

EXHIBIT 1

DESIGN-BUILD

AGREEMENT

between

Oregon State University (OSU)

(Owner)

and

(Design-Builder)

Dated _____, 20__

DESIGN-BUILD AGREEMENT

THIS DESIGN-BUILD AGREEMENT (this “Agreement”) is made this ____ day of _____, 20__ (the “Effective Date”), by and between Oregon State University (OSU), a public university (the “Owner”), and _____, a[n] _____ (the “Design-Builder”) (collectively, the “Parties”). Owner and Design-Builder agree as follows:

ARTICLE 1

DEFINITIONS AND GENERAL PROVISIONS

1.1 Definitions. The following terms have the meanings set forth below:

“Alternate” shall mean a scope of work that Design-Builder shall include in applicable budgets and estimates, such that Owner may, at its option and in its sole discretion, approve or disapprove the same as an additional component of the Work.

“Alternate Schedule” shall mean Design-Builder’s separate and identifiable pricing and scheduling information for all Alternates of a Deliverable Portion of Work, including in the applicable Pricing Amendment Documents, for possible addition to the Work.

“BIM” shall mean building information modeling, a design and construction modeling process, that shall be implemented during design and construction of the Project.

“BIM Model” shall mean the digital model or models produced during the design and construction of the Project.

“Business Inclusion and Diversity Program” shall have the meaning given in the General Conditions.

“Claim” shall have the meaning given in the General Conditions.

“Construction Contingency” shall mean separately identifiable contingency funds included in a Pricing Amendment as set forth in *Section 7.4* of this Agreement.

“Construction Documents” shall mean the documents Design-Builder and its consultants prepare for use when performing construction of a Deliverable Portion of Work, or the Project, as the context requires.

“Construction Phase” shall mean the phase of a Deliverable Portion of Work after Owner and Design-Builder enter into a Pricing Amendment for that Deliverable Portion of Work.

“Construction Schedule” shall have the meaning given in the General Conditions.

“Constructor’s Standard of Care” shall mean the professional standard that prevails in comparable areas throughout the United States among construction professionals and construction firms experienced with, and performing the construction and management of, projects similar to the scope, quality, and complexity of the Project.

“Contract Documents” shall have the meaning given in the General Conditions.

“Day” shall have the meaning given in the General Conditions.

“Deliverable Portion of Work” shall have the meaning given in the General Conditions.

“Design Phase” shall mean the phase of a Deliverable Portion of Work prior to Owner and Design-Builder entering into a Pricing Amendment for that Deliverable Portion of Work.

“Design Professional” shall mean [_____] or other professional organization that Design-Builder engages to perform Services, acting in accordance with ORS Chapter 671 (Architects) or ORS Chapter 672 (Engineers) and administrative rules adopted pursuant to the same.

“Design Professional’s Standard of Care” shall mean the professional standard that prevails in comparable areas throughout the United States among design professionals and design professional firms experienced with, and performing the design and administration of, projects similar to the scope, quality, and complexity of the Project.

“Design Schedule” shall mean Design-Builder’s comprehensive, detailed, updated, schedule for delivery of the Services of a Deliverable Portion of Work that is consistent with the Project Schedule, and approved by Owner in writing.

“Early Work” shall mean Work, including preparatory activities and long lead time materials, Design-Builder shall perform under an Early Work Amendment (defined below) prior to a Pricing Amendment that includes such Work.

“Early Work Amendment” shall mean Owner’s written order describing and authorizing Design-Builder to proceed with certain Early Work in a form substantially similar to attached *Exhibit B*.

“Estimated Pricing Amendment Sum” shall mean Design-Builder’s estimate of the total cost to Owner of a Deliverable Portion of Work.

“Estimated Project Sum” shall mean Design-Builder’s preliminary estimate of the total amount Owner will pay for the Project, generated in accordance with *Section 5.2*.

“Final Completion” shall have the meaning given in the General Conditions.

“General Conditions” shall mean the General Conditions of the Contract for Construction attached as *Exhibit A*.

“Guaranteed Substantial Completion Date” shall mean the date, as set forth in the applicable Pricing Amendment, by which Design-Builder shall achieve Substantial Completion of the applicable Deliverable Portion of Work.

“Instruments of Service” shall mean the Drawings, Specifications, and other documents and information expressing the Project, whether in form, function, concept, or otherwise, produced by Design-Builder or its Subcontractors.

“Key Personnel” shall have the meaning given in *Section 4.5* of this Agreement.

“Notice to Proceed” shall have the meaning given in the General Conditions.

“Owner Parties” shall mean, individually or collectively, as the case may be, Owner and Owner’s Representative’ provided, however, Owner shall have the exclusive right to change at any time such parties so designated as Owner Parties.

“Owner-Supplied Equipment and Materials” shall mean equipment and materials Owner procures and supplies for Design-Builder’s incorporation in the Project as part of the Work.

“Preliminary Services Sum” shall mean the not-to-exceed maximum sum amount payable by Owner to Design-Builder for Services, including Reimbursable Expenses rendered before Owner agrees to a Pricing Amendment applicable to those Services, as set forth in *Exhibit C-1*.

“Pricing Amendment” shall mean an amendment to this Agreement, signed by Owner and Design-Builder, determined in accordance with *Article 5*, issued in the form of *Exhibit C-2*, establishing the Pricing Amendment Sum, compensation method, Guaranteed Substantial Completion Date as updated and set forth in the Project Schedule, and Pricing Amendment Documents, for each Deliverable Portion of Work.

“Pricing Amendment Documents” shall mean the Drawings, Specifications, clarifications, qualifications, assumptions, and other documents, upon which a Pricing Amendment is based, all as approved by Owner.

“Pricing Amendment Sum” shall mean the maximum amount payable by Owner to Design-Builder for a Deliverable Portion of Work.

“Project Criteria” shall mean Owner’s preliminary Project information, which may include preliminary designs, design requirements, programming information, physical characteristic requirements, sustainable objectives, siting requirements, geotechnical reports or data, preliminary budget, scheduling information and milestone dates, or other requirements and information, all as set forth in *Exhibit D*, as the same may be supplemented from time to time, subject to the Project Schedule.

“Reimbursable Expenses” shall mean Design-Builder’s consultants’ (including Design Professional) travel and subsistence expenses, communication services, approval fees of authorities have jurisdiction over the Services, document production fees, postage and shipping fees, Site office expenses, and other similar Owner-approved Project-related expenses.

“Services” shall mean the design services Contractor furnishes to fulfill its Project obligations and execute the terms of the Contract Documents.

“Standard of Care” shall mean Design Professional’s Standard of Care, or Constructor’s Standard of Care, as the context requires.

“Supporting Documents” shall have the meaning given in the General Conditions.

“Work” shall have the meaning given in the General Conditions.

1.2 Other Terms. In addition to the terms defined in this *Article 1*, other terms are defined throughout this Agreement in sections relevant to their use, and in the General Conditions. If terms are not defined in this Agreement or the General Conditions, they shall have their well-known technical or construction industry meanings.

1.3 Context. As the context of each provision of this Agreement changes, so too shall its verbs and nouns. Specifically, terms in the singular and the plural shall include one another, and terms in the feminine, masculine, or neuter, shall include one another. Use of the word “including” throughout this Agreement shall mean “including without limitation” and shall not be deemed a limitation but instead an illustration.

1.4 Incorporation by Reference. All exhibits, schedules, and other attachments to this Agreement, including the General Conditions, shall be incorporated in and integral to this Agreement by their reference.

1.5 General Conditions. Design-Builder is referred to in the General Conditions as “Contractor.”

ARTICLE 2

RELATIONSHIP OF THE PARTIES

2.1 Relationship of the Parties. Design-Builder acknowledges and accepts that by the terms of the Contract Documents, Owner places its trust and confidence in Design-Builder. As such, Design-Builder covenants to: (i) cooperate with Owner Parties; (ii) exercise its best skill and judgment in furthering Owner’s interests for the benefit of the Project, including delivering efficient design, construction, administration, management, and supervision; (iii) furnish at all times an adequate supply of labor and Materials; and (iv) perform the Work in conformance with the Contract Documents and in an expeditious and economical manner.

2.2 Open Communication. Design-Builder shall regularly communicate with Owner Parties for the duration of the Project.

ARTICLE 3

OWNER'S RIGHTS AND RESPONSIBILITIES

3.1 Timely Response. Owner Parties shall render decisions in a timely manner to avoid unreasonable delay in the orderly progress of the Work; provided, however, Design-Builder shall timely advise Owner Parties of the time requirements pertaining to such decisions.

3.2 Owner's Personnel.

3.2.1 Project Consultants. Owner has separate agreements with Owner's Representative and Owner's other Project consultants, and although referred to in, are not parties to, this Agreement. Owner reserves the right to change Owner's Representative and will give Design-Builder prompt written notice of any such change. None of Owner's Representative's services supplant or modify any of Design-Builder's obligations, whether express, implied, or customary.

3.2.2 Communications. Owner's Representative shall give Design-Builder written direction on behalf of Owner. Unless specifically authorized, Design-Builder shall communicate with Owner, through Owner's Representative. All communications to and from Subcontractors and Suppliers shall be through Design-Builder.

3.2.3 Control. Owner Parties shall not be deemed to have control or charge of, and will not be responsible for acts or omissions of, Design-Builder, Subcontractors, or their respective agents or employees, or any other Persons performing Work.

ARTICLE 4

DESIGN-BUILDER'S RIGHTS AND RESPONSIBILITIES

4.1 Standard of Care. Design-Builder covenants it and its Subcontractors will perform the Work in accordance with the recognized standards of design and construction industry practices. Design-Builder further covenants the Services will be performed in accordance with Design Professional's Standard of Care and Work other than the Services will be performed in accordance with Constructor's Standard of Care.

4.2 Design-Builder's Role Generally. Design-Builder shall fully, properly, and timely, perform all Work, as required by the Contract Documents, to furnish Owner with a first-class, complete, fully-functional Project, capable of being used for its intended purpose. Throughout the Project, Design-Builder shall coordinate and manage the design and building process as an independent contractor, continuously monitor the schedules and budgets pertaining to the Work, and recommend adjustments to the Project as necessary to ensure completion of the Project in the most expeditious and efficient manner possible. During the Construction phase, Design-Builder shall be the Project's general contractor.

4.3 Cooperation. Design-Builder covenants to support a collaborative and cooperative relationship among it, Owner, Owner's Representative, Design Professional, other Project participants, and others Owner may engage to perform services or work not included in the Work. Design-Builder shall obtain and transfer, or assist others to obtain and transfer, warranties, and to perform warranty and inspection Work for the Project through the expiration date of the applicable warranty period.

4.4 Progress Reports. Design-Builder shall keep Owner Parties informed of the progress of the Work. Design-Builder shall submit to Owner Parties monthly Progress Reports, which shall include: (i) Work completed for the reporting period; (ii) an updated Project Schedule, Design Schedule and Construction Schedule, as applicable; (iii) an updated Submittal log including a summary of outstanding

Submittals; (iv) pending and approved changes under *Article 10* of the General Conditions; (v) test and inspection reports; and (vi) current total Reimbursable Expenses.

4.5 Design-Builder's Personnel and Consultants.

4.5.1 Design-Builder's personnel shall include those described in Design-Builder's staff chart in attached *Exhibit E* (the "Key Personnel"). Design-Builder shall submit to Owner Parties for approval within fifteen (15) Days of the Effective Date a list of the Key Personnel, which shall include the background, experience, and qualifications, of each of the Key Personnel. Following Owner Parties' approval, Design-Builder shall use best efforts to keep the Key Personnel assigned to the Project and performing in accordance with Owner's expectations and shall not assign to the Project any other senior personnel without Owner Parties' prior written approval.

4.5.2 Design-Builder shall promptly replace any personnel assigned to the Work upon Owner Parties' reasonable objection to such personnel.

4.5.3 In addition to the staff chart referenced above, Design-Builder shall include in *Exhibit E* its individual scheduled payment rates for all Key Personnel and Project personnel. Such rates shall include the pro rata portion of the cost of (a) mandatory and customary contributions and benefits pursuant to Design-Builder's company-wide policy and (b) applicable collective bargaining agreements.

4.5.4 In the event Design-Builder no longer employs any of the Key Personnel, Design-Builder shall promptly notify Owner Parties and shall use best efforts to provide a permanent replacement suitable to Owner Parties within ten (10) Days after such event.

4.5.5 Design-Builder represents that all persons under its direction performing Work who are required by Applicable Laws to be licensed are so licensed and will remain licensed for the duration of the Agreement.

4.6 Governmental Approvals. Design-Builder and Subcontractors shall secure and assist Owner to secure all Governmental Approvals.

4.7 Service Plan.

4.7.1 Submittal. Design-Builder shall submit to Owner Parties for review, within fifteen (15) Days of the Effective Date, its Project service plan. The service plan shall clearly communicate to Owner Parties Design-Builder's Project management plan including Project staffing and a Work Plan, all as set forth below.

4.7.2 Forms and Procedures. Owner Parties may develop forms and procedures for the administration and tracking of the Work and the Contract Documents. Design-Builder agrees it shall incorporate into its service plan all such forms and procedures as Owner Parties may require.

4.7.3 Project Staffing. Design-Builder shall include in its service plan a detailed staffing plan describing Design-Builder's and its consultants' services, including those of the Key Personnel. The staffing plan shall include, at a minimum, (i) the names of all individuals assigned to each Project phase; (ii) a brief description of such individuals' Project roles and responsibilities; and (iii) anticipated percentage of working time such individuals will expend performing Work for each Project phase.

4.7.4 Work Plan. Design-Builder shall include in its service plan and shall implement throughout the Project an updated and comprehensive work plan defining and describing Design-Builder's (and its Subcontractors' and consultants') deliverables and tasks throughout the design and construction process for each Deliverable Portion of Work, as well as procedures, schedules, documentation, and quality control plans (collectively, the "Work Plan"). The Work Plan shall also include Design-Builder's points of contact, file type and data transfer methods, and other protocols for everyday communications and document processing during preconstruction, construction, and post-construction.

4.8 Owner-Supplied Goods.

4.8.1 Design-Builder acknowledges Owner may supply the Project certain Owner-Supplied Equipment and Materials. Design-Builder shall cooperate with Owner Parties and shall provide information and assistance as Owner Parties may reasonably request to investigate such Owner-Supplied Equipment and Materials. Design-Builder's assistance may include providing quotes or Alternates such that Owner Parties may understand the cost of potential Owner-Supplied Equipment and Materials versus the cost of those same goods supplied through Design-Builder.

4.8.2 If Owner elects to procure Owner-Supplied Equipment and Materials for the Project, Owner Parties, together with Design-Builder, will develop an agreed upon responsibility matrix for the same. However, unless Owner and Design-Builder otherwise agree in writing, the Work shall include coordination, handling, inspecting, preparing, installing, commissioning, and testing such Owner-Supplied Equipment and Materials.

4.8.3 Owner and Design-Builder agree they will sign amendments and other documentation necessary to memorialize their agreement to matters related to the Owner-Supplied Equipment and Materials.

4.9 Building Information Modeling.

4.9.1 Protocols. Design-Builder may employ BIM to design, engineer, and construct, the Project.

.1 Owner Parties and Design-Builder shall meet to establish written protocols governing the BIM Model (the "BIM Protocols") including file formats, levels of development, authorized uses, and development and safekeeping responsibilities, governing all parties developing the Project's BIM Models. When completed, the BIM Protocols shall govern all parties' development of the Project's BIM Models.

.2 Design-Builder shall be responsible for management, development, and hosting of its BIM Model, its Subcontractors' BIM Models, and the Project's integrated BIM Model. Design-Builder shall have ultimate responsibility to perform clash detection among all BIM Models during the Design Phase and through Final Completion of the Project.

.3 Among Design-Builder's As-Built Documents due prior to Final Completion of each Deliverable Portion of Work, Design-Builder shall deliver to Owner an as-built BIM Model, built from its construction BIM Model, suitable for Owner's continued use during the lifecycle of that completed Work.

4.9.2 Ownership of BIM Models. Owner shall own at all times all of the Project's BIM Models. All parties modeling or otherwise submitting Project-specific data for modeling hereby transfer and convey to Owner all right, title, and interest, in and to, all such data and modeling and to the BIM Models.

4.10 Other Obligations. Design-Builder shall perform all other obligations and provide all other services (a) set forth in the Contract Documents and (b) necessary to fully and properly complete the Work.

4.11 Limitation of Authority. Design-Builder shall have no authority to bind Owner without Owner's prior written approval. Design-Builder shall have authority to act on Owner's behalf only to the extent provided in the Contract Documents.

ARTICLE 5

DESIGN PHASE SERVICES

5.1 Design Phase Services. During the Design Phase, Design-Builder shall provide Services, as set forth in this Agreement, including this *Article 5*, and as Owner Parties may reasonably request.

5.2 Project Planning. Design-Builder shall jointly with Owner Parties schedule and attend regular meetings to consult, advise, and solicit feedback from Owner Parties on all aspects of the planning and design of the Project. Design-Builder shall review and comment on Owner's Project Criteria, each in terms of the other. Design-Builder shall assist Owner to refine its proposed budgets, including by generating and delivering to Owner Parties its Estimated Project Sum, utilizing the Project Criteria, and estimating techniques appropriate to the Project's stage of development, and shall refine the Estimated Project Sum based on changes during the Project.

Design-Builder shall schedule and conduct weekly meetings with Owner Parties to review development of the Services, Drawings, Specifications, and the Project in general, including procedures, progress, coordination, and scheduling.

5.3 Project Criteria.

5.3.1 Design-Builder shall meet with Owner Parties to discuss its preliminary evaluation of the Project Criteria (the "Preliminary Evaluation Meeting") during which Design-Builder shall address (a) possible alternative approaches to design and construction of the Project and recommend when appropriate accelerated or fast-track scheduling, procurement, or phased construction and (b) cost information, constructability, and procurement and Project scheduling issues.

5.3.2 Within ten (10) Days of the Preliminary Evaluation Meeting, Design-Builder shall report in writing to Owner Parties with a summary of its understanding and a plan for implementation of the Project Criteria (the "Preliminary Design Report"), including: (i) a preliminary Estimated Project Sum and recommendations for meeting or adjusting the Project Criteria to conform to the Owner's budget; (ii) preliminary Design Schedules, including proposed design milestones; (iii) dates by which information and decisions from Owner are required; (iv) an anticipated date of delivery to Owner Parties of each Pricing Amendment; and (v) dates of periodic design review sessions with Owner Parties

5.3.3 Owner Parties shall review the Preliminary Design Report and either approve in writing of, or comment on, the same. Design-Builder shall revise the Preliminary Design Report in accordance with Owner Parties' comments until Owner approves in writing the Preliminary Design Report (the "Preliminary Report Approval"). Upon issuance of the Preliminary Report Approval, Design-Builder shall proceed with the Design Phase in accordance with the Design Schedules; provided, however, the Preliminary Report Approval shall not be deemed to modify the Project Criteria unless Owner and Design-Builder formally enter into a change in accordance with *Article 10* of the General Conditions.

5.3.4 Design-Builder shall confirm that the Project Criteria complies with Applicable Laws and lawful orders of Governmental Authorities. In the event the Project Criteria conflicts with Applicable Laws or lawful orders of Governmental Authorities, Design-Builder shall notify Owner of the same. If Design-Builder determines that Owner Parties' instructions would cause a violation of Applicable Laws or lawful orders of Governmental Authorities, Design-Builder shall promptly notify Owner Parties in writing.

5.3.5 After Owner issues the Project Criteria, if there is a change to the Project Criteria that is other than a minor change as set forth in *Section 10.3* of the General Conditions, Owner and the Design-Builder shall enter into a Change Order in accordance with *Section 10.3.2* of the General Conditions.

5.4 Project Scheduling.

5.4.1 Preliminary Scheduling. Throughout each Design Phase, Design-Builder shall continue to refine and update the applicable Design Schedule as necessary to respond to changes to the Work.

5.4.2 Project Schedule. Design-Builder shall prepare in conjunction with Owner Parties, and periodically update, a preliminary Project Schedule. Design-Builder shall include the necessary activities and timelines to support the Work of which Design-Builder is aware or believes to be necessary, including off-site transportation, site work outside of the scope of the Work, and off-site utility extensions. Design-Builder and Owner Parties shall each furnish the other with proposed revisions to the preliminary Project Schedule and Design-Builder shall edit and revise the same until Owner approves.

.1 Design-Builder shall be responsible for updating the Project Schedule throughout the duration of the Project.

.2 Design-Builder shall also propose to Owner Parties, and evaluate as requested, alternative schedules for delivery of the Project. Design-Builder shall estimate and inform Owner Parties of affects such alternative schedules may have on the Estimated Project Sum.

5.4.3 Special Procurement Issues. Design-Builder shall investigate and recommend to Owner a schedule for the purchase of Materials and equipment requiring advance procurement (e.g., due to long lead times) and for Owner-Supplied Equipment and Materials. Design-Builder shall also work with Owner Parties to identify critical elements of the Work that may require special procurement.

5.5 Project Phasing. Each Deliverable Portion of Work includes a Design Phase and a Construction Phase. Design-Builder shall recommend to Owner Parties Project phasing and Work prioritization based on the labor and material markets, project logistics, and such other important factors including time of performance, overlapping trade jurisdictions, weather conditions, and provisions for temporary facilities for the Work.

In the event Owner chooses to proceed with the Project or the Work in phases, Design-Builder shall cooperate to economically and efficiently divide the Work into separate Deliverable Portions of Work to accommodate such phases.

5.6 Construction Schedules. Design-Builder shall prepare and update Construction Schedules in accordance with *Section 5.13* below.

5.7 Cost and Constructability. During the Design Phase, Design-Builder shall work with Owner Parties to regularly estimate costs and analyze constructability of all major components and systems of the Work such that the design and budget can timely develop together.

Upon the dates set forth in the Project Schedule and in accordance with the development of the Services, Design-Builder shall submit to Owner Parties its final updated Estimated Project Sum.

5.8 Cost Estimates. Design-Builder shall use the final Estimated Project Sum to prepare for Owner Parties a detailed Project budget, including an Estimated Pricing Amendment Sum for each Deliverable Portion of Work, in accordance with this Agreement, and on the dates set forth in the Project Schedule. Design-Builder shall update its Project budget and Estimated Pricing Amendment Sums, using recognized and accepted industry techniques. In the event the Project's cost estimates, including the Estimated Pricing Amendment Sums, when taken together, exceed the Estimated Project Sum, Design-Builder shall meet with Owner Parties to discuss changes and review alternatives necessary to maintain a mutually acceptable Project budget.

Design-Builder shall estimate the costs of alternative designs or Materials to determine preliminary budgets and their possible economies, including those necessitated by special procurement issues, as set forth in *Section 5.4.3* above.

5.9 Design Documents.

5.9.1 Facilitation of Services. Prior to entering into a Pricing Amendment for a Deliverable Portion of Work, information Design-Builder submits to Owner Parties and Owner's decisions, shall be to facilitate the Services and shall not be deemed to modify the Project Criteria unless Owner and Design-Builder enter into a change in accordance with *Article 10* of the General Conditions.

5.9.2 Design. During the Design Phase, Design-Builder shall advise Owner on proposed Site use and improvements, selection of materials, building systems and equipment, and other pertinent design-related considerations.

5.9.3 Certification. Upon Owner Parties' request, Design-Builder shall furnish Owner Parties with individual certifications from Design Professional and Design-Builder's consultants stating (a) to the best of their knowledge, information and belief, the Drawings, Specifications, or Services to which the certifications relate are (i) consistent with the Contract Documents, except to the extent specifically identified in the certificate, and (ii) comply with Applicable Laws and lawful orders of Governmental Authorities and (b) Owner Parties shall be entitled to rely upon the certification.

5.10 Design Phase Deliverables.

5.10.1 In accordance with the Project Schedule, for each Deliverable Portion of Work, Design-Builder shall prepare and submit to Owner Parties its initial design, including a report identifying any deviations from the Project Criteria, and: (i) a Site plan; (ii) the applicable schematic design; and (iii) updated budgets and pricing estimates (collectively, the "Preliminary Design Deliverable").

5.10.2 Owner Parties shall review the Preliminary Design Deliverable and either approve in writing of, or comment on, the same. Design-Builder shall revise the Preliminary Design Deliverable in accordance with Owner Parties' comments until Owner approves the same in writing. The Preliminary Design Deliverable shall not be deemed to modify the Project Criteria unless Owner and Design-Builder enter into a change in accordance with *Article 10* of the General Conditions.

5.10.3 Upon Owner's approval of the Preliminary Design Deliverable, Design-Builder shall prepare and submit to Owner Parties its final design, including: (i) a report identifying any deviations from the Project Criteria; (ii) developed Drawings and Specifications; and (iii) updated budgets (collectively, the "Final Design Deliverable").

5.10.4 Owner Parties shall review the Final Design Deliverable and either approve in writing of, or comment on, the same. Design-Builder shall revise the Final Design Deliverable in accordance with Owner Parties' comments until Owner approves the same in writing. The Final Design Deliverable shall not be deemed to modify the Project Criteria unless Owner and Design-Builder enter into a change in accordance with *Article 10* of the General Conditions.

5.11 Pricing Amendment. If Owner approves a Final Design Deliverable in accordance with *Section 5.10* above, Design-Builder shall prepare Pricing Amendment Documents, which shall include Work that shall be priced, scheduled, and included in the Contract Documents, as an Alternate, and Work that shall be priced, scheduled, and included in the Contract Documents, as an Allowance. The Alternate Schedule shall include the required start dates for each Alternate, and the sequencing priority of implementing each Alternate.

5.11.1 By including an Allowance in Pricing Amendment Documents, Design-Builder represents and warrants it is a reasonable estimate of the costs of the Work of such Allowance, based on Design-Builder's best skill and judgment, based on the other Pricing Amendment Documents that are sufficiently detailed to make such an estimate. Each Alternate's and Allowance's pricing shall remain valid from the date the applicable Pricing Amendment is fully-signed through the date of Final Completion of the applicable Deliverable Portion of Work containing each such Alternate or Allowance unless, in the case of an Allowance, Design-Builder develops a final price for that portion of the Work

included in such Allowance, in which case that final price shall remain valid through the date of Final Completion of the applicable Deliverable Portion of Work.

5.11.2 In accordance with the Project Schedule and based upon the approved Final Design Deliverable and the Estimated Pricing Amendment Sum, Design-Builder shall deliver to Owner Parties for review, comment, and approval its proposed Pricing Amendment, supporting Pricing Amendment Documents, and its Work plan, for the applicable Deliverable Portion of Work.

5.11.3 Upon Owner's approval and the Parties' signatures, a proposed Pricing Amendment shall amend this Agreement, and shall be revised only by Change Order.

5.11.4 Notwithstanding anything to the contrary contained in the Contract Documents, Owner shall not be required to enter into any Pricing Amendment and, unless and until the Parties enter into a Pricing Amendment, Design-Builder's rights, including to payment, under the Contract Documents, shall be limited to only its completed Work, including completed Early Work set forth in an Early Work Amendment.

5.12 Early Work Amendment. Notwithstanding an Early Work Amendment, any Early Work Design-Builder may perform or be authorized to perform shall not waive Owner's right to reject the Pricing Proposal.

5.13 Construction Schedules. Design-Builder shall incorporate the relevant portions of the Project Schedule, into its Construction Schedules. After Owner approves a Pricing Amendment, Design-Builder shall update and distribute with the Progress Report its approved Construction Schedule for that Work. Each such updated Construction Schedule shall conform to the Contract Documents' requirements and shall accurately reflect progress and remaining estimated durations of applicable Work.

5.14 Construction Documents. After Owner and Design-Builder enter into a Pricing Amendment, Design-Builder shall prepare the Construction Documents it will use to construct the Deliverable Portion of Work associated with that Pricing Amendment, which shall be consistent with, and lend further detail to, the Final Design Deliverable.

Upon completion of the Construction Documents, Design-Builder shall provide the same to Owner Parties for review. If Owner Parties discover deviations from the Final Design Deliverable or other inconsistencies among the Construction Documents and the Contract Documents, Owner shall notify Design-Builder in writing of the same. The Construction Documents shall not modify the Project Criteria or the other Contract Documents unless Owner and Design-Builder enter into a change in accordance with *Article 10* of the General Conditions. Owner Parties' failure to discover any such deviations shall not relieve Design-Builder of its obligation to perform the Work in accordance with the Contract Documents.

5.15 Energy Analysis. Design-Builder shall cooperate with Owner Parties and maximize energy efficiency in the Project by proposing, supporting, and estimating costs associated with energy related incentive programs with every construction cost estimate and as Owner Parties may request.

5.16 Other Preparation for Construction. Design-Builder shall plan, in writing and through drawings as appropriate, the Project's Site coordination, including staging and storage areas, and rules applicable to Site operations.

5.16.1 Design-Builder shall recommend a schedule for and, if Owner requests, aid in delivery of, Owner-Supplied Equipment and Materials, including those items requiring special procurement, as set forth in *Section 5.4.3* above.

5.16.2 Design-Builder shall confirm all Construction Documents: (a) coordinate separate Subcontractors' Work, (b) are assigned to the appropriate trade, (c) minimize the likelihood of jurisdictional disputes, and (d) allow for phased construction if and when applicable.

5.16.3 Unless Owner Parties otherwise direct or the Contract Documents otherwise require, Design-Builder shall obtain all permits, licenses, and approvals for the Work, including building,

Site development, shoring and excavation, and utilities, as required by Governmental Authorities and customarily obtained by construction contractors.

5.16.4 The Construction Phase of a Deliverable Portion of Work shall not commence prior to a Pricing Amendment for that Work unless and only to the extent set forth in an Early Work Amendment.

ARTICLE 6

CONSTRUCTION PHASE SERVICES

6.1 General Subcontracting Requirements. For purposes of this *Article 6* the term “Subcontractor” shall include the term “Supplier.”

Design-Builder shall assure that the Work under all Subcontracts, when taken together, will be complete and sufficient for the entire construction of the Project as required by the Contract Documents.

Design-Builder’s Subcontracting records are not intended to be considered public records; provided, however, that Owner and other agencies of the State shall retain the right to audit and monitor the Subcontracting process to protect Owner’s interests.

Design-Builder’s use of Subcontractors shall not relieve Design-Builder of any of its obligations or liabilities under the Contract Documents. Design-Builder shall have sole responsibility for managing, coordinating, and settling disputes involving any Subcontractor.

6.2 Subcontractor Interest. Design-Builder shall develop Subcontractor interest in the Project and shall furnish Owner Parties with a list of possible Subcontractors for each principal portion of the Work (the “Potential Subcontractor List”). Design-Builder’s submission of the Potential Subcontractor List is for information and discussion only and is not for Owner Parties’ prequalification. Owner’s receipt of the Potential Subcontractor List shall not require Owner Parties to investigate, and shall not waive Owner Parties’ right to reject, the qualifications of any Subcontractors.

6.2.1 Design-Builder shall furnish Owner Parties with information and advice concerning current construction market bidding conditions and shall advise Owner Parties of subcontracting opportunities with certified diverse businesses.

6.2.2 Within fourteen (14) Days of Owner and Design-Builder entering into a Pricing Amendment, Design-Builder shall furnish Owner Parties with a written list of proposed Subcontractors for each principal portion of the applicable Work. Owner Parties will reply within seven (7) Days to the Design-Builder in writing if Owner has reasonable objection to any such proposed Subcontractor.

6.2.3 Design-Builder shall comply with OSU Business Inclusion and Diversity Program as set forth in OSU Standard 03-010 and OSU Procurement and Contract Services Manual Section 316.

6.2.4 Design-Builder shall, and require Subcontractors to, comply with State of Oregon Bureau of Labor & Industries prevailing wage rates.

6.2.5 Design-Builder shall indemnify, defend, and hold harmless, Owner Parties, from and against any Subcontractor claim that arises due to Design-Builder’s failure to incorporate the relevant terms of this *Article 6* and other necessary provisions of the Contract Documents in each Subcontract.

6.3 Early Work. Design-Builder and Owner may enter into one or more Early Work Amendment identifying specific Work that shall be performed prior to a Pricing Amendment that includes such Work, subject to a not-to-exceed budget and price. All Early Work shall be performed and Owner shall pay for the same in accordance with the terms of the Contract Documents and the terms of the applicable Early Work Amendment.

6.3.1 Prior to commencing any Early Work: (i) Design Professional shall have issued Construction Documents for that Early Work; (ii) Governmental Approvals necessary to commence such Early Work shall have been issued; (iii) Design-Builder shall have submitted, for Owner Parties' review and approval, a Construction Schedule and cost estimate for the Early Work; (iv) Design-Builder shall have selected Subcontractors to perform the Early Work; and (v) Owner Parties shall have issued a Notice to Proceed with the Early Work.

6.3.2 The costs of Early Work shall be included in the applicable Pricing Amendment and Design-Builder's obligation to develop its Pricing Amendments shall not be deferred or waived by any Early Work Amendment.

6.4 Construction.

6.4.1 Scope of Work. Unless otherwise set forth in the Contract Documents, Design-Builder shall provide and pay for labor, Materials, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

6.4.2 Substitutions. When a material or system is specified in the Contract Documents, Design-Builder may make substitutions only in accordance with *Article 10* of the General Conditions.

ARTICLE 7

PAYMENT

7.1 **Contract Sum.** Subject to the terms of the Contract Documents, Owner shall pay Design-Builder the Contract Sum subject to the Preliminary Services Sum and each Pricing Amendment Sum, as the same may be amended from time to time by Change Order. Design-Builder shall bear, without Owner's reimbursement, all costs in excess of (a) the Preliminary Services Sum and (b) each applicable Pricing Amendment Sum.

7.2 **Alternates.** Owner shall approve each Alternate by Change Order in accordance with *Section 10.3* of the General Conditions. Unless so approved, Design-Builder shall not proceed with an Alternate. If Owner approves one or more Alternates, payment for such approved Alternates shall be included in Design-Builder's applicable Applications for Payment in accordance with *Section 7.5*.

7.3 Allowances.

7.3.1 Design-Builder shall promptly develop and deliver to Owner Parties a final price for each of its Allowances after the Contract Documents pertinent to each such Allowance are completed. If Design-Builder's final price exceeds an Allowance, Owner will elect to: (a) issue a Change Order by an amount to which Owner and Design-Builder agree for the Work of that Allowance, or (b) cause Design-Builder and its consultants to redesign the Work of that Allowance, including Work ancillary to the Work of the Allowance, such that the Allowance price set forth in the applicable Pricing Amendment will not be exceeded.

7.3.2 If Design-Builder's final price is less than an Allowance, Design-Builder and Owner will promptly issue a deductive Change Order to the applicable Pricing Amendment.

7.3.3 In the event some of Design-Builder's final prices exceed, and others are less than, their applicable Allowance prices, Owner may offset such prices to reduce or eliminate the number of Change Orders otherwise necessary due to all of those Allowances.

7.4 **Construction Contingency.** Each Pricing Amendment shall include a preliminary Construction Contingency in an initial amount to which Owner and Design-Builder agree.

7.4.1 Use of Funds. Subject to Owner Parties' prior written approval, Design-Builder may apply Construction Contingency funds to unexpected increases in costs of the Work, including due to: (i) unforeseen differences in the scope of the Work; (ii) corrective Work due to Defective Work; (iii) errors in estimating; (iv) overtime expenses; (v) other errors or omissions not due to breach of the Contract Documents, and not due to negligence or willful misconduct; and (vi) Subcontractor default if Design-Builder shows it took reasonable steps to cause each such defaulting Subcontractor or Subcontractor's surety to perform its Work; provided, however, requisite or otherwise available insurance would not cover such default.

In no event shall Construction Contingency funds be used to pay Liquidated Damages.

7.5 Progress Payments

7.5.1 Applications for Payment.

.1 *Design Services*. Design-Builder shall prepare separate Applications for Payment for the Services of each Deliverable Portion of Work executed, in accordance with *Article 6* of the General Conditions, and this *Section 7.5*. Before an applicable Pricing Amendment Sum is established, Owner shall make progress payments for the Work on account of the Preliminary Services Sum including for documented Reimbursable Expenses. After the applicable Pricing Amendment Sum is established, Owner shall make progress payments on account of that Pricing Amendment Sum as provided in *Article 5* above, including for Reimbursable Expenses.

.2 *Construction Services*. Design-Builder shall prepare separate Applications for Payment for the Work of each Deliverable Portion of Work executed, in accordance with *Article 6* of the General Conditions, and this *Section 7.5*. Owner shall make progress payments on account of the applicable Pricing Amendment Sum as provided below and elsewhere in the Contract Documents.

7.5.2 Required Contents. Design-Builder shall include the following in each Application for Payment and each shall be a condition precedent to Owner's payment:

.1 *Schedule of Values*. An updated Schedule of Values showing all current expenses pertaining to the Work.

.2 *Percent Complete*. The percentage each portion of the applicable Work is completed, as compared to and categorized in the Schedule of Values, as of the end of the period covered by such Application for Payment. The percentage of the Work that is completed in each Application for Payment shall be the percentage of Work that has actually been completed and not rejected for the applicable Deliverable Portion of Work.

.3 *Progress Report*. A current Progress Report, updated Project, Design, and Construction Schedules, if any, for the Deliverable Portion of Work applicable to the Application for Payment, all in accordance with *Section 4.4* and *Article 5* of this Agreement.

.4 *Supporting Documents*. Supporting Documents and any other evidence Owner Parties reasonably require to demonstrate cash payments, all on account of costs of the Work, equal to or exceeding: (i) progress payments Design-Builder has already received; plus (ii) payrolls for the period covered by the present Application for Payment; plus (iii) retainage as set forth in *Section 7.5.4*, if any, applicable to prior progress payments, less back-charges and credits pursuant to Design-Builder's Subcontracts. Design-Builder shall include among its Supporting Documents a log of small tool acquisitions along with organized copies of receipts of all small tools purchased for the Project. Design-Builder shall also include in such log records of disposition of small tools whose selling price exceeds one hundred dollars (\$100). An up-to-date copy of such log

shall accompany each Application for Payment that includes the acquisition or disposition of such small tools.

.5 *Statement of Furnishing.* A sworn statement identifying: (i) the names of all parties furnishing and the goods, labor, or services so furnished to the Project with a value in excess of twenty-five thousand dollars (\$25,000) during the time period of the applicable Application for Payment; (ii) payments made to each party furnishing goods, labor, or services; and (iii) amounts due and remaining amounts that are likely to become due to each party furnishing goods, labor, or services.

.6 *Claims Statement.* A statement expressly made to induce Owner's payment, detailing the costs of the Work completed less retainage withheld, along with any Claims pertaining to that Work, sworn to by the Design-Builder and the Subcontractors, attesting to the satisfactory completion of the Work with qualifications pertaining to the Claims.

.7 *Lien and Bond Claim Waivers.* The partial waiver of liens and bond claims, in the form set forth on *Exhibit F*, of Design-Builder and all Subcontractors and their Sub-subcontractors and Suppliers who are listed in the immediately prior Application for Payment for which Design-Builder has received payment.

.8 *No Change Orders.* Design-Builder's statement certifying there are no Change Order requests or other claims for additional payment outstanding, or, if a Change Order request or claim for additional payment is outstanding, the amount of funds in issue, the name of the potential claimants, and a description of the pertinent Work.

7.5.3 Computation. Subject to other terms of the Contract Documents, progress payments shall be computed as follows:

.1 Take that portion of the applicable cost limitation (i.e., the Preliminary Services Sum or Pricing Amendment Sum) that is properly allocable to completed Work as determined by multiplying the percentage completion of the applicable Work by the share of the cost limitation allocated to that Work in the applicable Schedule of Values. Pending final determination of cost to Owner of changes in the Work, amounts not in dispute may be included.

.2 Add that portion of the applicable cost limitation properly allocable to Materials and equipment delivered, suitably stored, and in compliance with *Section 6.5.3* of the General Conditions.

.3 Subtract the sum of Owner's previous payments made on account of the applicable Work.

.4 Subtract any shortfall indicated in the documentation required by *Section 7.5.2* above to substantiate prior Applications for Payment, or resulting from errors subsequently discovered in such documentation.

.5 Subtract amounts, if any, Owner is entitled to withhold under the Contract Documents.

.6 Subtract retainage in accordance with *Section 7.5.4* below.

7.5.4 Review; Payment; Retainage.

.1 *Submittal.* Each Application for Payment shall cover one calendar month and shall be due on or before the final Day of each month.

On or before the **20th** Day of each month, Design-Builder shall submit to Owner Parties a draft Application for Payment, together with all applicable Supporting Documents. Owner Parties will review and comment on the draft Application for Payment and return the same to Design-Builder with comments and changes, if any, within three (3) Days. On or before the final Day of that month, Design-Builder shall submit to Owner Parties its Application for Payment, revised to reflect Owner Parties' comments and changes.

.2 *Payment.* Owner shall pay Design-Builder for the amounts in each approved Application for Payment, delivered pursuant to Owner's invoice delivery requirements, within **forty-five** (45) Days of its receipt of the same. Notwithstanding the foregoing, Design-Builder shall not be entitled to payment unless and until its applicable Application for Payment is approved by all of Owner's reviewing parties. In the event Owner fails to make payment within the time required under this *Section 7.5.4*, Design-Builder shall furnish Owner with ten (10) Days' advance written notice as a condition precedent to exercising remedies, including those available under the Contract Documents. After receiving a payment, within the legal requirement for prompt payment or seven (7) Days, whichever is less, Design-Builder shall pay each Subcontractor amounts due and owing.

.3 *Retainage.* Retainage shall be withheld and released in accordance with this *Section* and *Section 6.7* of the General Conditions. Owner shall retain from all payments to Design-Builder five percent (5%) of each such payment as security for the Work, until such time as Owner may release retainage or a approves a retainage substitute in accordance with the Contract Documents.

7.6 Final Payment.

7.6.1 Final Application for Payment Accounting. In addition to the requirements set forth in *Sections 6.5* and *6.9* of the General Conditions, Design-Builder shall submit to Owner Parties a detailed final accounting of the Cost of the Work together with its final Application for Payment for each Deliverable Portion of Work. Owner Parties and Owner's agents may review and report to Owner their findings concerning Design-Builder's final accounting (the "Final Accounting Report") within thirty (30) Days after Owner receives such final accounting. Based upon substantiated amounts due, as set forth in the Final Accounting Report, and provided the other conditions of the Contract Documents have been met, Owner Parties will, within fifteen (15) Days after receiving the Final Accounting Report, make final payment to the Design-Builder.

7.6.2 Computation. Final payment shall be calculated as follows: (i) take the costs of the applicable Work substantiated by the Supporting Documents, less any amount in excess of the applicable Pricing Amendment Sum; (ii) subtract amounts, if any, Owner is entitled to withhold under the Contract Documents; (iii) subtract the amount of any unresolved Claims pertaining to that Work; and (iv) subtract the sum of Owner's previous payments made on account of the applicable Work.

However, notwithstanding the foregoing, if the Final Accounting Report indicates Owner's previous payments made on account of the applicable Deliverable Portion of Work exceed the total amount due Design-Builder for that Work, Design-Builder shall reimburse Owner within thirty (30) Days of such determination with interest at the rate set forth in *Section 14.2* of the General Conditions.

7.6.3 Payment Disputes. In the event Owner Parties determine Design-Builder is due less than amounts requested in its final Application for Payment or Owner otherwise withholds amounts, including because of purported failure of the Work to conform to the Contract Documents' requirements or due to unresolved Claims, and Design-Builder disagrees with any such nonpayment, Design-Builder shall have a Claim in accordance with *Article 12* of the General Conditions.

7.7 **Interest.** Owner shall pay Contractor interest for payable amounts overdue, which necessarily do not include retainage properly withheld, at the rate set forth in *Section 14.2* of the General Conditions. For purposes of this *Section*, overdue amounts shall be those due and unpaid for not less than forty-five (45) Days from the latest of (a) the date Owner received the accurate, complete, Application for Payment; or (b) the date Owner receives proper notice of a Claim for nonpayment of amounts due and owing.

ARTICLE 8

TIME AND TERMINATION

8.1 **Time is of the Essence.** Time is of the essence of this Agreement and of the Contract Documents. Dates and milestones established or shown in the Project Schedule or Construction Schedules shall not be altered except by Change Order.

8.2 **Calculation of Time.** If a required time period in this Agreement expires on a Day other than a business day, such time period shall be extended to the next succeeding business day.

8.3 **Termination Generally.** Any termination of the Contract Documents shall be pursuant to and in accordance with *Article 13* of the General Conditions. In addition to the terms and conditions of *Section 13.2* of the General Conditions, in the event Owner terminates this Agreement for convenience, Design-Builder shall be entitled to payment for only Work performed and accepted up to and including the date of termination, including Reimbursable Expenses, together with amounts payable for completed Early Work for which Owner issued an Early Work Amendment.

ARTICLE 9

MISCELLANEOUS

9.1 **Representations and Warranties.** Design-Builder represents and warrants to Owner (a) its previously submitted qualifications, references, and financial information were and continue to be true and correct in all material respects and are without material change since the date of their submission and (b) the Contract Documents constitute Design-Builder's legal, valid, and binding obligation, enforceable in accordance with their terms.

9.2 **Authority.** Design-Builder and Owner each have full power and authority to enter into and perform the Contract Documents and the persons signing this Agreement on behalf of their respective parties are duly authorized to do so.

9.3 **Ownership of Documents.**

In addition to the terms of the *Section 14.1* of the General Conditions, Design-Builder unconditionally and irrevocably transfers and assigns to Owner for uses connected to the Project an exclusive, royalty-free, license to the Instruments of Service; provided, however, Design-Builder and its Subcontractors shall retain all proprietary and intellectual property rights to the Instruments of Service consistent with the confidentiality provisions of *Section 14.4* of the General Conditions.

9.3.1 Design-Builder shall obtain all necessary releases from Subcontractors to allow it to satisfy its obligations to Owner under this *Article 9*.

9.3.2 In the event Owner alters Instruments of Service without the original author's written authorization or uses the Instruments of Service without retaining the original authors of the Instruments of Service for work other than that which is indicated in those authors' Instruments of Service, the Owner releases such authors from all claims and causes of action arising from or related to

such uses. The terms of this *Section 9.3.2* shall not apply if the Owner rightfully terminates this Agreement for cause pursuant to *Section 13.2.4* of the General Conditions.

9.4 Notice. Any notice or other written instrument required or permitted pursuant to this Agreement shall be in writing signed by the party giving such notice. Delivery of all such notices and written instruments shall be by hand, overnight courier, or registered letter at the addresses set forth in *Exhibit H*; provided, however, each party shall have the right to change its address by sending notice in the same manner.

9.5 Third Parties. Nothing contained in this Agreement shall be deemed to give any third party a claim, Claim, or right of action against Owner or Design-Builder unless that third party is expressly included as an intended beneficiary under the terms of this Agreement.

9.6 Remedies. Except as set forth in this Agreement, all rights and remedies contained in this Agreement are in addition to all others available at law or in equity.

9.7 Headings. The captions contained in this Agreement are for convenience and reference only and neither extend nor limit the scope or intent of this Agreement or its terms.

9.8 Exhibits. All exhibits, schedules, and other attachments referenced in this Agreement are fully incorporated by reference and are an integral part of this Agreement.

9.9 Entire Agreement. This Agreement represents the entire and integrated agreement between Owner and Design-Builder and supersedes all prior negotiations, representations, or agreements, whether written or oral. This Agreement may be amended only by written instrument signed by both Owner and Design-Builder.

9.10 Counterparts. This Agreement may be signed in separate counterparts, each of which when signed and delivered shall be an original, and all of which when taken together shall constitute one instrument.

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This Agreement is entered into as of the Effective Date.

OWNER:

DESIGN-BUILDER:

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

EXHIBIT LIST

Exhibit A	General Conditions of the Contract for Design and Construction
Exhibit B	Form of Early Work Amendment
Exhibit C-1	Form of Preliminary Services Sum
Exhibit C-2	Form of Pricing Amendment - GMP
Exhibit D	Project Criteria - RESERVED
Exhibit E	Key Personnel and Hourly Rates - RESERVED
Exhibit F	Form of Payment Claim Waiver - RESERVED
Exhibit G	RESERVED
Exhibit H	Notice and Contact Information
Exhibit I	Owner's Standard Requirements
Exhibit J	Project Description - RESERVED
Exhibit K	Quality Management and Control Plan
Exhibit L	Site Description - RESERVED
Exhibit M	Directs Costs/General Conditions Costs/Fee Matrix and Travel Reimbursement Policy
Exhibit N	Insurance
Exhibit O	Form of Bonds
Exhibit P	Form of Change Order
Exhibit Q	Change Pricing
Exhibit R	On-Call Parameters

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