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CONSENSUSDOCS 400 PRELIMINARY DESIGN-BUILD AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER

This Agreement is intended to be used in conjunction with ConsensusDOCS 410 or 415.

This document was developed through a collaborative effort of entities representing a wide cross-section of the construction industry. The organizations endorsing this document believe it represents a fair and reasonable consensus among the collaborating parties of allocation of risk and responsibilities in an effort to appropriately balance the critical interests and concerns of all project participants.

These endorsing organizations recognize and understand that users of this document must review and adapt this document to meet their particular needs, the specific requirements of the project, and applicable laws. Users are encouraged to consult legal, insurance and surety advisors before modifying or completing this document. Further information on this document and the perspectives of endorsing organizations is available in the ConsensusDOCS Guidebook.

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This Agreement is made this _____ day of _____ in the year _____, by and between the
OWNER

and the
DESIGN-BUILDER

for preliminary services in connection with the following
PROJECT

Notice to the Parties shall be given at the above addresses.

**ARTICLE 1
TEAM RELATIONSHIP**

1.1 The Owner and the Design-Builder agree to proceed on the basis of trust, good faith and fair dealing, and shall take all actions reasonably necessary to perform this Agreement in an economical and timely manner. The Owner and the Design-Builder shall perform their obligations with integrity, ensuring at a minimum that: a) conflicts of interest shall be avoided or disclosed promptly to the other Party; and b) The Design-Builder and the Owner warrant that they have not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including their agents, officers and employees, Subcontractors or others for whom they may be liable, to secure preferential treatment.

**ARTICLE 2
DESIGN-BUILDER'S RESPONSIBILITIES**

2.1 The Design-Builder shall exercise reasonable skill and judgment in the performance of its services. Architectural and engineering services shall be procured from licensed, independent design professionals retained by the Design-Builder or furnished by licensed employees of the Design-Builder, or as permitted by the law of the State in which the Project is located. The person or entity providing architectural and engineering services shall be referred to as the Architect/Engineer. If the Architect/Engineer is an independent design professional, the architectural and engineering services shall be procured pursuant to a separate agreement between the Design-Builder and the Architect/Engineer. The Architect/Engineer for the Project is _____.

2.2 The Design-Builder is responsible for the following Preliminary Design-Build Services:

2.2.1 OWNER'S PROGRAM If requested by the Owner as an Additional Service, the

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

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

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

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

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

2.2.6 ADDITIONAL SERVICES The Design-Builder shall provide the following Additional Services:

ARTICLE 3

OWNERSHIP OF DOCUMENTS

3.1 OWNERSHIP OF TANGIBLE DOCUMENTS Upon the making of final payment to the Design-Builder, the Owner shall receive ownership of the property rights, except for copyrights, of all documents, drawings, specifications, electronic data and information (hereinafter "Documents") prepared, provided or procured by the Design-Builder, its Architect/Engineer, Subcontractors or consultants and

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distributed to the Owner for this Project.

3.2 **COPYRIGHT** The Parties agree that Owner _____ shall/ _____ shall not (indicate one) obtain ownership of the copyright of all Documents. The Owner's acquisition of the copyright for all Documents shall be subject to the making of payments as required by Article 6 and the payment of the fee reflecting the agreed value of the copyright set forth below:

If the Parties have not made a selection to transfer copyright interests in the Documents, the copyright shall remain with the Design-Builder.

3.3 **OWNER'S USE** The Owner _____ shall/ _____ shall not have the right to use, reproduce or make derivative works of the Design-Build Documents for other projects without the written authorization of the Design-Builder, who shall not unreasonably withhold consent. The Owner's use of the Design-Build Documents on other projects or without the Design-Builder's written authorization or involvement is at the Owner's sole risk, and the Owner shall indemnify and hold harmless the Design-Builder, the Architect/Engineer and Subcontractors, and the agents, officers, directors and employees of each of them from and against any and all claims, damages, losses, costs and expenses, including but not limited to attorneys' fees, costs and expenses incurred in connection with any dispute resolution process, arising out of or resulting from such use of the Design-Build Documents.

3.4 **DESIGN-BUILDER'S USE** Where the Design-Builder has transferred its copyright interest in the Documents, the Design-Builder may reuse Documents prepared by it pursuant to this Agreement in its practice, but only in their separate constituent parts and not as a whole.

The Design-Builder shall obtain from its Architect/Engineer, Subcontractors and consultants property rights and rights of use that correspond to the rights given by the Design-Builder to the Owner in this Agreement.

3.5 **ELECTRONIC DOCUMENTS** If the Owner requires that the Owner and Design-Builder exchange documents and data in electronic or digital form, prior to any such exchange, the Owner and Design-Builder shall agree on a written protocol governing all exchanges in ConsensusDOCS 200.2 or a separate Agreement.

ARTICLE 4

OWNER'S RESPONSIBILITIES

4.1 The Owner shall provide to the Design-Builder all relevant information for the Project, including the Owner's Program, unless the Owner's Program is developed and prepared with the assistance of the Design-Builder as an Additional Service. The Owner shall timely review and approve schedules, estimates, Schematic Design Documents and other documents provided under this Agreement.

4.2 **OWNER'S ELECTION TO PROCEED** If the Owner elects to proceed with the Project beyond the Preliminary Design-Build Services provided in this Agreement, the Owner and the Design-Builder shall enter into an additional agreement for the completion of the design and the construction of the Project. If the Owner elects not to proceed with the Project, the Owner shall have no further obligation to the Design-Builder other than the payment of compensation as set forth in this Agreement.

ARTICLE 5

CONTRACT TIME

5.1 The Design-Builder's Services provided under this Agreement shall commence on or about _____, and shall be completed on or about _____.

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**ARTICLE 6
COMPENSATION**

6.1 The Owner shall compensate the Design-Builder monthly for Preliminary Design-Build Services performed under the Agreement on the following basis:

(State whether a stipulated sum, actual cost or other basis. If a stipulated sum, state what portion of the sum shall be payable each month.)

6.2 Reimbursable expenses under this Agreement shall include:

(List those reimbursable expenses that are not included above)

**ARTICLE 7
PROFESSIONAL LIABILITY INSURANCE**

7.1 The Design-Builder shall obtain, either itself or through the Architect/Engineer, professional liability insurance for claims arising from the negligent performance of professional services under this Agreement, which shall be:

General Office Coverage _____ or Project Specific Professional Liability Insurance _____ (indicate one)

written for not less than \$ _____ per claim and in the aggregate with a deductible not to exceed \$ _____. The Professional Liability Insurance shall include prior acts coverage sufficient to cover all services rendered by the Architect/Engineer.

This Agreement is entered into as of the date entered in Article 1.

ATTEST:

OWNER: _____

BY:

PRINT NAME: _____

PRINT TITLE: _____

ATTEST:

DESIGN-BUILDER: _____

BY:

PRINT NAME: _____

PRINT TITLE: _____

IMPORTANT: A vertical line in the margin indicates a change has been made to the original text. Prior to signing, recipients may wish to request from the party producing the document a "redlined" version indicating changes to the original text. Consultation with legal and insurance counsel and careful review of the entire document are strongly encouraged.