



This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion.

EFFECTIVE DATE is the _____ day of _____ in the year **20**__.

BETWEEN THE OWNER:

State of Oklahoma
OMES/CAM/CAP
P.O. Box 53448
Oklahoma City, OK 73152-3448
cap@omes.ok.gov

PROJECT:

(CAP Project Number) (Solicitation Number)

(CAP Project Name)

(Address/Location)

This Exhibit is attached to and made a part of the Underlying Contract between the parties.

ARTICLE 1: Definitions.

1.1 BIM or BIM Process means the Building Information Modeling system that is described in this Exhibit and that has been agreed to between Owner and Design-Builder.

1.2 Deliverable means a document, either in hard copy or electronic form that contains designs, drawings, calculations, information or other data that is utilized in the BIM Process. A Deliverable may be in the form of a submission from a Participant to the BIM Process or a document generated through the BIM Process.

1.3 Design-Build Agreement means the Agreement identified below between the Design-Builder and Owner for the design and construction of the Project. Definitions in this Exhibit shall be the same as the definitions set forth in CAP Form DB535 *General Conditions of the Contract for Design-Build*. The Design-Build Agreement is based on the following:

(The document referred to for 1.3 clause, if selected with an "X," shall become the valid document reference of this Agreement)

☐ CAP Form DB525 *Standard Form of Agreement Between Owner and Design-Builder – Lump Sum* ("DB525").

☐ CAP Form DB530 *Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee with an Option for a Guaranteed Maximum Price* ("DB530").

1.4 General Conditions of Contract means the General Conditions attached to the Design-Build Agreement and is the CAP Form DB535 *General Conditions of the Contract for Design-Build*.

1.5 Information means any information, data, drawings, concepts, designs, submittals, models, calculations, or any other information in any media whatsoever, submitted by a Participant to the Design-Builder or Information Manager for use in the BIM Process.

1.6 Information Manager means the entity or individual designated in Section 3.2 of this Exhibit.

1.7 Intellectual Property Rights means the copyrights, patents, licenses and other rights associated with the use and/or modification of any Information or Deliverables.

1.8 Participant means an entity who is a party to the Design-Build Agreement, Subcontract, Design Consultant Agreement, or a contract of a lower tier, who has or will provide either Information or a Deliverable to the BIM Process.

1.9 Project means the Project described and set forth above.

1.10 Subcontractor or Design Consultant and their lower tier *Sub-Subcontractors* and *Design Sub-Consultants* shall have the meanings set forth in the General Conditions of Contract.

1.11 Subcontract or Design Consultant Agreement shall mean an agreement between the Design-Builder, and a Subcontractor or a Design Consultant to perform a portion of the Work set forth in the Design-Build Agreement.

1.12 Underlying Contract means the contract under which the Participant is obligated to provide Information, Deliverables and/or design and/or construction services to the Project. Underlying Contracts include the Design-Build Agreement, Subcontracts, Design Consultant Agreements, and contracts of a lower tier.

ARTICLE 2: Purpose.

2.1 The Participants have agreed to utilize BIM to assist with the design and/or planning of the Project set forth above. The purpose of this Exhibit is to establish the procedures associated with the use of BIM for the Project.

2.2 The Participants will, in connection with the meeting set forth in Section 2.1.4 of the General Conditions of Contract ("Initial Conference"), determine the following:

2.2.1 The desired use and outcome of BIM for the Project, including but not limited to the Deliverables to be developed from the use of BIM;

2.2.2 The Information and Deliverables to be submitted by the Participants, including but not limited to the format for the Information and/or Deliverable;

2.2.3 The identities of the Participants to the BIM Process;

2.2.4 The roles and responsibilities of the Participants to the BIM Process; and

2.2.5 Establish submission schedules for Information and Deliverables.

2.3 All Participants will incorporate this Exhibit into their respective Subcontracts, Design Consultant Agreements, and lower tier contracts with Participants.

ARTICLE 3: Information Management.

3.1 Design-Builder will identify the software program(s) that the Participants are required to utilize in the BIM Process. The cost of the software is:

(The 3.1 clause, if selected with an "X," shall become the valid clause of this Agreement)

☐ A Cost of the Work pursuant to Section 6.3 of DB530;

☐ Included in the lump sum set forth in Section 6.1 of DB525;

☐ Paid by Owner outside the Contract Price;

☐ Obtained, provided, and paid for by each Participant;

☐ Included in the cost of the Underlying Contract; or

☐ Other: _____

3.2 Design-Builder will designate an Information Manager who will be responsible for the following:

3.2.1 Establishment of submission standards for Information and Deliverables and other data to be submitted through the BIM Process;

3.2.2 Control of access to the BIM Process, including but not limited to, control over access to the submissions contained therein. Such control shall include establishment of passwords and security for Participants; assigning and maintaining user accounts; applying controls so that only authorized Participants may access and/or modify files; and recording information regarding the data entry by each Participant;

3.2.3 Receipt and organization of the Information submitted through the BIM Process;

3.2.4 Maintenance and updating of the software and electronic files associated with the BIM Process, including but not limited to, regularly backing up the programs and data associated with BIM and/or restoring such data and programs, if necessary; and

3.2.5 Serving as the central communications point for all Participants with respect to questions and problems associated with BIM, including but not limited to, questions regarding software, access to BIM, and troubleshooting.

3.3 The Owner will provide such Information as agreed to in the Initial Conference. The Participants may rely on the Owner's Information and Owner shall remain responsible for such Information in the same manner as set forth in Section 3.2.1 of the General Conditions of Contract.

ARTICLE 4: Responsibility for Information and Deliverables.

4.1 Each Participant to the BIM Process shall be responsible for complying with their respective Underlying Contracts with regard to Information and Deliverables.

4.2 Each Participant shall review and coordinate the Information and/or Deliverable submitted by its Subcontractors, Design Consultants or others as the case may be and shall remain fully responsible for the Information and Deliverables so provided.

4.3 If a Participant modifies the Information and/or Deliverable of another Participant without the professional involvement of the non-modifying Participant, the modifying Participant shall be responsible to the extent of the modification and shall indemnify, defend and hold harmless the non-modifying Participant from and against any claims, suits, damages, losses, liabilities, costs and expenses (including reasonable attorney's fee) to the extent caused by such modification(s).

4.4 Information and Deliverables provided by each Participant are represented as suitable for incorporation into the BIM Process for this Project only, and are not represented as appropriate or suitable for any other project, nor for adaptation of this Project design to another location. Any further use of the Participant's Information and Deliverables for another project or location is strictly prohibited without the written consent and professional involvement of the Participant.

4.5 Participants are not responsible for errors in their Information and Deliverables caused by software or hardware compatibility with the BIM software specified by the Information Manager. However, upon notice from the Information Manager of such incompatibility, the Participant shall work in good faith to resolve such compatibility issues, including errors in transmission, at no added cost to any Participant.

ARTICLE 5: Participant's Responsibilities.

5.1 Participants shall carefully review the Information and Deliverables submitted to and developed by the Participant through the BIM Process to determine whether the Information and/or Deliverable that the Participant provides is adequately and accurately reflected in the Deliverable and that such Information and/or Deliverable is consistent with the overall Project and the Basis of Design Documents. If a Participant identifies any error, omission or inconsistency in any Information or Deliverable submitted to or developed through the BIM Process, the Participant shall immediately notify Design-Builder and the Information Manager of such error, omission or inconsistency, regardless of Participant's responsibility for the error, omission or inconsistency.

5.2 Each Participant is responsible for maintaining a record of the Information and Deliverables that the Participant submits to the BIM Process.

ARTICLE 6: Intellectual Property Rights.

6.1 Each Participant represents that it has the appropriate Intellectual Property Rights to submit its Information or Deliverable to the BIM Process and that it has obtained such rights from any of its Subcontractors and Design-Consultants and lower tier parties whose Information or Deliverable the Participant furnishes. Such Intellectual Property Rights shall comply with Article 4 of DB525 *Standard Form of Agreement Between Owner and Design-Builder – Lump Sum* or DB530 *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price*, and each Participant represents that it will provide such licenses and/or ownership rights in the Work Product as is required in Article 4 of the Design-Build Agreement.

ARTICLE 7: Miscellaneous.

7.1 This Exhibit shall not modify or alter any Underlying Contract, except as expressly set forth in this Addendum.

7.2 Resolution of any disputes arising out of this Exhibit shall be pursuant to the Participants' Underlying Contracts.

Attachments list