

**DESIGN/BUILD AGREEMENT**

**Project Number: [Project Number]**

**Project Name: [Project Name]**

**THIS AGREEMENT**, made and entered into this [Day] day of [Month], [Year], by and between Utah Valley University, hereafter referred to as “UVU” and [Design/Build Firm], a corporation authorized to do business in the State of Utah and consisting of a legally recognized business entity in the State of Utah and general contracting/construction management and architectural/engineering components, which are to be performed by [Design/Build Firm], or entities under contract with [Design/Build Firm], as appropriate. [Design/Build Firm], shall hereinafter be referred to as “DESIGN/BUILD TEAM”.

**WITNESSETH:**

WHEREAS, UVU intends to have Work performed at [Location].

WHEREAS, DESIGN/BUILD TEAM agrees to perform the Work for the sum stated herein.

NOW, THEREFORE, UVU and DESIGN/BUILD TEAM for the consideration provided in this Agreement, agree as follows:

**INTRODUCTION:**

This Agreement is between UVU and DESIGN/BUILD TEAM, consisting of the prime general contractor who shall also responsibly represent it’s A/E’s, architect’s, engineer’s, suppliers, consultants, subconsultants and subcontractors at any tier. There are designer and general contractor responsibilities identified in this Agreement. There are important documents incorporated by reference. While the DESIGN/BUILD TEAM maintains liability for all design and general contractor functions, the specific functions referred to in this Agreement as well as the documents incorporated by reference, shall be performed by the respective personnel of the DESIGN/ BUILD TEAM that are qualified architects/engineers and general contractors.

The identity of the leaders of the specific functions of the DESIGN/BUILD TEAM are attached to this Agreement, entitled Exhibit “A.” and made a part of this Agreement. Said leadership shall not be changed or substituted without written approval of the UVU.

# DOCUMENTS INCORPORATED BY REFERENCE AND GENERAL PROVISIONS

## DOCUMENTS INCORPORATED BY REFERENCE:

* + 1. Request for Proposals and General Conditions. The DESIGN/ BUILD TEAM and UVU shall be bound by their respective obligations, duties and rights as referred to in the Request for Proposals identified as [Insert RFP # and Title], herein after identified as “Announcement of Design/Build Competition” and dated [Date of RFP], inclusive of all addenda, as well as the UVU General Conditions dated August 31, 2012 (“General Conditions”) and the UVU Supplemental General Conditions (“also referred to as the UVU General Conditions”). The Cost Proposal Form is hereby attached and made part of this agreement and is entitled Exhibit B. It is intended that this DESIGN/BUILD TEAM's Agreement not reiterate all the applicable provisions of said Request for Proposals and the General Conditions and the fact that some provisions are reiterated herein does not lessen the importance of the provisions that are not so reiterated. Unless the context provides otherwise, all the definitions and interpretations of provisions of this DESIGN/BUILD TEAM's Agreement shall be as stated in said Announcement of Design Build Competition and the General Conditions. In case of conflict between the provisions of this DESIGN/BUILD TEAM's Agreement, the Announcement of Design/Build and the General Conditions, the following shall indicate which provision controls:

1. This Agreement shall control over conflicting provisions in the Announcement of Design/Build Competition and/or General Conditions.
2. The Announcement of Design/Build Competition shall control over conflicting provisions in the General Conditions.

Said General Conditions shall be construed in such a manner as that any reference to a right, responsibility, or duty of the General Contractor (Contractor) referred to in the General Conditions shall be deemed to refer to the DESIGN/BUILD TEAM. Any reference to A/E in the General Conditions shall be deemed to refer to the DESIGN/BUILD TEAM Architect/Engineer as applicable, and shall also be bound by the provisions in the General Conditions that refer to the duties and responsibilities of the A/E in the General Conditions. Unless otherwise specified by this Agreement, the definitions in the General Conditions shall apply to this Agreement.

* + 1. **The Project Defined.** The Project is the total design and construction for which the DESIGN/BUILD TEAM is responsible, including all professional design services and all labor, materials and equipment used or incorporated in such design and construction for the project referenced by the Announcement of Design/Build Competition in Paragraph 1.1.1 above.
    2. **The Work Defined**. The Work comprises the completed construction designed under the Project and includes labor necessary to produce such construction, and materials and equipment incorporated or to be incorporated in such construction.

## EXECUTION, CORRELATION, CONTRACTUAL RELATIONSHIP AND INTENT

* + 1. This Agreement shall be signed in not less than duplicate by UVU and DESIGN/ BUILD TEAM.
    2. Nothing contained in this Agreement and the Contract Documents shall create a professional obligation or contractual relationship between UVU and any third party, including subcontractors, A/E’s, consultants and suppliers at any tier of the DESIGN/BUILD TEAM.

Notwithstanding this, it is understood and agreed that UVU is the intended third party beneficiary of all contracts for design or engineering services, all subcontracts, purchase orders and other agreements between the DESIGN/BUILD TEAM and third parties.

The DESIGN/BUILD TEAM shall incorporate the obligations of this Agreement into its respective subcontracts, supply agreements and purchase orders. The DESIGN/BUILD TEAM shall also be responsible to UVU for wrongful or negligent acts, errors or omissions of its A/E, consultants, subcontractors, suppliers, agents and employees or those in privity with the DESIGN/BUILD TEAM, at any tier.

## CONTRACT DOCUMENTS.

The Contract Documents consist of the General Conditions; this Agreement; the Conditions of the Contract (General and Supplementary Conditions); and all competition documents provided by UVU to DESIGN/BUILD TEAM and all competition documents provided by DESIGN/BUILD TEAM to UVU, which are identified in a list entitled Exhibit C, hereby attached and made part of this Agreement. Clarifications to said proposal documents are hereby identified in Exhibit D, which is hereby attached and made part of this Agreement. All such Contract Documents referred to in this Paragraph 1.3 are hereby incorporated by reference herein. Any reference in this Agreement to certain provisions of the Contract Documents shall in no way be construed as to lessen the importance or applicability of any other provisions of the Contract Documents.

## CONTRACT DOCUMENTS COMPLIANCE, TERMS, INDEPENDENT CONTRACTOR.

The Work to be performed shall be in accordance with all of the Contract Documents. All terms used in this Agreement shall be as defined in the Contract Documents, and in particular, the General Conditions, except as otherwise provided in this Agreement. The DESIGN/ BUILD TEAM Agrees to furnish labor, materials and equipment to complete the Work as required in the Contract Documents which are hereby incorporated by reference. It is understood and agreed by the parties hereto that all Work shall be performed as required in the Contract Documents and shall be subject to inspection and approval of UVU or its authorized representative. The relationship of the DESIGN/BUILD TEAM to UVU hereunder is that of an independent contractor

# DESIGN/BUILD TEAM

## RESPONSIBILITY ALLOCATION.

The components of the Design Team shall have primary responsibilities as follows:

* + 1. Design services shall be performed by the A/E of the DESIGN/BUILD TEAM as well as the appropriate consultants (engineers, etc.) selected and paid by the DESIGN/BUILD TEAM and acting in the interest of the DESIGN/BUILD TEAM. As part of the proposal of DESIGN/ BUILD TEAM, [Design Firm] has been selected as the A/E for the project and is, or shall be promptly, under contract with the DESIGN/BUILD TEAM. DESIGN/BUILD TEAM shall notify UVU of any substantial change in the composition of the A/E assigned to the Project, including but not limited to any major changes of staffing or assignments of architects to the Project. Any substantial change in the composition of the A/E must be approved by UVU in writing. The identity of the leader of the specific functions of [Design Firm] is [Design Firm Representative], principal in charge of coordination of all design services. Said leadership shall not be changed or substituted without written approval of UVU.
    2. Construction shall be performed in accordance with this Agreement and the Contract Documents by the qualified general contractor component of the DESIGN/BUILD TEAM as well as the appropriate subcontractors and suppliers at any tier in privity with the DESIGN/BUILD TEAM. Design Work shall be performed in accordance with this Agreement and the Contract Documents by the A/E component of the DESIGN/BUILD TEAM as well as the appropriate consultants at any tier in privity with the A/E.
    3. The DESIGN/BUILD TEAM shall be responsible to UVU for wrongful or negligent acts, errors or omissions of the DESIGN/BUILD TEAM's employees and parties in privity of contract with the DESIGN/BUILD TEAM, at any tier, to perform any portion of the Work, including their agents and employees.

## BASIC DESIGN SERVICES.

The DESIGN/BUILD TEAM's Basic Design Services consist of those described below and any other services identified in this DESIGN/BUILD TEAM Agreement as part of Basic Services related to design, including normal structural, mechanical, electrical, and architectural as well as other consulting services reasonably necessary to fulfill the design duties and responsibilities under this Agreement and the Contract Documents. The DESIGN/BUILD TEAM shall prepare and promptly distribute minutes of all meetings. Said minutes shall not be considered official minutes until approved by UVU.

## DESIGN DEVELOPMENT PHASE.

* + 1. **Design Development Documents.** Based on the approved Design/Build Proposal, written authorization to proceed to Design Development signed by UVU, and any adjustments authorized by UVU in the program, or scope of work, schedule or construction budget, the DESIGN/BUILD TEAM shall prepare, for approval by UVU, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.
    2. **Design Revisions.** UVU reserves the right to request minor design revisions and the DESIGN/BUILD TEAM shall promptly perform such revisions with no increase in cost beyond the Guaranteed Fixed Costs for all the Work of this Project.

## CONSTRUCTION DOCUMENTS PHASE.

* + 1. **Construction Documents.** Based on the approved Design Development Documents, and written authorization to proceed to the Construction Documents Phase signed by UVU, and any further adjustments in the scope or quality of the Project or in the construction budget authorized by UVU, the DESIGN/BUILD TEAM shall prepare, for approval by UVU, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.
    2. **Market Changes.** It is understood that the DESIGN/BUILD TEAM assumes the risk and cost of market changes with respect to the DESIGN/BUILD TEAM’s scope of work. In the event any supplier under a Purchase Agreement with UVU fails to perform according to the terms of his agreement, the DESIGN/BUILD TEAM will be entitled to an equitable adjustment of the contract price and time. The DESIGN/BUILD TEAM will use its best efforts in managing those suppliers to maintain the project schedule.
    3. **Assist With Filing For Governmental Approval.** When requested by UVU, the DESIGN/BUILD TEAM shall assist UVU in all reasonable requests in connection with UVU’s responsibility for filing documents required for approval of governmental authorities having jurisdiction over the Project.

## BIDDING OR NEGOTIATION PHASE.

* + 1. **Duties; In General.** After receipt of the written authorization to proceed to the Bidding or Negotiation Phase by UVU, the DESIGN/BUILD TEAM shall obtain bids or negotiate proposals and award contracts to subcontractors, subconsultants and suppliers which are consistent with the Design/Build Agreement. The term “bid” in the Agreement is also meant to mean “proposal” where the DESIGN/BUILD TEAM is using a request for proposal procurement process.
  1. The DESIGN/BUILD TEAM shall promptly supply five (5) complete sets of Final Construction Documents to UVU.
  2. **Specified Subcontractors**: The specifically cited subcontractors, along with their license number (if required) and estimated cost, have been listed as a submission with the DESIGN/BUILD TEAM cost proposal. Any substantial variation from the original estimate, submitted on [Date proposal was submitted] as part of the Cost Proposal, shall be accompanied by a written explanation from the Contractor justifying the variation and describing how the variation meets or exceeds the “value” to UVU on the project.
  3. **Non-Specified Subcontractors**: The non-specified subcontractor’s scope of work and estimated costs shall be listed as a submission with the DESIGN/BUILD TEAM cost proposal. Within 24 hours after the Contractor “opens” the non-specified subcontractors bid and if the bid is from a subcontractor that would otherwise be required to be part of a sublist under UCA 63-5a-208 if the procurement was performed directly by UVU in bidding process, the DESIGN/BUILD TEAM shall submit name of the subcontractor along with their license number (if required) and estimated cost to UVU. During the competitive bid process by the DESIGN/BUILD TEAM for these subcontractors, UVU shall have a representative at the bid opening and subcontractor’s selection.
  4. The DESIGN/BUILD TEAM shall at all reasonable times be available personally, or have available, a responsible member of his or her staff to make such interpretations of the Contract Documents as are necessary to facilitate completion of the construction contract by the DESIGN/BUILD TEAM's subcontractors and suppliers.
  5. If subcontractor’s are selected through a proposal process and the DESIGN/BUILD TEAM fails to comply with the sublist requirements of UCA 63-5a-208 for bids made applicable in this Agreement to proposals, the DESIGN/BUILD TEAM shall have 24 hours to cure such failure after receiving written notice from UVU.

## CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION.

* + 1. **Advise And Consult.** The DESIGN/BUILD TEAM shall advise and consult with UVU during the Construction Phase. No one shall be entitled to rely upon any representation by the DESIGN/BUILD TEAM unless it is in writing and signed by the DESIGN/BUILD TEAM Project Manager or a principal of the DESIGN/BUILD TEAM.
    2. **Representations by Third Parties, and Officials, Other Than UVU.** DESIGN/ BUILD TEAM may not rely on any representations of other state agencies, officials or any third parties unless specifically approved in writing by UVU.
    3. **Record Copy at Site.** The DESIGN/BUILD TEAM shall maintain in good order at the site one record copy of the drawings, specifications, product data, samples, shop drawings, Change Orders and other Modifications, marked currently to record changes made during construction. At the conclusion of the Construction Phase the DESIGN/BUILD TEAM shall prepare and furnish to UVU a complete set of Record Drawings (corrected original tracings or re-plotted CADD drawings), one set of mylar reproducible Record Drawings and two (2) sets of Specifications depicting the Project.

## ADDITIONAL SERVICES: IN GENERAL.

* + 1. **Written Authorization Required.** The DESIGN/BUILD TEAM shall perform all duties and responsibilities required by this Agreement and the Contract Documents for the Guaranteed Fixed Price. If the DESIGN/BUILD TEAM reasonably believes that a particular duty or responsibility is beyond that identified by this Agreement or the Contract Documents, then the DESIGN/ BUILD TEAM shall not be entitled to any amount which would result in an increase in the Guaranteed Fixed Price unless, prior to performing the subject duty or responsibility, the DESIGN/BUILD TEAM has requested in writing a Modification to this Agreement and the Modification has been approved, in writing, by UVU. The provisions of the General Conditions regarding Modifications, requests for additional time and additional monies shall apply to this Agreement.
    2. **When Not Paid by UVU**. Notwithstanding anything to the contrary in this Agreement, UVU shall not be responsible to pay and the DESIGN/BUILD TEAM shall not be entitled to receive, compensation for any Contingent Additional Services if such services were required due to the fault of the DESIGN/BUILD TEAM or the DESIGN/BUILD TEAM's failure to perform in accordance with the terms of this Agreement. Notwithstanding this, there shall be no right to payment for additional services or contingent additional services if such services are not approved in advance by UVU in writing.

## STANDARD FOR PERFORMANCE.

* + 1. **Due Care and Diligence; In General.** DESIGN/BUILD TEAM shall exercise the degree of skill and diligence as exercised by members of the DESIGN BUILD TEAM’S profession having substantial experience on projects similar in type, magnitude and complexity to the Project that is the subject of this Agreement and all of the services under this Agreement shall be performed as expeditiously as is consistent with said standards. The DESIGN/BUILD TEAM shall be liable to the Owner for claims, liabilities, additional burdens, penalties, damages or third party claims, to the extent caused by wrongful or negligent acts, errors or omissions that do not meet this standard of care.
    2. **Due Care and Diligence; Discovering and Reporting Defects and Deficiencies.** The DESIGN/BUILD TEAM shall exercise due care and diligence in discovering and promptly reporting to UVU any defects or deficiencies in the Work. Any defective Designs or Specifications furnished by the DESIGN/BUILD TEAM shall be promptly corrected by the DESIGN/ BUILD TEAM at no cost to UVU, and the DESIGN/BUILD TEAM shall promptly reimburse UVU for all damages, if any, resulting from the use of such defective Designs or Specifications. UVU's approval, acceptance, use of or payment for all or any part of the DESIGN/ BUILD TEAM'S services hereunder or of the Project itself shall in no way alter the DESIGN/BUILD TEAM'S obligations or UVU's rights hereunder.

## TESTS, INSPECTIONS AND REPORTS.

* + 1. UVU shall be responsible for all structural (soils and concrete), mechanical, electrical testing required by law or code. It shall be DESIGN/BUILD TEAM's responsibility to determine when, which, and to the extent that such tests, inspections and reports are required by the Contract Documents. UVU may review and comment, when appropriate, on the accuracy of the tests and information furnished by the DESIGN/BUILD TEAM pursuant to this Paragraph 2.9.1. UVU will be monitoring tests and inspections for the subject work. The DESIGN/BUILD TEAM shall coordinate all test and inspections with UVU. All other tests or inspections required by contract documents shall be furnished at the DESIGN/BUILD TEAM’s expense.
    2. UVU shall be responsible for all chemical, air and water pollution tests, tests for hazardous material, and other laboratory and environmental tests, inspections and reports, including those required by law or the Contract Documents. It shall be UVU’s responsibility to determine when, which, and to the extent that such tests, inspections and reports are required by the Contract Documents. UVU may review and comment, when appropriate, on the accuracy of the tests and information furnished by the DESIGN/BUILD TEAM pursuant to this Paragraph 2.9.2. The services, information, surveys and reports required by this Paragraph 2.9.2 shall be furnished at UVU’s expense. UVU will be monitoring tests and inspections for the subject work. The DESIGN/BUILD TEAM shall coordinate all tests and inspections with UVU.

# UVU'S RESPONSIBILITIES

## INFORMATION.

UVU shall provide full information regarding requirements for the Project, including a program or scope of work which shall set forth UVU's objectives, schedule, constraints, and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

## RESPONSE TO DESIGN/BUILD TEAM.

UVU shall give reasonable consideration to all sketches, estimates, working drawings, specifications, proposals, and other documents presented by the DESIGN/BUILD TEAM; and to inform the DESIGN/BUILD TEAM of the decisions, in writing, within a fourteen (14) day time period.

## UVU PROJECT MANAGER.

UVU shall designate a UVU Project Manager authorized to act on UVU's behalf with respect to the Project. UVU or such Project Manager shall render decisions within a fourteen (14) day time period pertaining to documents submitted by the DESIGN/BUILD TEAM in order to avoid unreasonable delay in the orderly and sequential progress of the DESIGN/BUILD TEAM's services and Work. UVU may appoint an on-site project representative to observe the Work and to have such other responsibilities as UVU deems necessary to facilitate this Agreement.

## COMMUNICATIONS.

UVU shall communicate with subcontractors at any tier and material suppliers of the DESIGN/BUILD TEAM only through the DESIGN/BUILD TEAM. DESIGN/BUILD TEAM shall communicate to UVU directly and not through the User or any other governmental agency. DESIGN/BUILD TEAM shall not rely on any comments or writings of User without express consent in writing of UVU.

# TIME

## DESIGN FUNCTION SCHEDULE.

Time limits provided by the RFP shall not be exceeded by the DESIGN/BUILD TEAM or UVU. Any extensions of time from the schedule shall be void and of no force and effect until such adjustments are agreed to in writing by UVU and DESIGN/BUILD TEAM.

## CONSTRUCTION FUNCTION SCHEDULE. TIME OF COMPLETION OF CONSTRUCTION WORK AND DELAY REMEDY.

The Construction Work shall be Substantially Complete by [Completion date]. DESIGN/BUILD TEAM agrees to pay liquidated damages in the amount of $[Amount of liquidated damages] per day for each day after expiration of the Contract Time until the DESIGN/BUILD TEAM achieves Substantial Completion in accordance with the Contract Documents, if the DESIGN/BUILD TEAM’s delay makes the damages applicable. The provision for liquidated damages is: (a) to compensate UVU for delay only; (b) is provided for herein because actual damages cannot be readily ascertained at the time of execution of this Design/Build Agreement; (c) is not a penalty; and (d) shall not prevent UVU from maintaining Claims for other non-delay damages, such as costs to complete or remedy defective Work.

No PRE, Claim or action shall be maintained by the DESIGN/BUILD TEAM or Subcontractor or material supplier of DESIGN/BUILD TEAM at any tier, against UVU for damages or other claims due to losses attributable to hindrances or delays from any cause whatsoever, including acts and omissions of UVU or its officers, employees or agents, except as expressly provided in the General Conditions, including procedural, timing and substantive provisions of the General Conditions.

# PAYMENTS

## COMPENSATION.

UVU shall compensate the DESIGN/BUILD TEAM for work properly performed in accordance with the Contract Documents after UVU's receipt and approval of the DESIGN/BUILD TEAM's detailed monthly statement and any lien waivers or releases previously requested by UVU.

* + 1. **Guaranteed Fixed Contract Amount.** UVU agrees to pay and the DESIGN/BUILD TEAM agrees to accept in full performance of the design work and the construction Word under this DESIGN/BUILD TEAM’s Agreement, not more than the sum of [Contract Amount] DOLLARS AND NO CENTS ($00.00) which sum is the proposal amount submitted on [Date of proposal] and which sum shall be the guaranteed fixed contract amount. Payment to the DESIGN/BUILD TEAM will be made within thirty (30) calendar days of receipt of payment application by UVU.

The DESIGN/BUILD TEAM shall provide UVU within thirty (30) days of request by UVU, a schedule of accounts and budgets for Work which will be used as a basis for applications for payment. UVU agrees to pay the DESIGN/BUILD TEAM for the construction Work and the design services from time to time as the Work progresses, but not more than once each month after the date of Notice to Proceed, and only upon Certificate of the A/E as approved by UVU which approval may not be unreasonably withheld, for Work performed during the preceding calendar month, ninety-five percent (95%) of the value of the labor performed and ninety-five percent (95%) of the value of materials furnished in place or on the site. The DESIGN/BUILD TEAM agrees to furnish to UVU invoices for materials purchased and on the site but not installed, for which the DESIGN/BUILDER requests payment and agrees to safeguard and protect such equipment or materials and is responsible for the safekeeping thereof and if such be stolen, lost or destroyed, to replace same.

Such evidence of labor performed and materials furnished as UVU may reasonably require shall be supplied by the DESIGN/BUILD TEAM at the time of request for Certificate of Payment on account. Materials for which payment has been made cannot be removed from the job site without UVU's written approval. Five percent (5%) of the earned amount shall be retained from each monthly payment. Additional retainage shall be imposed if, in the written opinion of the Director of Procurement Services, special circumstances or considerations justify the imposition of additional retainage in the interest of the University.

* + 1. **DESIGN/BUILD TEAM Expenses.** The guaranteed fixed contract amount shall include all expenses of the DESIGN/BUILD TEAM, including travel, lodging, per diem and other costs associated with the performance of the duties and work under this Agreement.

## DESIGN/BUILD TEAM'S ACCOUNTING RECORDS.

All Accounting Records shall be available to UVU or UVU’s authorized representative at mutually convenient times.

# CHANGES IN THE WORK

## ADDITIONAL WORK.

It is understood and agreed by the parties hereto that no money will be paid to the DESIGN/BUILD TEAM for additional labor or materials furnished unless a new contract in writing or a Modification hereof in accordance with the General Conditions and Contract Documents for such additional labor or materials has been executed. UVU specifically reserves the right to modify or amend this Agreement and the total sum due hereunder either by enlarging or restricting the scope of the Work.

Modifications shall be issued in accordance with the General Conditions. No action, conduct, omission, prior failure or course of dealing by UVU shall act to waive, modify, change, or alter this requirement. Written modifications are the exclusive method for effecting any change to the contract sum or contract time. The DESIGN/BUILD TEAM understands and agrees that the contract sum and contract time cannot be changed by implication, oral agreements, actions, inactions, course of conduct or contractor initiated change order.

# INSURANCE, BONDS AND INDEMNIFICATION

## IN GENERAL.

To protect against liability, loss and/or expense arising in connection with the performance of services described under this DESIGN/BUILD TEAM's Agreement, the DESIGN/BUILD TEAM shall obtain and maintain in force during the entire period of this DESIGN/BUILD TEAM's Agreement, at its own expense, the following insurance from insurance companies authorized to do business in the State of Utah and rated "A" or better with a financial size category of Class X or larger. An exception to the above-stated rating and financial size category requirements is for the professional liability insurance referred to in 7.2.1(1) below, in which case the rating must be "B" or better with a financial size category of Class VIII or larger. All said ratings and financial size categories shall be as published by A.M. Best Company at the time this DESIGN/BUILD TEAM's Agreement is executed.

## DESIGN/BUILD TEAM INSURANCE.

Insurance for the general construction management and architectural components of the DESIGN/BUILD TEAM shall be provided as required below:

* + 1. **General Contractor’s Insurance.** In addition to the insurance required in Section 7.4 below, the DESIGN/BUILD TEAM shall meet all the insurance requirements for a General Contractor as required by the General Conditions.

## GENERAL CONTRACTOR'S BONDS.

In addition to the insurance required above, the bonds for the General Contractor functions under this Agreement shall be provided as required by the General Conditions. The 100% performance and payment bonds may exclude the amount attributable to design services as agreed to by UVU. The performance and payment bonds must be in effect and provided to UVU on the standard UVU forms prior to the issuance of a notice to proceed for the actual construction work.

## DESIGN INSURANCE.

In addition to the insurance required above, the following insurance for the design services under this Agreement shall be provided:

* + 1. DESIGN/BUILD TEAM Designer's Professional Liability Insurance. The DESIGN/BUILD TEAM shall maintain a professional liability insurance policy on a claims made basis, annual aggregate policy limit based on the following chart, unless modified in an attachment to this Agreement.

|  |  |
| --- | --- |
| **Construction Budget** | **Minimum Liability Coverage** |
| $50,000,000 and above | $2,000,000 per claim,  $4,000,000 aggregate |
| $25,000,000 and above, but under $50,000,000 | $2,000,000 per claim,  $2,000,000 aggregate |
| $1,500,000 and above but under $25,000,000 | $1,000,000 per claim,  $1,000,000 aggregate |
| Under $1,500,000 | $ 500,000 per claim,  $ 500,000 aggregate |

* + 1. Valuable papers and Records Coverage and/or Electronic Data Processing (Data and Media) Coverage. The DESIGN/BUILD TEAM and all engineering consultants of the DESIGN/BUILD TEAM shall provide coverage for the physical loss of or destruction to their work product including drawings, specifications and electronic data and media.

## ADDITIONAL COVERAGE.

UVU reserves the right to require additional coverage from that stated hereinabove, at UVU's expense for the additional coverage portion only. UVU also reserves the right to require project specific insurance, and if such right has been exercised it shall be indicated as an exhibit to this DESIGN/BUILD TEAM's Agreement. Unless project specific insurance is required by UVU, the coverage may be written under a practice policy with limits applicable to all projects undertaken by the firm but must be maintained in force for the discovery of claims for a period of three (3) years after the date final payment is made to the DESIGN/BUILD TEAM under this DESIGN/ BUILD TEAM's Agreement. All policies provided by the DESIGN/BUILD TEAM must contain a "retroactive" or "prior-acts" date which precedes the earlier of, the date of the DESIGN/BUILD TEAM's Agreement or the commencement of the DESIGN/BUILD TEAM's services. The DESIGN/BUILD TEAM's policy must also include a contractual liability endorsement applicable to the indemnity provision contained under this Article of this DESIGN/ BUILD TEAM's Agreement. Any review and approval by UVU does not relieve the DESIGN/BUILD TEAM of any responsibility of liability for an error, omission, submittal or work.

## FURNISH EVIDENCE OF INSURANCE, CERTIFICATES, ADDITIONAL INSURED.

The DESIGN/BUILD TEAM shall submit certificates in form and substance satisfactory to UVU as evidence of the insurance requirements of this Article. Such certificates shall provide UVU with thirty (30) day notice prior to the cancellation, material change or non-renewal of the applicable coverage, as evidenced by return receipt, certified mail, sent to UVU. The DESIGN/BUILD TEAM shall notify UVU within thirty (30) days of any claim(s) against the DESIGN/BUILD TEAM which singly or in the aggregate exceed 20% of the applicable required insured limits, and UVU may require the DESIGN/BUILD TEAM to reinstate the policy to provide full protection at the original limits.

Utah Valley University shall be named as an insured party, as primary coverage and not contributing, on all the insurance policies required by this Article except the professional liability and workers' compensation policies. UVU reserves the right to request the DESIGN/BUILD TEAM to provide a loss report from their insurance carrier.

## UVU RECOURSE.

The DESIGN/BUILD TEAM agrees to maintain the insurance described in this Article during the required term. If the DESIGN/BUILD TEAM fails to furnish and maintain said required insurance, UVU may purchase such insurance on behalf of the DESIGN/BUILD TEAM, and the DESIGN/BUILD TEAM shall pay the cost thereof to UVU upon demand and shall furnish to UVU any information needed to obtain such insurance.

## INDEMNIFICATION.

* + 1. **In General.** To the fullest extent permitted by law, the DESIGN/BUILD TEAM shall indemnify and hold harmless UVU and the State of Utah, its institutions, agencies, departments, divisions, authorities, and instrumentalities, boards, commissions, elected or appointed officers, employees, agents, authorized volunteers (hereinafter the above listing of entities and persons is referred to as "indemnities") from and against every kind and character of claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from any act or omission in the performance of the Work under this DESIGN/ BUILD TEAM's Agreement including the work of anyone directly or indirectly employed by the DESIGN/ BUILD TEAM, the DESIGN/BUILD TEAM's agent, consultant or independent contractor, or anyone for whose acts any of them may be liable, provided that any such claim, damage, loss or expense is caused in whole or in part by the negligent or intentional act or omission of the DESIGN/BUILD TEAM, anyone directly or indirectly employed by the DESIGN/BUILD TEAM, the agent, consultant or independent contractor of any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a part indemnified hereunder. The DESIGN/ BUILD TEAM shall defend all actions brought upon such matters to be indemnified hereunder and pay all costs and expenses incidental thereto, but the State of Utah shall have the right, at its option, to participate in the defense of any such action without relieving the DESIGN/BUILD TEAM of any obligation hereunder.
    2. **Not Reduce Current Rights.** Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person under this DESIGN/BUILD TEAM's Agreement.
    3. **Not Bound By Damage Limitations Under Certain Acts.** In claims against any person or entity indemnified under this Paragraph 7.8 by an employee of the DESIGN/BUILD TEAM, anyone directly or indirectly employed by the DESIGN/BUILD TEAM, the agent, consultant or independent contractor of any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 7.8 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the DESIGN/BUILD TEAM or said employee, agent, consultant, independent contractor or anyone for whose acts any of them may be liable, under workers' or workmen's compensation acts, disability benefits acts or other employee benefit acts.

# DISPUTE RESOLUTION

## DISPUTES.

Any dispute, PRE or Claim between the parties shall be subject to the provisions of Article 7 of the General Conditions. UVU reserves all rights to pursue its rights and remedies as provided in the General Conditions.

# TERMINATION, SUSPENSION OR ABANDONMENT

## IN GENERAL.

This Agreement may be terminated, suspended or abandoned in accordance with the General Conditions.

# OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

## IN GENERAL.

All Drawings, Specifications, other Contract Documents, as well as studies and projects prepared by the DESIGN/BUILD TEAM under this Agreement, are and shall remain the property of UVU, and UVU shall retain all common law, statutory and other reserved rights with respect thereto. All other provisions regarding the use, re-use and other provision regarding such items as stated in the General Conditions shall apply.

# MISCELLANEOUS PROVISIONS

## GOVERNING LAW AND VENUE.

Unless otherwise provided, this DESIGN/BUILD TEAM's Agreement shall be governed by the laws of the State of Utah. Salt Lake County, State of Utah, shall be the venue of any legal proceeding regarding the terms or enforcement of this DESIGN/BUILD TEAM's Agreement.

## WAIVER TO EXTENT OF RECOVERY OF INSURANCE MONIES.

UVU and DESIGN/BUILD TEAM waive all rights against each other and against the DESIGN/BUILD TEAM's consultants, subcontractors, agents and employees of the other for damages, but only to the extent covered by UVU provided Builder's Risk Policy concerning damage to the Work during construction, except such rights as they may have to the proceeds of such insurance as set forth in the General Conditions. UVU and DESIGN/BUILD TEAM each shall require similar waivers from their contractors, subcontractors, consultants and agents at any tier.

## BINDING AGREEMENT AND ASSIGNMENT PROVISIONS.

UVU and DESIGN/ BUILD TEAM respectively, bind themselves, their successors, assigns and legal representatives to the other party to this DESIGN/BUILD TEAM's Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this DESIGN/BUILD TEAM's Agreement. Neither UVU nor the DESIGN/BUILD TEAM shall assign its interest in this Agreement without the written consent of the other, except that the Contractor hereby consents to the assignment of UVU's interest herein as provided in this Article 11.

## INTEGRATION AND AMENDMENT.

This DESIGN/BUILD TEAM's Agreement represents the entire and integrated agreement between UVU and DESIGN/BUILD TEAM and supersedes all prior negotiations, representations or agreements, either written or oral. Except for Construction Change Directives issued under the General Conditions, this Agreement may be amended only by written instrument signed by both UVU and DESIGN/BUILD TEAM.

## THIRD PARTIES.

Except for UVU’s third party beneficiary rights described in this Agreement, nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either UVU or DESIGN/BUILD TEAM.

## HAZARDOUS MATERIALS.

The responsibilities of UVU and the DESIGN/BUILD TEAM regarding Hazardous Materials shall be as specified in the General Conditions and the Contract Documents.

## PROMOTION.

The DESIGN/BUILD TEAM shall have the right to include accurate representations of the design of the Project, including photographs of the exterior and interior, among the DESIGN/BUILD TEAM's promotional and professional materials. The DESIGN/BUILD TEAM's materials shall not include UVU's or the State’s confidential or proprietary information if UVU has previously advised the DESIGN/BUILD TEAM in writing of the specific information considered by UVU to be confidential or proprietary. UVU shall provide professional credit for the DESIGN/ BUILD TEAM on the construction sign and in the promotional materials for the Project. For purposes of this Paragraph 11.7, reference to the "DESIGN/BUILD TEAM" shall include the DESIGN/BUILD TEAM's consultants.

## INDEPENDENT CONTRACTOR.

The DESIGN/BUILD TEAM shall be considered an independent DESIGN/BUILD TEAM, and as such, shall have no authorization, express or implied, to bind the State of Utah or UVU to any agreement, settlement, liability or understanding whatsoever, nor to perform any acts as agent for the State of Utah or UVU, except as specifically set forth in this DESIGN/BUILD TEAM's Agreement.

## WRITTEN NOTICE.

UVU and DESIGN/BUILD TEAM shall be subject to the written notice provisions of the General Conditions.

## UVU/AGENCY REVIEW.

UVU or any other entity’s plan reviews or any other type or nature of review shall in no way relieve the DESIGN/BUILD TEAM of design liability or contractual responsibility under this DESIGN/BUILD TEAM's Agreement. Any guidelines, specifications, drawings or plans provided by UVU or any other entity to the DESIGN/ BUILD TEAM shall not relieve the DESIGN/BUILD TEAM of design liability or contractual responsibility under this Agreement.

## CONSULTANTS.

* + 1. **Not Use "Sales" or "Agent" A/E’s or Consultants.** The DESIGN/ BUILD TEAM agrees not to use "sales" or "agent" A/E’s or consultants. Said A/E’s or Consultants are not to benefit financially either directly or indirectly from the sale or use of any product on or in the Project.
    2. **A/E and Consultant Qualifications.** All A/E and Consultants must be licensed in Utah for the professional practice used on the Project and be approved in writing, in advance, by UVU.

## A/E, CONSULTANTS, SUBCONTRACTORS OF DESIGN/BUILD TEAM.

Any A/E, subcontract, supplier, or consultants agreement that the DESIGN/BUILD TEAM may enter into in regard to the Project of this DESIGN/BUILD TEAM's Agreement, shall require conformance with the provisions of this DESIGN/ BUILD TEAM's Agreement, to the extent applicable.

## WORK BY UVU OR UVU'S CONTRACTORS.

UVU reserves the right to perform work related to, but not part of, the Project and to award separate contracts in connection with other work at the site. The DESIGN/BUILD TEAM shall cooperate with UVU to afford UVU's other contractors a reasonable opportunity for access and storage of their materials and equipment for execution of their work. The DESIGN/BUILD TEAM shall incorporate and coordinate the DESIGN/BUILD TEAM's Work with work of UVU's separate contractors as required by the Contract Documents. The DESIGN/BUILD TEAM shall promptly notify UVU if any such independent action will in any way compromise the DESIGN/ BUILD TEAM's ability to meet the DESIGN/BUILD TEAMS's responsibilities under this Agreement.

## SEVERABILITY.

In case a provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected.

## OBSERVATIONS.

The Work shall be observed for acceptance in accordance with the General Conditions. DESIGN/BUILD TEAM shall have a Utah duly licensed architect or engineer, visit the site at least once per week during construction and shall make appropriate observations and promptly write and send to UVU written reports for each site visit. UVU may request more periodic site observations by the A/E if needed. The A/E shall be compensated for additional work properly performed and approved in advance in writing by UVU as well as not caused by errors and/or omissions of DESIGN/BUILD TEAM. The A/E shall report promptly any deficiencies, defects or problems with the Work or site conditions.

## RELATIONSHIP OF THE PARTIES AND ASSIGNMENT.

The DESIGN/BUILD TEAM accepts the relationship of trust and confidence established by this DESIGN/BUILD TEAM's Agreement and covenants with UVU to cooperate with UVU and utilize the DESIGN/ BUILD TEAM's best skill, efforts and judgment in furthering the interest of UVU; to furnish efficient business administration and supervision; to make best efforts to furnish at all times an adequate supply of workers and materials; and to perform the Work in the best and most expeditious and economic manner consistent with the interests of UVU.

## SUCCESSORS AND ASSIGNS.

UVU and DESIGN/BUILD TEAM, respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement, and to partners, successors, assigns and legal representatives of such other party with respect to all covenants, provisions, rights and responsibilities of this Agreement. The DESIGN/BUILD TEAM shall not assign the Contract without the prior written consent of UVU, nor shall the DESIGN/BUILD TEAM assign any moneys due or to become due as well as any rights under the Contract, without prior written consent of UVU.

UVU agrees to exercise reasonable best efforts to enable the DESIGN/BUILD TEAM to perform the Work by furnishing and approving in a timely way, information required by the DESIGN/BUILD TEAM in accordance with the requirements of the Contract Documents.

## AUTHORITY TO EXECUTE AND PERFORM AGREEMENT.

DESIGN/BUILD TEAM and UVU each represent that the execution of this DESIGN/BUILD TEAM's Agreement and the performance thereunder is within their respective duly authorized powers.

## ATTORNEY FEES AND COSTS.

Except as otherwise provided in the dispute resolution provisions of the General Conditions, the prevailing party shall be entitled to reasonable attorney fees and costs incurred in any action in the District Court and/or appellate body to enforce this DESIGN/BUILD TEAM's Agreement or recover damages or any other action as a result of a breach thereof.

## EXTENT OF AGREEMENT.

This Agreement represents the entire agreement between UVU and DESIGN/BUILD TEAM and supersedes any prior negotiations, representations or agreements. This Agreement may be amended only by written instrument signed by both UVU and DESIGN/BUILD TEAM. The DESIGN/BUILD TEAM and UVU for themselves, their heirs, successors, executors, and administrators, whichever may be applicable, hereby agree to the full performance of this Agreement and the Contract Documents.

DESIGN/BUILD TEAM and UVU each represent that the execution of this DESIGN/BUILD TEAM's Agreement and the performance thereunder is within their respective duly authorized powers.

**IN WITNESS WHEREOF**, the parties hereto have executed this DESIGN/BUILD TEAM's Agreement on the day and year stated hereinabove.

**DESIGN/BUILD TEAM:**

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

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

Signature Date

Title:

State of \_\_\_\_\_\_\_\_\_\_\_\_\_)

)

County of \_\_\_\_\_\_\_\_\_\_\_\_\_) Please type/print name clearly

On this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 20\_\_\_\_, personally appeared before me, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) and who by me duly sworn (or affirmed), did say that he (she) is the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (title or office) of the firm and that said document was signed by him (her) in behalf of said firm.

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

**Notary Public**

(SEAL) My Commission Expires \_\_\_\_\_\_\_\_\_\_\_\_

**UTAH VALLEY UNIVERSITY**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

(Signature) (Date)

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

(Name)

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

(Title)

# EXHIBIT “A”

DESIGN/BUILD TEAM Leaders

# EXHIBIT “B”

Cost Proposal Form with Cost Breakdown

# EXHIBIT “C”

List of Competition Documents

# EXHIBIT “D”

Clarification Items