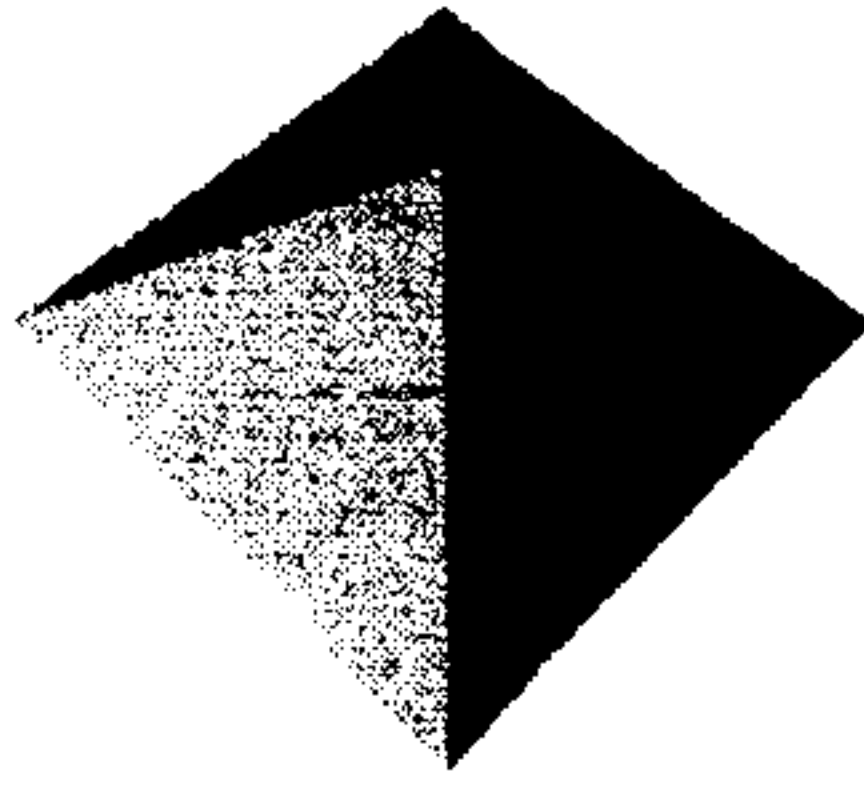


DBIA



**DESIGN-BUILD
INSTITUTE OF AMERICA**

Standard Form of Preliminary Agreement Between Owner and Design-Builder

*This document has important legal consequences. Consultation with
an attorney is recommended with respect to its completion or modification.*

SAMPLE. By inclusion of this document in DBIA's Manual of Practice, DBIA does not grant any implied or explicit license to copy it in whole or in part. Please contact DBIA for information on licensed reproduction.

This **AGREEMENT** is made as of the _____ day of _____
in the year of _____, by and between the following parties, for services in connection with the Project
identified below.

OWNER:

(Name and address)

DESIGN-BUILDER:

(Name and address)

PROJECT:

*(Include Project name and location
as it will appear in the Contract
Documents)*

In consideration of the mutual covenants and obligation contained herein, Owner and Design-Builder agree
as set forth herein.

Article 1

General

1.1 Duty to Cooperate. Owner and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith to permit each party to realize the benefits afforded under this Agreement.

1.2 Definitions. Terms, words and phrases used in this Agreement shall have the meanings given them in DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (1998 Edition) ("General Conditions of Contract").

Article 2

Design-Builder's Services and Responsibilities

2.1 Design Services. Design-Builder shall, consistent with applicable state licensing laws, provide design services, including architectural, engineering and other design professional services, required by this Agreement. Such design services shall be provided through qualified, licensed design professionals who are either (i) employed by Design-Builder, or (ii) procured by Design-Builder from independent sources. Nothing in this Agreement is intended to create any legal or contractual relationship between Owner and any independent design professional.

2.2 Preliminary Services

2.2.1 Owner shall provide Design-Builder with Owner's Project Criteria describing Owner's program requirements and objectives for the Project. Owner's Project Criteria shall include Owner's use, space, price, time, site, performance and expandability requirements. Owner's Project Criteria may include conceptual documents, design criteria, performance requirements and other technical materials and requirements prepared by or for Owner.

2.2.2 If Owner's Project Criteria have not been developed prior to the execution of this Agreement, Design-Builder will assist Owner in developing Owner's Project Criteria, with such service deemed to be an Additional Service pursuant to Section 2.7 hereof. If Owner has developed Owner's Project Criteria prior to executing this Agreement, Design-Builder shall review and prepare a written evaluation of such criteria, including recommendations to Owner for different and innovative approaches to the design and construction of the Project. The parties shall meet to discuss Design-Builder's written evaluation of Owner's Project Criteria and agree upon what revisions, if any, should be made to such criteria.

2.3 Schematic Design Documents. Design-Builder shall prepare Schematic Design Documents based on Owner's Project Criteria, as may be revised in accordance with Section 2.2.2 hereof. The Schematic Design Documents shall include design criteria, drawings, diagrams and specifications setting forth the requirements of the Project. The parties shall meet to discuss the Schematic Design Documents and agree upon what revisions, if any, should be made. Design-Builder shall perform such agreed-upon revisions.

2.4 Proposal. Based on Owner's Project Criteria, the Schematic Design Documents, as each may be revised pursuant to Sections 2.2.3 and 2.3 above, and any other documents upon which the parties may agree, Design-Builder shall submit a proposal to Owner (the "Proposal"), which shall include the following unless the parties mutually agree otherwise:

- .1 a proposed contract price for the design and construction of the Project, which price shall be in the form of a lump sum or the cost of the work plus a fee with an option for a Guaranteed Maximum Price ("GMP");
- .2 a schedule and date of Substantial Completion of the Project upon which the Contract Price for the Project is based;
- .3 all other information necessary for the parties to enter into DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder — Lump Sum* (1998 Edition) or DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder — Cost Plus Fee with an Option for a Guaranteed Maximum Price* (1998 Edition), with the accompanying General Conditions of Contract; and
- .4 the time limit for acceptance of the Proposal.

2.5 Review of Proposal. Design-Builder and Owner shall meet to discuss and review the Proposal. If Owner has any comments regarding the Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If Design-Builder finds the revisions acceptable, Design-Builder shall, upon receipt of Owner's notice, adjust the Proposal.

2.6 Completion of This Agreement. Design-Builder's services under this Agreement shall be deemed completed upon meeting with Owner to discuss the Proposal and making those revisions to the Proposal, if any, Design-Builder finds acceptable.

2.7 Additional Services. Design-Builder shall perform the Additional Services set forth in a separate exhibit to this Agreement. The cost for such services shall be as mutually agreed upon by Owner and Design-Builder, with the Contract Price for this Agreement, as set forth in Section 6.1 hereof, being adjusted accordingly.

Article 3

Owner's Services and Responsibilities

3.1 Timely Performance. Owner shall throughout the performance of this Agreement cooperate with Design-Builder. Owner shall perform its responsibilities, obligations and services, including its reviews and approvals of Design-Builder's submissions, in a timely manner so as not to delay or interfere with Design-Builder's performance of its obligations under this Agreement.

3.2 Owner's Project Criteria. Owner shall provide Design-Builder with Owner's Project Criteria. If Owner desires that Design-Builder assist Owner in developing such criteria as an Additional Service under Section 2.7 hereof, Owner shall provide Design-Builder with its objectives, limitations and other relevant information regarding the Project.

3.3 Owner Provided Information. Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely upon in performing its obligations hereunder:

- .1 Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

- .2 Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
- .3 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project;
- .4 A legal description of the Site;
- .5 To the extent available, as-built and record drawings of any existing structures at the Site; and
- .6 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

Article 4

Ownership of Work Product

4.1 Work Product. All drawings, specifications and other documents and electronic data furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including the copyright thereto.

4.2 Owner's Limited License. If Owner fails to enter into a contract on this Project with Design-Builder to complete the design and construction of the Project and Owner proceeds to design and construct the Project through its employees, agents or third parties, Design-Builder, upon payment of the amounts due Design-Builder under this Agreement, shall grant Owner a limited license to use the Work Product to complete the Project, conditioned on the following:

- .1 Use of the Work Product is at Owner's sole risk without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"). Owner shall defend, indemnify and hold harmless the Indemnified Parties from any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use of the Work Product; and
- .2 Owner agrees to pay Design-Builder the additional sum of _____ Dollars (\$ _____) as compensation for the right to use the Work Product in accordance with this Article 4.

Article 5

Contract Time

5.1 Commencement Date. Design-Builder shall commence performance of the services set forth in this Agreement within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties' mutually agree otherwise in writing. Design-Builder shall complete such services no later than _____ (_____) calendar days after the Date of Commencement.

5.2 Interim Dates. Interim milestone dates, if any, of identified portions of the services set forth in this Agreement shall be achieved as described in a separate exhibit to this Agreement.

Article 6
Contract Price

6.1 Contract Price. The Contract Price for this Agreement is as set forth below: *(Provide for a fixed lump sum amount, cost of the work plus a fee with a GMP, hourly rates, or some other basis of compensation)*

6.2 Scope of Contract Price. The Contract Price shall be the full compensation due Design-Builder for the performance of all services set forth in this Agreement, and shall be deemed to include all the sales, use, consumer and other taxes mandated by applicable Legal Requirements. The Contract Price shall be adjusted to reflect any Additional Services agreed upon by the parties after execution of this Agreement.

Article 7
Procedure for Payment

7.1 Payment. Design-Builder and Owner agree upon the following method for partial and final payment to Design-Builder for the services hereunder.

7.2 Interest. Payments due and unpaid by Owner to Design-Builder shall bear interest commencing five (5) days after payment is due at the rate of _____ percent (_____%).

Article 8
Other Provisions

8.1 Dispute Resolution. The parties agree that any claim, dispute or controversy arising out of or relating to this Agreement or the breach thereof shall first be submitted to non-binding mediation administered by the American Arbitration Association ("AAA") pursuant to the Construction Industry Mediation Rules then in effect. Any claim, dispute, or controversy arising out of or relating to this Agreement or the breach thereof which has not been resolved by mediation shall be submitted to binding arbitration administered by the AAA pursuant to the Construction Industry Arbitration Rules then in effect.

8.2 Assignment. Neither Design-Builder nor Owner shall without the written consent of the other party assign, transfer, or sublet any portion or part of its obligations under this Agreement.

8.3 Governing Law. This Agreement shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

8.4 Severability. If any provision or any part of a provision of this Agreement shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to applicable laws by any authority having jurisdiction, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provisions or parts of the provision of this Agreement, which shall remain in full force and effect as if the unenforceable provision or part was deleted.

SAMPLE: By inclusion of this document in DBIA's Manual of Practice, DBIA does not grant any implied or explicit license to copy it in whole or in part. Please contact DBIA for information on licensed reproduction.

8.5 Amendments. This Agreement may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of both parties.

8.6 Entire Agreement. This Agreement forms the entire agreement between Owner and Design-Builder. No oral representations or other agreements have been made by the parties except as specifically stated in this Agreement.

8.7 Other Provisions. Other provisions, if any, are as follows:

In executing this Agreement, Owner and Design-Builder each represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

OWNER:

(Name of Owner)

(Signature)

(Printed Name)

(Title)

Date: _____

DESIGN-BUILDER:

(Name of Design-Builder)

(Signature)

(Printed Name)

(Title)

Date: _____