

**ATTACHMENT TO SUPPLEMENT# \_\_\_\_\_ TO MASTER CONTRACT FOR CONSTRUCTION  
RELATED SERVICES FOR DESIGN-BUILD WORK**

The Owner and the Contractor agree as set forth below:

For the purposes of the terms and conditions set forth in this Attachment, “Contractor” and “Design-Builder” may be used interchangeably.

Whereas, the Owner and Contractor entered into the Master Contract for Construction Related Services on \_\_\_\_\_ (“Agreement”), which contemplates the execution of Supplements for each Unit of Work performed by Contractor;

Whereas, the Owner and Contractor have agreed that a design-build delivery should be utilized for the Work set forth in Supplement# \_\_\_\_\_;

Whereas, the Owner and Contractor acknowledge that certain terms set forth in the General Conditions of the Agreement may at times conflict with a design-build delivery;

Whereas, the Owner and Contractor, for the performance of Supplement# \_\_\_\_\_, intend that the terms set forth in this Supplement supersede any conflicting terms in the General Conditions for the performance of this Supplement and agree that the Agreement, General Conditions, the Supplement, and this Attachment to the Supplement should be interpreted as though drafted in whole for a design-build delivery;

NOW, THEREFORE, the Owner and Contractor have agreed upon design-build terms and conditions, as set forth below:

**Amendment of Conflicting General Conditions**

1. The definition of “Architect/Engineer” set forth in Section A.1 of the General Conditions is amended to mean the licensed, independent design professional retained by the Design-Builder to provide the architectural and engineering services for the Work relating to Supplement# \_\_\_\_\_. The architectural and engineering services shall be procured pursuant to a separate agreement between the Design-Builder and the Architect/Engineer, incorporating the requirements of the Agreement as they relate to the Architect/Engineer’s work.

2. The “Contract Documents” defined in General Conditions Section A.1 shall also include the work criteria, including changes to the work criteria proposed by the Design-Builder and accepted by the Owner. The Contract Documents do not create a contractual relationship of any kind (1) between the Architect/Engineer and Owner, (2) between the Owner and a Subcontractor, or (3) between any persons or entities other than the Owner and Design-Builder, including but not limited to any consultant retained by the Owner to prepare or review the work criteria, as established by the Owner.

3. The definition of “Direct Costs” set forth in Section A.1 of the General Conditions is amended to include the fees and reimbursable expenses paid by the Design-Builder for design and other consulting services required by the Contract Documents, and the professional liability insurance carried by Design-Builder for the performance of the Work.

4. The definition of “Work” set forth in Section A.1 of the General Conditions is amended to include the design of the Work as provided for herein.

5. To the extent any section of the General Conditions contemplates the Architect/Engineer being appointed by Owner, controlled by Owner, delegated duties from Owner, or otherwise having any direct obligations to Owner, those provisions are removed, as Architect/Engineer now owes duties and obligations directly to the Design-Builder.

6. To the extent any section of the General Conditions contemplates the Design-Builder having any direct duties or obligations to the Architect/Engineer, those provisions are removed and replaced by the duties set forth in the separate agreement between the Design-Builder and the Architect/Engineer.

7. Section G.1.2 of the General Conditions setting forth the indemnity obligations of Design-Builder is amended to remove Architect/Engineer and its consultants from the indemnity obligation.

### **Design-Builder Obligations**

8. The Design-Builder shall be responsible for procuring or furnishing the design and for the construction of the Work to achieve Owner’s objectives and requirements as reflected generally in the work criteria, as such work criteria may be modified by the Owner during the course of the Work. At all times, the Design-Builder shall exercise reasonable skill and judgment in the performance of its services.

9. The Design-Builder shall fully perform the Work described in the Contract Documents, except to the extent specifically indicated in the Supplement.

10. Design-Builder is not a licensed or authorized architect or engineer and Owner acknowledges that it is contracting with Design-Builder to furnish, but not to perform, certain select design services. Owner further acknowledges that Design-Builder will subcontract all design services and such services shall be performed by licensed design professionals, duly authorized and registered to render such services in the state in which the Work is located. Owner expressly agrees that Owner’s recovery for claims of professional errors and omissions (under contract, tort or any other theory of law) shall be limited to the amount recoverable from the errors and omissions insurance coverage required to be carried.

### *Design/Preconstruction Phase*

11. The Design-Builder shall review and evaluate the work criteria to ascertain the objectives and requirements of the Work and shall verify such with the Owner. Pursuant to a mutually agreeable schedule, Design-Builder shall prepare schematic design documents and provide in writing estimated costs and an estimated schedule for construction of the Work.

12. “Design Criteria” means the current version (as of the Effective Date of this Supplement) of the University’s “Construction Standards” provided to Consultant by the Owner and incorporated herein by reference.

13. Subsequently, and based on the parties review of the schematic design documents and related Contract Documents, pursuant to a mutually agreeable schedule, the Design-Builder shall provide design development documents in compliance with the Design Criteria. The design development documents shall further define the Unit of Work, including drawings and outline specifications fixing and describing the Unit of Work size and character as to site utilization, and other appropriate elements incorporating the structural, architectural, mechanical, and electrical systems. When the Design-Builder submits the design development documents, the Design-Builder shall identify in writing all material changes and deviations that have taken place from the Contract Documents and schematic design documents.

14. The construction documents shall set forth in detail the requirements for construction of the Work, and shall be based upon codes, laws, or regulations enacted at the time of their preparation. When the Design-Builder submits the construction documents, the Design-Builder shall identify in writing all material changes and deviations that have taken place from the design development documents or the contract documents. Construction shall be in accordance with the approved construction documents. One set of these documents shall be furnished to the Owner before commencing construction.

15. The Design-Builder shall obtain and the Owner shall pay for all permits necessary for the construction of the Work.

#### *Construction Phase*

16. Design-Builder may perform certain construction scopes prior to completion of the design/preconstruction phase, if set forth in the Supplement and scope of services relating thereto. All such services shall be performed in accordance with the Agreement.

17. To the extent not included in the initial Supplement, upon completion of the construction documents, Design-Builder shall provide Owner a lump sum proposal for the balance of the construction phase of the Work. Upon the parties' agreement, the parties shall amend the Supplement to include the balance of the construction phase of the Work.

18. Unless otherwise stated in this Attachment, the Agreement shall govern and control the Design-Builder's and Owner's duties and responsibilities with regard to all construction work performed during the construction phase.

#### **Owner's Obligations During Design**

19. The Owner shall provide the work criteria at the inception of the design/preconstruction phase and shall review and timely approve in writing schedules, estimates, schematic design documents, design development documents and construction documents furnished during the design/preconstruction phase.

20. Notwithstanding any other provision herein, neither Owner's review nor approval of any submission made by Design-Builder, including without limitation any design or schedule submission, shall relieve Design-Builder from its obligations under this Agreement.

#### **Compensation for Design/Preconstruction Phase**

21. The Owner shall compensate the Design-Builder for services performed during the design/preconstruction phase as specified in the Supplement.

22. Compensation for design/preconstruction phase services shall be equitably adjusted if such services extend beyond the date specified in the Supplement, if any, for reasons beyond the reasonable control of the Design-Builder or as otherwise provided in the Agreement for changes in the Work.

23. Design-Builder shall provide Owner a lump sum proposal for the balance of the construction phase of the Work. The parties shall amend the Supplement to include the balance of the construction phase of the Work.

24. Payment of amounts due under the Agreement shall be consistent with the terms of the Agreement.

### **Ownership of Documents**

25. Unit of Work **Definitions.** The following terms used in this Attachment on have the meanings set forth below:

- a. "Design Builder Intellectual Property" means any intellectual property owned by the Design Builder and developed independently from this Supplement.
- b. "Third Party Intellectual Property" means any intellectual property owned by parties other than Owner or Design Builder.
- c. "Work Product" means every invention, discovery, work of authorship, Unit of Work Drawing, trade secret, or other tangible or intangible item, whether completed, partially completed, or in draft form and all intellectual property rights therein, that the Design Builder is required to deliver to Owner pursuant to the this Supplement.

26. **Work Product.** All Work Product created by the Design Builder, including derivative works and compilations, and whether or not such Work Product is considered a "work made for hire," is the exclusive property of Owner. Owner and the Design Builder agree that Work Product that constitutes original works of authorship (the "Original Work Product") is "work made for hire", and Owner is the author within the meaning of the United States Copyright Act. The Design Builder hereby irrevocably assigns to Owner any and all of its rights, title, and interest in all Original Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Owner's reasonable request, the Design Builder shall execute such further documents and instruments necessary to fully vest rights to Original Work Product in Owner. The Design Builder forever waives any and all rights relating to Original Work Product, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction, or limitation on use or subsequent modifications. However, see Sections 26, 27, 28, and 29. immediately below, for provisions applicable to Design Builder Intellectual Property, Third Party Intellectual Property, Design Builder Intellectual Property derivative works, and Third Party Intellectual Property derivative works

27. **Work Product.** All Work Product created by the Design Builder, including derivative works and compilations, and whether or not such Work Product is considered a “work made for hire,” is the exclusive property of Owner. Owner and the Design Builder agree that Work Product that constitutes original works of authorship (the “Original Work Product”) is “work made for hire”, and Owner is the author within the meaning of the United States Copyright Act. The Design Builder hereby irrevocably assigns to Owner any and all of its rights, title, and interest in all Original Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Owner’s reasonable request, the Design Builder shall execute such further documents and instruments necessary to fully vest rights to Original Work Product in Owner. The Design Builder forever waives any and all rights relating to Original Work Product, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction, or limitation on use or subsequent modifications. However, see Sections 26, 27, 28, and 29. immediately below, for provisions applicable to Design Builder Intellectual Property, Third Party Intellectual Property, Design Builder Intellectual Property derivative works, and Third Party Intellectual Property derivative works

28. **Design Builder Intellectual Property.** In the event that any portion of the Work Product is Design Builder Intellectual Property or in the event any Design Builder Intellectual Property is necessary for Owner to reasonably enjoy and use Work Product, the Design Builder hereby grants to Owner an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Design Builder Intellectual Property, including the right of Owner to authorize others to do the same on Owner’s behalf. At the request of the Design Builder, Owner shall take reasonable steps to protect the confidentiality and proprietary interests of the Design Builder in any Design Builder Intellectual Property licensed under this Section within the limits of the Oregon Public Records Law (ORS 192.410 through 192.505) and the Oregon Uniform Trade Secrets Act (ORS 646.461 to 646.475).

29. **Third Party Intellectual Property.** In the event that any portion of the Work Product is Third Party Intellectual Property, or in the event any Third Party Intellectual Property is necessary for Owner to reasonably enjoy and use Work Product, the Design Builder shall secure on Owner’s behalf, and in the name of Owner, an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, including the right of Owner and others to do the same on Owner’s behalf.

30. **Design Builder Intellectual Property-Derivative Work.** If all or any portion of the Work Product is a derivative work based on Design Builder Intellectual Property, or is a compilation that includes Design Builder Intellectual Property, the Design Builder hereby grants to Owner an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of Design Builder Intellectual Property employed in the Work Product, including the right of Owner to authorize others to do the same on Owner’s behalf.

31. **Third Party Intellectual Property-Derivative Work.** If all or any portion of the Work Product is a derivative work based on Third Party Intellectual Property or is a compilation that includes

Third Party Intellectual Property, the Design Builder shall secure on Owner's behalf, and in the name of Owner, an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, and display the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, including the right to authorize others to do the same on Owner's behalf.

32. **Limited Owner Indemnity.** To the extent permitted by the Oregon Constitution, Article XI, Section 7, and by the Oregon Tort Claims Act, ORS 30.260 through 30.400, Owner shall indemnify and hold the Design Builder harmless from liability arising out of Owner's re-use or alteration of the Work Product, within the limits set forth in the Oregon Constitution, Article XI, Section 7, and by the Oregon Tort Claims Act, ORS 30.260 through 30.400.

33. **Design Builder Use of Work Product.** Notwithstanding anything to the contrary in this Section, the Design Builder may refer to the Work Product in its marketing materials and, unless specified otherwise, Owner hereby grants to the Design Builder a non-exclusive, non-transferable, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, and display Work Product on other unrelated Unit of Works for this limited use. This provision explicitly excludes any "Confidential Information" protected from disclosure under the provisions of this Section (I) and (J) below. Design Builder may use the Work Product for other uses only with Owner's prior written approval.

34. **Confidential Information.** Any and all information that Owner designates as confidential (either on the document itself or through related correspondence) and any other documents or materials (including software) that result from the Design Builder's use of such information and any other Work Product that Owner designates as confidential, is deemed to be confidential information of Owner ("Confidential Information"). Confidential Information does not include information that (i) is or becomes (other than by disclosure by the Design Builder) publicly known; (ii) is furnished by Owner to others without restrictions similar to those imposed by this Supplement; (iii) is rightfully in the Design Builder's possession without the obligation of nondisclosure prior to the time of Owner's Confidential Information disclosure; (iv) is obtained from a source other than Owner without the obligation of confidentiality; (v) is disclosed with the written consent of Owner; or (vi) is independently developed by employees, sub-contractors, or agents of the Design Builder who can be shown to have had no access to the Confidential Information.

35. **Non-Disclosure.** The Design Builder shall hold Confidential Information in strict confidence, using at least the same degree of care that the Design Builder uses in maintaining the confidentiality of its own confidential information, and shall not, without Owner's prior written consent, copy, reproduce, sell, assign, license, market, transfer, dispose of, give, disclose, or otherwise use Confidential Information for any purposes whatsoever outside of the scope of Services of this Supplement. The Design Builder shall advise each of its employees, sub-contractors, and agents of their obligations to keep Confidential Information confidential. The Design Builder shall use reasonable efforts to assist Owner in identifying and preventing any unauthorized use or disclosure of any Confidential Information. The Design Builder shall advise Owner immediately if the Design Builder learns or has reason to believe that any person who has had access to Confidential Information has

violated or intends to violate the terms this Section 33, and the Design Builder shall, at its expense, cooperate with Owner in seeking injunctive or other equitable relief in the name of Owner against any such person. Upon termination of this Supplement, or at Owner's request, the Design Builder shall turn over to Owner all documents, papers, and other materials in the Design Builder's possession that contain Confidential Information. In the event Design Builder is required to disclose Confidential Information pursuant to a subpoena or other legal process, the Design Builder shall immediately notify Owner of such subpoena or other legal process, provide Owner with copies of all related documentation, including the subpoena or other request for disclosure, and otherwise cooperate with Owner. In the event Owner decides not to oppose such subpoena or other legal process or Owner's decision to oppose the subpoena or legal process has not been successful, the Design Builder shall be excused from the requirements of this provision to the extent necessary to meet the demands of the subpoena or other legal process requesting disclosure of Confidential Information.

36. The Design-Builder and its subcontractors shall have a nonexclusive license to reproduce the design documents for purposes of constructing, using and maintaining the Unit of Work.

37. Submission or distribution of the design documents to meet official regulatory requirements or for similar purposes in connection with the Unit of Work is not to be construed as publication in derogation of the rights reserved in this Attachment.

38. The Design-Builder and the Owner shall by separate written agreement set forth the specific conditions governing the format of such Works for Hire or electronic data, including any special limitations or licenses not otherwise provided in this Attachment and, if appropriate, adjustments in the Design-Builder's compensation and schedule for performance of the Design-Builder's services.

39. Assist the Owner in the implementation of the State of Oregon's "1% For Art Program", as applicable.

40. Upon completion of the Work, the Design Builder shall, at no additional cost to the Owner, update CAD drawings (plans only) and submit the appropriate compact discs (including "bookplans" of the construction area made to most current University standards) - compatible with AutoCAD Release 2014, reflecting significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor (the "Record Documents").