate against any employee or independent Contractor or other person because of race, color, religious creed, ancestry, national origin, age, or sex.

Design-Builder shall take affirmative action to ensure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, age, or sex. Such affirmative action shall include, but is not 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.

Design-Builder shall post in conspicuous places, available to employees, agents, applicants for employment and other persons, notices to be provided by the contracting agency setting forth the provisions of this non-discrimination clause.

- b. Design-Builder shall in solicitations or advertisements placed by it or on its behalf state all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age, or sex.
- c. Design-Builder shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this non-discrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment. Similar notices shall be sent to every other source of recruitment utilized by Design-Builder.
- d. It shall be no defense to a finding of a non-compliance with this non-discrimination clause that recipient had delegated some of its employment practices to any union, training program or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Design-Builder was not on notice of the third-party discrimination, or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.
- e. Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that Design-Builder will be unable to meet its obligations under this non-discrimination clause, the Design-Builder shall then employ and fill vacancies through other non-discriminatory employment procedures.
- f. Design-Builder shall comply with all rules, regulations and orders issued by the Governor, the Attorney General, and the Human Relations Commission relating to laws, prohibiting discrimination in hiring or employment opportunities. In the event of Design-Builder's non-compliance with the non-discrimination clause of this Contract or with any such rules, regulations or orders, this Contract may be cancelled, terminated or suspended in whole or in part, and recipient may be declared ineligible for further Commonwealth contracts, and such other sanctions may be imposed and remedies invoked as provided by rule, regulation or order of the Governor, Attorney General, or the Human Relations Commission, or as otherwise provided by law.
- g. Design-Builder shall furnish all necessary employment documents and records to, and permit access to its books, records and accounts by the Owner and the Office of Administration, Bureau of Affirmative Action, for purposes of investigation to ascertain compliance with this clause. If Design-Builder does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the Owner or by the Bureau of Affirmative Action.
- h. Design-Builder shall actively recruit minority Subcontractors or Subcontractors with substantial minority representation among their employees. Develop and implement a system to attain MBE/WBE participation. The Owner has set a goal of 10% combined utilization of MBE and WBE contractors and suppliers. Track and monitor the MBE/WBE participation and submit monthly updates to the Owner. In coordination with the Owner, conduct an Open House and hold workshops in an effort to increase MBE/WBE participation
- i. Design-Builder shall include these provisions in every Agreement, Subcontract or Purchase Order, so that such provisions will be binding upon each Subcontractor or vendor or other person.

12.1.5 **Steel Products Procurement Act.** This project is subject to the provisions of the Steel Products Procurement Act of 1978 (P.L. 6, No. 3) as amended by the Act of July 9, 1984 (P.L. 674, No. 144). The Design-Builder, Subcontractors, and Material Suppliers shall be required to comply with all provisions of this Act.

- 12.1.6 **Collaborative Environment.** Design-Builder, with assistance from the Owner, shall develop an Integrated Project Delivery plan outlining collaborative concepts to be incorporated into the Work. Collaboration Plan shall incorporate integrated concepts such as early involvement of key participants, decision making process mapping, co-location, team-building, and information sharing technology options.
- 12.1.7 **PSU Project Delivery System.** Design-Builder shall assist the Owner in the development of the project deliverable requirements as outlined in the "PSU Project Delivery System." Refer to Exhibit E for the process diagram and deliverable listing. The PSU Project Delivery Guidebook, which defines the process and the deliverables, will be made available to the Design-Builder by the Owner.
- 12.1.8 **Minority and Women Business Enterprise Program (MBE/WBE):** Develop and implement a system to attain MBE/WBE participation. The Owner has set a goal of 15% combined utilization of MBE and WBE contractors and suppliers. Design-Builder will track and monitor the MBE/WBE participation and submit monthly updates to the Owner. In coordination with the Owner, the Design-Builder is to conduct an Open House and hold workshops in an effort to increase MBE/WBE participation.

#### ARTICLE 13: SCHEDULE OF EXHIBITS

Exhibit A: Design-Builder's proposal dated \_\_\_\_\_.

Exhibit B: The Pennsylvania State University Design and Construction Standards listing (screen print from the Office of Physical Plant web page).

Exhibit C: Staff Hourly Billable Rates ( \_\_\_\_ page(s), attached).

Exhibit D: Project Milestone Schedule ( \_\_\_\_ pages, dated \_\_\_\_\_, un/attached (*choose one*)).

Exhibit E: PSU Project Delivery System (2 pages, attached).

#### ARTICLE 14: BACKGROUND CHECK POLICY

The Contractor confirms that all employees (including the employees of any subconsultants/subcontractors) assigned to this project and who conduct their work on Penn State premises have had background checks that meet or exceed the University's standards for the type of work being performed per the background check process for third-party employees outlined in PSU Policy HR99 Background Check Process (<http://guru.psu.edu/policies/OHR/hr99.html>).

#### ARTICLE 15: PUBLIC WORKS EMPLOYMENT VERIFICATION ACT

As a precondition to the award of the contract for the Work described herein, Contractor must complete the Commonwealth of Pennsylvania 'Public Works Employment Verification Form' ("Form") and provide a copy to Owner.

Furthermore, by execution of this Agreement, the Contractor hereby affirms as follows:

(1) Contractor is presently and shall remain in compliance with the Pennsylvania Public Works Employment Verification Act ("the Act") through utilization of the Federal E-Verify Program ("EVP") operated by the United States Department of Homeland Security.

(2) Contractor will ensure that all contracts with subcontractors contain notification of the applicability of the Act, information regarding the use of EVP, and either a copy of the Form or a reference to the Pennsylvania Department of General Services website at [www.dgs.state.pa.us](http://www.dgs.state.pa.us), where the Form may be obtained. Contractor will further ensure that prior to beginning onsite or offsite work, every subcontractor shall submit a completed Form to the Owner.

(3) Contractor and subcontractors shall utilize EVP to verify the employment eligibility of each new employee hired, whether the new employee will be performing onsite or offsite work, within five (5) business days of the employee's start date and shall maintain documentation of continued compliance with the Act for the duration of this Agreement.

(4) Contractor and subcontractors shall cooperate with Owner and Pennsylvania Department of General Services in the event of an audit arising under the Act.

THIS AGREEMENT entered into as of the day and year written above.

THE PENNSYLVANIA STATE UNIVERSITY  
OWNER

\_\_\_\_\_  
Title ATTEST  
Secretary

*(name of design-builder)*  
DESIGN-BUILDER

\_\_\_\_\_  
Name: \_\_\_\_\_ ATTEST  
Secretary  
(print name of person signing above)

Title: \_\_\_\_\_  
(print title of person signing above)

Federal ID Number: \_\_\_\_\_

Attachments

# **General Conditions of Contract**

## **1-DB-GMP-GC**

**Between Owner and Design-Builder**

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## Article 1

### **General**

#### 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.

#### 1.2 Basic Definitions

1.2.1 Agreement refers to the executed contract between Owner and Design-Builder.

1.2.2 Day or Days shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.3 Design Consultant is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder or Subcontractor, to furnish design services required under the Contract Documents.

1.2.4 Hazardous Conditions are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.2.5 General Conditions of Contract refer to General Conditions of Contract Between Owner and Design-Builder.

1.2.6 Legal Requirements are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

1.2.7 Owner's 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 the Work. Owner's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

1.2.8 Site is the land or premises on which the Project is located.

1.2.9 Subcontractor is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include material men and suppliers.

1.2.10 Sub-Subcontractor is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include material men and suppliers.

1.2.11 Substantial Completion is the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

1.2.12 Work is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

## Article 2

### **Design-Builder's Services and Responsibilities**

#### 2.1 General Services

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to 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. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

2.1.2 Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including whether (i) the Work is proceeding according to schedule, (ii) discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) health and safety issues exist in connection with the Work, and (iv) other items require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

2.1.3 Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. 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 to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of and response to the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

2.1.4 The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

#### 2.2 Design Professional Services

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

#### 2.3 Standard of Care for Design Professional Services

2.3.1 The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. Notwithstanding the preceding sentence, if the parties agree upon specific performance standards for any aspect of the Work,

which standards are to be set forth in an exhibit to the Agreement entitled "The Pennsylvania State University Design and Construction Standards listing," the design professional services shall be performed to achieve such standards.

- 2.4 Building Information Modeling (BIM). The project will be designed using Building Information Modeling (BIM). Digital modeling information will be provided to the Owner for the following building systems: (list applicable building components here or additional detail about type of software and additional BIM requirements)
- 
- 
- 

All costs associated with BIM, including model updates during construction, are included in the base contract price. An as-built BIM model is required to be submitted by the Design-Builder to the Owner upon Final Completion of the Work for the agreed upon building systems listed in this agreement. The BIM digital information is to be considered the Architect's work product and as such, under Article 4 of the contract, is ultimately the Owner's property. It shall be the responsibility of the Design-Builder to produce a BIM execution plan during the schematic design phase that details the use of BIM on the project during all project phases including the construction phase. The execution plan shall be approved, in writing, by the Owner.

## 2.5 Preliminary Design Services

2.5.1 OWNER'S PROGRAM The Design-Builder shall assist the Owner in the development and preparation of the Owner's Program, which is an initial description of the Owner's objectives. The Owner's Program may include budget and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

2.5.2 PRELIMINARY EVALUATION The Design-Builder shall review the Owner's Program to ascertain the requirements of the Project and shall verify such requirements with the Owner. The Design-Builder's review shall also provide to the Owner a preliminary evaluation of the site with regard to access, traffic, drainage, parking, building placement and other considerations affecting the building, the environment and energy use, as well as information regarding applicable governmental laws, regulations and requirements. The Design-Builder shall review the Owner's existing test reports but will not undertake any independent testing nor be required to furnish types of information derived from such testing in its preliminary evaluation. The Design-Builder shall also propose alternative architectural, civil, structural, mechanical, electrical and other systems for review by the Owner, in order to determine the most desirable method of achieving the Owner's requirements in terms of cost, technology, quality and speed of delivery. Based upon its review and verification of the Owner's Program and other relevant information, the Design-Builder shall provide a preliminary evaluation of the Project's feasibility for the Owner's acceptance. The Design-Builder's preliminary evaluation shall specifically identify any deviations from the Owner's Program.

2.5.3 PRELIMINARY SCHEDULE The Design-Builder shall provide a preliminary schedule for the Owner's written approval. The schedule shall show the activities of the Owner and the Design-Builder necessary to meet the Owner's completion requirements.

2.5.4 PRELIMINARY ESTIMATE The Design-Builder shall prepare for the Owner's written approval a preliminary estimate utilizing area, volume, or similar conceptual estimating techniques. The level of detail for the estimate shall reflect the Owner's Program and any additional available information. If the preliminary estimate exceeds the Owner's budget, the Design-Builder shall make written recommendations to the Owner.

2.5.5 SCHEMATIC DESIGN DOCUMENTS The Design-Builder shall submit for the Owner's written approval Schematic Design Documents based on the agreed upon Preliminary Evaluation. Schematic Design Documents shall include drawings, outline specifications and other conceptual documents illustrating the Projects basic elements, scale and their relationship to the Worksite. One set of these Documents shall be furnished to the Owner. When the Design-Builder submits the Schematic Design Documents, the Design-Builder shall identify in writing all material changes and deviations from the Design-Builder's preliminary evaluation, schedule and estimate. The Design-Builder shall update the preliminary schedule and preliminary estimate based on the Schematic Design Documents.

## 2.6 Design Development Services

2.6.1 The Design Development Documents shall further define the Project including drawings and outline specifications fixing and describing the Project size and character as to site utilization, and other appropriate elements incorporating the structural, architectural, mechanical and electrical systems. Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Design-Builder General Conditions Project requirements. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

2.6.2 Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work, and shall be based upon codes, laws, or regulations enacted at the time of their preparation. These Construction Documents shall delineate, detail, and completely specify all materials and equipment required to fully complete construction of the Project in every respect, consistent with current standards of the profession. The Construction Documents shall be consistent with the latest set of interim design submissions; as such submissions may have been modified in a design review meeting. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.6.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

2.6.3 Owner's review and approval of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim

design submissions and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.

2.6.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

## 2.7 Legal Requirements

2.7.1 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

2.7.2 The Contract Price and/or Contract Time shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

## 2.8 Government Approvals and Permits

2.8.1 Except as identified by the Project Team, 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.

2.8.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

## 2.9 Design-Builder's Construction Phase Services

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

2.9.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill 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. The Design-Builder shall give all notices and comply with all laws and ordinances legally enacted at the date of execution of the contract which govern the proper performance of the work.

2.9.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Design-Builder to prequalify all bidders with a process approved by the Owner. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. All trade packages will be competitively bid.

### 2.9.3.1 Trade Contracts

Trade Contracts will be awarded after consultation with the Owner. Design-Builder (D-B) shall have final authority and responsibility for selection of all Trade Contractors and award of all Trade Contracts.

D-B hereby specifically agrees to indemnify, defend and hold harmless the Owner and Owner's agents, employees, trustees and attorneys for any and all loss, damage, cost, charge, award, verdict, judgment, liability or expense, including without limitation, reasonable attorneys' fees, arising out of any claim, actions or suits which are based upon or in any way related to the process of selecting Trade Contractors or the award of Trade Contracts for the project.

A change in any approved Trade Contractor or the addition of any new Trade Contractor can only be made with the written approval of the Owner.

The D-B agrees to bind every Trade Contractor, and every Trade Contractor agrees to be bound, by the terms of the Agreement, the General Conditions of the Contract, and the Drawings and Specifications insofar as they are applicable to the Trade Contractor's respective portion of the Work. The D-B shall further more fully inform each of its Trade Contractors, prior to executing an agreement with, conformance with related documents and to submit Cost Estimates and Change Order proposals in complete and full analytical detail when so required or requested. The D-B shall indemnify the Owner for any Trade Contractor's claim which may result from the failure of the D-B to incorporate the provisions of this Contract, in the D-B's agreements with any of its Trade Contractors.

The D-B shall indemnify the Owner for any Trade Contractor's claim which may arise out of an inconsistency between the Contract Documents and a Trade Contract. Trade Contracts entered into between the D-B and Trade Contractors shall not be inconsistent with the obligations of the D-B under the Contract Documents.

2.9.4 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.9.5 Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.9.6 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.9.7 The Design-Builder shall maintain the Schedule of Work. This schedule shall indicate the dates for the start and completion of the various stages of the construction, including the dates when information and approvals are required from the Owner. It shall be revised as required by the conditions of the work.

2.10 Design-Builder's Responsibility for Project Safety

2.10.1 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site 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 Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

2.10.2 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related Injury loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work. It shall be the duty and responsibility of the Design-Builder and all its Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Design-Builder to be familiar and comply with all requirements of Public Law 91-596, the Occupational Safety and Health Act of 1970 (OSHA) and all amendments thereto, and to enforce and comply with all of the provisions of this Act.

2.10.3 Design-Builder's responsibility for safety under this Section 2.10 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matter's, and (ii) 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.

2.10.4 At a minimum, the Owner requires the following:

- A. The Design-Builder must provide a site specific written safety program. The safety plan must address all public interfaces, critical activities, and overall project safety. The first pay application will not be processed until this safety plan submission is received.
- B. The Design-Builder's on-site superintendent must be 30-hour OSHA certified. Proof of certification is required. Date of certification must be within (5) years of the start of the project.
- C. The Design-Builder's Safety Director must visit the site on a monthly basis. Inspection report from the site visit must be distributed to the Owner.
- D. 100% eye protection and 100% hard hat protection is required on the construction site. Eye protection and hard hats must be ANSI approved.
- E. OSHA recordable accident data must be submitted to the Owner prior to final payment.

## 2.11 Design-Builder's Warranty

2.11.1 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 failure to maintain the Work by persons other than Design-Builder or anyone for whose acts Design-Builder may be liable. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.11 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

## 2.12 Correction of Defective Work

2.12.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.11 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents.

2.12.2 Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day Period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day periods identified herein shall be deemed inapplicable.

2.12.3 The one year period referenced in Section 2.12.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

## Article 3

### **Owner's Services and Responsibilities**

#### 3.1 Duty to Cooperate

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

3.1.2 Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

#### 3.2 Furnishing of Services and Information

3.2.1 Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely upon in performing the Work:



1. Surveys describing the property boundaries, topography and reference points for use during construction, including existing service and utility lines; Design-Builder General Conditions
2. Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
3. Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;
4. A legal description of the Site;
5. To the extent available, as-built and record drawings of any existing structures at the Site; and
6. To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

3.2.2 Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

### 3.3 Financial Information

3.3.1 At Design-Builder's request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

3.3.2 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

### 3.4 Owner's Representative

3.4.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals 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 prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work.

### 3.5 Government Approvals and Permits

3.5.1 Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in the Owner's Permit List attached as an exhibit to the Agreement.

3.5.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

### 3.6 Owner's Separate Contractors

3.6.1 Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to

cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents. Additionally, Design-Builder shall coordinate any/all inspection efforts procured by the Owner.

## Article 4

### **Hazardous Conditions and Differing Site Conditions**

#### 4.1 Hazardous Conditions

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

4.1.4 Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

4.1.5 To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly for any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.

4.1.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

#### 4.2 Differing Site Conditions

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in

the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition.

4.2.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than forty-eight (48) hours after such condition has been encountered. Failure by the Design-Builder to provide written notice shall constitute a waiver by the Design-Builder of any claim arising out of or relating to such concealed or unknown condition.

## Article 5

### **Insurance and Bonds**

#### 5.1 Design-Builder's Insurance Requirements

5.1.1 Design-Builder is responsible for procuring and maintaining from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Agreement, the following insurance coverages for certain claims which may arise from or out of the performance of the Work and obligations under the Contract Documents:

1. Coverage for claims arising under workers' compensation, disability and other similar employee benefit laws applicable to the Work;
2. Coverage for claims by Design-Builder's employees for bodily injury, sickness, disease, or death;
3. Coverage for claims by any person other than Design-Builder's employees for bodily injury, sickness, disease, or death;
4. Coverage for usual personal injury liability claims for damages sustained by a person as a direct or indirect result of Design-Builder's employment of the person, or sustained by any other person;
5. Coverage for claims for damages (other than to the Work) because of injury to or destruction of tangible property including loss of use;
6. Coverage for claims of damages because of personal Injury or death, or property damage resulting from ownership, use and maintenance of any motor vehicle; and
7. Coverage for contractual liability claims arising out of Design-Builder's obligations under Section 7.4.1 hereof.

5.1.2 Design-Builder's liability insurance required by Section 5.1.1 above shall be written for the coverage amounts set forth in the Agreement and shall include completed operations insurance for the period of time set forth in the Agreement.

5.1.3 Design-Builder's liability insurance set forth in Sections 5.1.1.1 through 5.1.1.7 above shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

5.1.4 To the extent Owner requires Design-Builder or any Design Consultant to provide professional liability insurance for claims arising from the negligent performance of design services by Design-Builder or the Design Consultant, the coverage limits, duration and other specifics of such insurance shall be as set forth in the Agreement. Any professional liability shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project. Such policies shall be provided prior to the commencement of any design services hereunder.

5.1.5 Prior to commencing any construction services hereunder, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the

Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Owner.

## 5.2 Owner's Liability Insurance

5.2.1 Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

## 5.3 Owner's Property Insurance

5.3.1 Unless otherwise provided in the Contract Documents, Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located property insurance upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Owner shall include as additional insured the interests of Design-Builder, Design Consultants, Subcontractors and Sub-Subcontractors, and shall insure against the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. The property insurance shall include physical loss or damage to the Work, including materials and equipment at the Site or within 1000 feet thereof.

5.3.2 Unless the Contract Documents provide otherwise, Owner shall procure and maintain boiler and machinery insurance that will include the interests of Owner, Design-Builder, Design Consultants, Subcontractors and Sub-Subcontractors.

5.3.3 Prior to Design-Builder commencing any Work, Owner shall provide Design-Builder with certificates evidencing that (i) all Owner's insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Design-Builder has completed all of the Work and has received final payment from Owner and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Design-Builder. Owner's property insurance shall not lapse or be canceled if Owner occupies a portion of the Work pursuant to Section 6.5.3 hereof.

5.3.4 Any loss covered under Owner's property insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.

5.3.5 Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. The property insurance has a deductible. The Design-Builder shall be responsible for the first \$5,000 of such deductible. If the Owner or insurer increases the required minimum deductibles above the amounts so identified or if the Owner elects to purchase this insurance with voluntary deductible amounts, the Owner shall be responsible for payment of the additional costs not covered because of such increased or voluntary deductibles. Design-Builder's payment towards the deductible will not exceed \$5,000 per occurrence.

## 5.4 Bonds and Other Performance Security

5.4.1 If Owner requires Design-Builder to obtain performance and labor and material payment bonds, or other forms of performance security, the amount, form, and other conditions of such security shall be as set forth in the Agreement.

## Article 6

### **Payment**

#### 6.1 Schedule of Values

6.1.1 Within ten (10) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

#### 6.2 Monthly Progress Payments

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.

6.2.2 Payments on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site, or at some other location agreed upon in writing, will be made by the Owner subject to the following conditions:

1. Such materials or equipment shall have been fabricated or assembled specifically for the Project and delivered to storage no earlier than needed for the orderly progress of the Work as demonstrated by the Progress Schedule.
2. Title to such materials or equipment shall pass to the Owner pursuant to the Contractor's bill of sale which shall contain a guarantee of replacement thereof in the event of damage thereto or disappearance thereof due to any cause. Payment by the University for stored material will be made only upon receipt of the Contractor's paid-in-full invoice from the manufacturer or supplier.
3. In the case of off-site storage, the Contractor shall also provide consent of Surety to such payment and insurance of such materials or equipment against perils both while in storage and during transportation to the site.
4. Raw materials or other materials or equipment readily duplicated or usable on other projects will be paid for only after the materials are incorporated into the Project.

6.2.3 The Application for Payment shall constitute Design-Builder's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

#### 6.3 Withholding of Payments

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold,

the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

#### 6.4 Design-Builder's Payment Obligations

6.4.1 Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

#### 6.5 Substantial Completion

6.5.1 Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents. If such Work is substantially complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment, and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

6.5.2 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of, all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

6.5.3 Owner, at its option, may use a portion of the Work which has been determined to be substantially complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.5.1 above, (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

#### 6.6 Final Payment

6.6.1 After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has completed all of the Work in conformance with the Contract Documents.

6.6.2 At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

1. An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;
2. A general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;
3. Consent of Design-Builder's surety, if any, to final payment;
4. All operating manuals, warranties and other deliverables required by the Contract Documents; and
5. Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

6.6.3 Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests, (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion and (iii) the terms of any special warranties required by the Contract Documents.

## Article 7

### **Indemnification**

#### 7.1 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 or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably 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 but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

7.1.2 If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright, or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not 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. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

7.1.4 The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement of violation of any patent or copyright.

## 7.2 Tax Claim Indemnification

7.2.1 If, in accordance with Owner's direction, an exemption for all or part of the Work is claimed for taxes, Owner shall indemnify, defend and hold harmless Design-Builder from and against any liability, penalty, interest, fine, tax assessment, attorneys' fees or other expenses or costs incurred by Design-Builder as a result of any action taken by Design-Builder in accordance with Owner's directive.

## 7.3 Payment Claim Indemnification

7.3.1 Providing that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

## 7.4 Design-Builder's General Indemnification

7.4.1 Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its officers, directors, employees and agents from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

7.4.2 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligation set forth in Section 7.4.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.



## 7.5 Owner's General Indemnification

7.5.1 Owner, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Design-Builder and any of Design-Builder's officers, directors, employees, or agents from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Owner's separate contractors or anyone for whose acts any of them may be liable.

## Article 8

### **Time**

#### 8.1 Obligation to Achieve the Contract Times

8.1.1 Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement.

#### 8.2 Delays to the Work

8.2.1 If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will 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 in the Work, Differing Site Conditions, Hazardous Conditions, wars, floods, labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God.

8.2.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price Design-Builder General Conditions Page 15 of 20 provided, however, that the Contract Price shall not be adjusted for those events set forth in Section 8.2.1 above that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

## Article 9

### **Changes to the Contract Price and Time**

#### 9.1 Change Orders

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; and
2. The amount of the adjustment to the Contract Price.

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

9.1.3 If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs Incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

## 9.2 Work Change Directives

9.2.1 A Work Change Directive is a written order prepared and signed by Owner, directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

9.2.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

## 9.3 Minor Changes In the Work

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

## 9.4 Contract Price Adjustments

9.4.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

1. Unit prices set forth in the Agreement or as subsequently agreed to between the parties;
2. A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner; and
3. If an increase or decrease cannot be agreed to as set forth in items .1 and .2 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting Design-Builder General Conditions Page 16 of 20 from the change, including a reasonable overhead and profit, as may be set forth in the Agreement. If the net result of both additions and deletions to the Work is an increase in the Contract Price, overhead and profit shall be calculated on the basis of the net increase to the Contract Price. If the net result of both additions and deletions to the Work is a decrease in the Contract Price, there shall be no overhead or profit adjustment to the Contract Price. Design-Builder shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

9.4.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

9.4.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the

disagreement pursuant to Article 10 hereof. 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 (i) directing Design-Builder to proceed, and (ii) 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 and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

## Article 10

### **Contract Adjustments and Disputes**

#### 10.1 Requests for Contract Adjustments and Relief

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

#### 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 so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

10.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative.

10.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

10.2.4 In the event litigation arises out of this Contract, the parties agree to submit any claim to the competent courts of Centre County, Pennsylvania.

### 10.3 Duty to Continue Performance

10.3.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

### 10.4 CONSEQUENTIAL DAMAGES

10.4.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.4.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

10.4.2 The consequential damages limitation set forth in Section 10.4.1 above is not intended to affect the payment of liquidated damages, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner for some damages that might otherwise be deemed to be consequential.

## 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 the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

11.1.2 Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of work by Owner.

#### 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, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may 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, which have been purchased or provided for the performance of the Work, 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. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.4 hereof.

11.2.4 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

### 11.3 Design-Builder's Right to Stop Work

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop work for the following reasons:

1. Owner's failure to provide financial assurances as required under Section 3.3 hereof; or
2. Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

11.3.2 Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

### 11.4 Design-Builder's Right to Terminate for Cause

11.4.1 Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

1. The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.
2. Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

3. Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem then Design-Builder may give a second written notice to Owner of Its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

## 11.5 Bankruptcy of Owner or Design-Builder

11.5.1 If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

1. The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and
2. The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action. If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

11.5.2 The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

## Article 12

### **Miscellaneous**

#### 12.1 Assignment

12.1.1 Neither Design-Builder nor Owner shall without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

#### 12.2 Successorship

12.2.1 Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

### 12.3 Governing Law

12.3.1 The Agreement and all Contract Documents shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

### 12.4 Severability

12.4.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, 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 as if the unenforceable provision or part were deleted.

### 12.5 No Waiver

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

### 12.6 Headings

12.6.1 The headings used in these General Conditions of Contract, or 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

12.7.1 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) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement, or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

### 12.8 Amendments

12.8.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

### 12.9 Lead-Free Plumbing Certification

12.9.1 The Design-Builder shall provide a certification that all plumbing materials are lead-free and meet the requirements of the Pennsylvania Plumbing and Lead Ban Notification Act. This certification shall be signed by the Design-Builder, notarized and submitted to the University before the water service turn-on.

## 12.10 Construction Waste Management

12.10.1 The Design-Builder is required to recycle and/or salvage 75% construction, demolition, and land-clearing waste. A waste management plan is to be developed for the project which outlines how you will achieve the required recycling rate, including materials to be recycled or salvaged, materials handling requirements, and how you will communicate the plan to your crews and trade/subcontractors. The waste management plan is to be approved by the OPP Project Leader and submitted with the initial application for payment.

12.10.2 At the end of the project, prior to the application for Final Payment, the Design-Builder is required to submit a calculation documenting that the project achieved a 75% diversion rate. The Application for Final Payment will be held until this documentation is received by the Owner. The documentation should include a tabulation of the total waste material, quantities diverted and the means by which they were diverted. A signature declaring that the requirements have been met must be included.

12.10.3 If this project is attempting to achieve LEED certification, the LEED process to achieve the Construction Waste Management credit(s) supersedes this section.

## 12.11 Right to Audit

Design-Builder's "records" shall upon reasonable notice be open to inspection and subject to audit and/or reproduction during normal business working hours. An Owner's representative or an outside representative engaged by Owner may perform such audits. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of three years after final payment or longer if required by law.

Design-Builder's "records" as referred to in this contract shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other contractor records which may have a bearing on matters of interest to the Owner in connection with Design-Builder's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to adequately permit evaluation and verification of: a) contractor compliance with contract requirements, b) compliance with Owner's business ethics policies, and c) compliance with provisions for pricing change orders, invoices or claims submitted by the contractor or his payees.



Design-Builder shall require all payees (examples of payees include subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by incurring the requirements hereof in a written contract agreement between Design-Builder and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. Design-Builder will cooperate fully and will require Related Parties and all of Design-Builder's subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested in an expeditious manner any and all such information, materials and data.

Owner's authorized representative or designee shall have reasonable access to the Design-Builder's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

If an audit inspection or examination in accordance with this Article, discloses overpricing or overcharges (of any nature) by the Design-Builder or any subcontractor to the Owner in excess of one-half of one percent (.5%) of the total contract billings, the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the Design-Builder. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Design-Builder's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of Owner's findings to Design-Builder.

General Conditions of the Contract: September 2013