

Standard Form of
Preliminary Agreement
Between Owner and
Design-Builder

SAMPLE

Document No. 520

Second Edition, 2010

© Design-Build Institute of America
Washington, D.C.





Design-Build Institute of America - Contract Documents

LICENSE AGREEMENT

By using the DBIA Contract Documents, you agree to and are bound by the terms of this License Agreement.

- 1. License.** The Design-Build Institute of America ("DBIA") provides DBIA Contract Documents and licenses their use worldwide. You acknowledge that DBIA Contract Documents are protected by the copyright laws of the United States. You have a limited nonexclusive license to: (a) Use DBIA Contract Documents on any number of machines owned, leased or rented by your company or organization; (b) Use DBIA Contract Documents in printed form for bona fide contract purposes; and (c) Copy DBIA Contract Documents into any machine-readable or printed form for backup or modification purposes in support of your permitted use.
- 2. User Responsibility.** You assume sole responsibility for the selection of specific documents or portions thereof to achieve your intended results, and for the installation, use, and results obtained from the DBIA Contract Documents. You acknowledge that you understand that the text of the DBIA Contract Documents has important legal consequences and that consultation with an attorney is recommended with respect to use or modification of the text. You will not represent that any of the contract documents you generate from DBIA Contract Documents are DBIA documents unless (a) the document text is used without alteration or (b) all additions and changes to, and deletions from, the text are clearly shown.
- 3. Copies.** You may not use, copy, modify, or transfer DBIA Contract Documents, or any copy, modification or merged portion, in whole or in part, except as expressly provided for in this license. Reproduction of DBIA Contract Documents in printed or machine-readable format for resale or educational purposes is expressly prohibited. You will reproduce and include DBIA's copyright notice on any printed or machine-readable copy, modification, or portion merged into another document or program.
- 4. Transfers.** You may not transfer possession of any copy, modification or merged portion of DBIA Contract Documents to another party, except that a party with whom you are contracting may receive and use such transferred material solely for purposes of its contract with you. You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement, and any attempt to do so is void.
- 5. Term.** The license is effective for one year from the date of purchase. DBIA may elect to terminate it earlier, by written notice to you, if you fail to comply with any term or condition of this Agreement.
- 6. Limited Warranty.** DBIA warrants the electronic files or other media by which DBIA Contract Documents are furnished to be free from defects in materials and workmanship under normal use during the Term. There is no other warranty of any kind, expressed or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state. DBIA does not warrant that the DBIA Contract Documents will meet your requirements or that the operation of DBIA Contract Documents will be uninterrupted or error free.
- 7. Limitations of Remedies.** DBIA's entire liability and your exclusive remedy shall be: the replacement of any document not meeting DBIA's "Limited Warranty" which is returned to DBIA with a copy of your receipt, or at DBIA's election, your money will be refunded. In no event will DBIA be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use DBIA Contract Documents even if DBIA has been advised of the possibility of such damages, or for any claim by any other party. Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.
- 8. Acknowledgement.** You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions and that it will be governed by the laws of the District of Columbia. You further agree that it is the complete and exclusive statement of your agreement with DBIA which supersedes any proposal or prior agreement, oral or written, and any other communications between the parties relating to the subject matter of this agreement.

INSTRUCTIONS

For DBIA Document No. 520 Standard Form of Preliminary Agreement Between Owner and Design-Builder (2010 Edition)

Checklist

Use this Checklist to ensure that the Agreement is fully completed and all exhibits are attached.

_____	Page 1	Owner's name, address and form of business
_____	Page 1	Design-Builder's name, address and form of business
_____	Page 1	Project name and address
_____	Section 2.7	Attach exhibit for Additional Services (optional)
_____	Section 4.2.2	Complete blanks for additional sum for use of Work Product
_____	Section 5.1	Complete blanks for calendar days
_____	Section 5.2	Attach exhibit for interim milestone dates (optional)
_____	Section 6.1	Insert the Contract Price
_____	Section 7.1	Insert the payment method
_____	Section 7.2	Complete blanks for interest rate
_____	Section 9.8	Insert any other provisions (optional)
_____	Last Page	Owner's and Design-Builder's execution of the Agreement

General Instructions

No.	Subject	Instruction
1.	Standard Forms	Standard form contracts have long served an important function in the United States and international construction markets. The common purpose of these forms is to provide an economical and convenient way for parties to contract for design and construction services. As standard forms gain acceptance and are used with increased frequency, parties are able to enter into contracts with greater certainty as to their rights and responsibilities.
2.	DBIA Standard Form Contract Documents	Since its formation in 1993, the Design-Build Institute of America ("DBIA") has regularly evaluated the needs of owners, design-builders, and other parties to the design-build process in preparation for developing its own contract forms. Consistent with DBIA's mission of promulgating best design-build practices, DBIA believes that the design-build contract should reflect a balanced approach to risk that considers the legitimate interests of all parties to the design-build process. DBIA's Standard Form Contract Documents reflect a modern risk allocation approach, allocating each risk to the party best equipped to manage and minimize that risk, with the goal of promoting best design-build practices.
3.	Use of Non-DBIA Documents	To avoid inconsistencies among documents used for the same project, DBIA's Standard Form Contract Documents should not be used in conjunction with non-DBIA documents unless the non-DBIA documents are appropriately modified on the advice of legal counsel.
4.	Legal Consequences	DBIA Standard Form Contract Documents are legally binding contracts with important legal consequences. Contracting parties are advised and encouraged to seek legal counsel in completing or modifying these Documents.
5.	Reproduction	DBIA hereby grants to purchasers a limited license to reproduce its documents consistent with the License Agreement accompanying these Documents. At least two original versions of the Agreement should be signed by the parties. Any other reproduction of DBIA Documents is prohibited.

No.	Subject	Instruction
6.	Modifications	<p>Effective contracting is accomplished when the parties give specific thought to their contracting goals and then tailor the contract to meet the unique needs of the project and the design-build team. For that reason, these Documents may require modification for various purposes including, for example, to comply with local codes and laws, or to add special terms. Also, in some instances, these Documents must be modified to indicate the selection of a particular contract term.</p> <p>Any modifications to these Documents should be underlined to distinguish them from original language. Any modifications should be initialed by the parties. To delete provisions, strike through the printed words so that original language remains legible. At no time should a document be re-typed in its entirety. Re-creating the document violates copyright laws and destroys one of the advantages of standard forms - familiarity with the terms.</p>
7.	Execution	It is good practice to execute two original copies of the Agreement. Only persons authorized to sign for the contracting parties may execute the Agreement.

Specific Instructions

Section	Title	Instruction
General	Purpose of This Document	<p>DBIA Document No. 520, <i>Standard Form of Preliminary Agreement Between Owner and Design-Builder</i> ("Agreement") is for preliminary services only, not for construction services, and shall be used when Owner decides not to contract for the complete design and construction at one time. Use of this Agreement anticipates a two-stage approach to the Project, whereby Owner retains the Design-Builder to assist in the review and/or development of Owner's Project Criteria and for preliminary Schematic Design Documents. Then, depending upon the Design-Builder's Proposal, Owner has the option of contracting for final design and construction services by executing either DBIA Document No. 525, <i>Standard Form of Agreement Between Owner and Design-Builder – Lump Sum</i>, 2010 Edition, or DBIA Document No. 530, <i>Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price</i>, 2010 Edition. DBIA Document No. 525 and DBIA Document No. 530 can also be used when Owner desires preliminary services as part of a complete design-build contract.</p> <p>Under this Agreement, Design-Builder provides a Schematic Design and a Proposal for the completion of the design and construction. If Owner has not completed its Project Criteria before executing this Agreement, the Agreement allows for Owner to pay Design-Builder to assist in the development of Owner's Project Criteria as an Additional Service.</p> <p>If Owner does not accept the Proposal Design-Builder prepares under this Agreement, Owner may select another design-builder to complete the final design and construction. This Agreement allows Owner a limited license to use the Schematic Design and other Work Product created by Design-Builder under this Agreement to complete the Project, providing that Owner indemnifies Design-Builder for claims arising out of the use of the Work Product, and further agrees to compensate Design-Builder for the use of its Work Product. It is anticipated that Owner and Design-Builder will negotiate the compensation for the use of the Work Product prior to the execution of this Agreement.</p>
General	Purpose of These Instructions	These Instructions are not part of this Agreement, but are provided to aid the parties in their understanding of the Agreement and in completing the Agreement.

Section	Title	Instruction
General	Related Documents	<p>This Agreement includes its own abbreviated general conditions and does not require the use of DBIA Document No. 535, <i>Standard Form of General Conditions of Contract Between Owner and Design-Builder</i>, 2010 Edition (“General Conditions of Contract”).</p> <p>Upon completion of the services under this Agreement, the parties may complete the final design and construction of the Project by executing either DBIA Document No. 525 or DBIA Document No. 530, and the accompanying General Conditions of Contract.</p>
General	Date	<p>On Page 1, enter the date when both parties reach a final understanding. It is possible, due to logistical reasons, that the dates when the parties execute the Agreement may be different. Once both parties execute the Agreement, the effective date of the Agreement will be the date recorded on Page 1. This date does not, however, determine Contract Time, which is measured according to the terms of Article 5.</p>
General	Parties: Owner and Design-Builder	<p>On Page 1, enter the legal name and full address of Owner and Design-Builder, as well as the legal form of each entity, e.g., corporation, partnership, limited partnership, limited liability company, or other.</p>
1.2	Definitions	<p>Although this Agreement is a stand-alone document, terms, words and phrases used in the Agreement shall have the same meanings used in the General Conditions of Contract.</p>
2.1	Design Services	<p>The parties should be aware that in addition to requiring compliance with state licensing laws for design professionals, some states also require that the design professional have a corporate professional license.</p>
2.2	Preliminary Services	<p>If Owner’s Project Criteria are provided, Design-Builder’s review and written evaluation of the Project Criteria will promote a clear understanding of Owner’s program prior to Design-Builder’s preparation of Schematic Design Documents.</p> <p>This Agreement acknowledges that Owner may not have developed its Project Criteria prior to the execution of this Agreement, and provides that Owner may pay Design-Builder an additional fee to assist in this effort pursuant to Section 2.7, Additional Services.</p>
2.4	Proposal	<p>Upon completion of the Schematic Design Documents, Design-Builder shall prepare its Proposal, which shall contain the information described in Sections 2.4.1, 2.4.2, 2.4.3, and 2.4.4. If the parties agree to additional or other requirements, state these requirements in Section 9.8, Other Provisions, or modify Section 2.4 appropriately.</p>
2.4.2	Schedule	<p>Given that expedited delivery is one of the primary factors driving many owners to select the design-build method, DBIA strongly believes that the parties should discuss and understand what each party must do to support the Project schedule. The entire Work, both design and construction, should be scheduled. The schedule should indicate the dates for the start and completion of the various stages of the Work, including the date when Owner information and approvals are required and any Owner created constraints.</p>
2.4.3	Other information	<p>Other information may be required to enter into a subsequent agreement for final design and construction. For example, if a Guaranteed Maximum Price (“GMP”) is proposed, Design-Builder will need to provide all documents used as the basis for the GMP and identify them in a GMP Exhibit. For a Lump Sum proposal, Design-Builder may need to create a Design-Builder’s Deviation List to identify any deviations from Owner’s Project Criteria.</p> <p>To identify other information that may be required, Design-Builder should familiarize itself with the terms of DBIA Document No. 525 or DBIA Document No. 530, and the accompanying General Conditions of Contract.</p>

Section	Title	Instruction
2.6	Completion of the Agreement	If Design-Builder and Owner are unable to reach agreement on mutually acceptable revisions to the Proposal, and Owner does not accept the Proposal, Design-Builder will have no further involvement in the Project. Design-Builder's ownership of the Work Product prepared under this Agreement, and Owner's limited license to its use are described in Article 4, Ownership of Work Product.
2.7	Additional Services	Attach as a separate exhibit to this Agreement the scope of work for any Additional Services to be performed by Design-Builder, such as the development of Owner's Project Criteria pursuant to Section 2.2.2.
Article 4	Ownership of Work Product	<p>This Agreement provides that unless the parties select the optional provisions set forth in Article 4, Design-Builder shall retain ownership of the Work Product it produces, but obligates Design-Builder to grant a limited license to Owner to use the Work Product conditioned on the terms of Sections 4.2.1 and 4.2.2.</p> <p>DBIA recognizes that the critical decisions affecting the success of the Project and the greatest intellectual effort are typically developed during the preliminary phase. The purpose of Article 4 is to balance the interests of Owner, whose schedule will be adversely affected if it cannot use the Work Product created under this Agreement, and Design-Builder, who may not have been compensated for the full market value of its preliminary work, and who must be protected from liability for design that it does not complete or construct.</p>
4.2.2	Additional Compensation	To minimize disputes, the parties should negotiate prior to execution of the Agreement the amount of additional compensation Owner will pay Design-Builder for the right to use the Work Product. Enter the amount of this additional compensation.
5.1	Commencement Date	Design-Builder will commence its services within five (5) days of its receipt of Owner's Notice to Proceed, and complete its services no later than the calendar day duration of time negotiated between the parties. Enter the calendar days duration of this negotiated Contract Time.
5.2	Interim Dates	Attach an exhibit for interim dates, if any.
6.1	Contract Price	Insert the Contract Price, or the basis for its calculation as agreed to by the parties.
7.1	Payment	Insert the method agreed upon by Owner and Design-Builder for partial and final payment.
7.2	Interest	Enter the rate at which interest will accrue on Design-Builder's payments, if unpaid five (5) days after due.
9.1	Dispute Resolution	DBIA endorses the use of partnering, negotiation, mediation and arbitration for the prevention and resolution of disputes. This Agreement provides for mandatory, non-binding mediation followed by binding arbitration for any dispute not resolved by mediation. The parties are encouraged to attempt to negotiate a mutually satisfactory resolution of any claim, dispute, or controversy prior to resorting to mediation.
9.8	Other Provisions	Insert any other provisions.

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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.*

This **AGREEMENT** is made as of the _____ day of _____ in
the year of 20_____, 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 obligations 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* (2010 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 specifications, design performance specifications 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 2.2.2 and 2.3 above, and any other Basis of Design 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:

2.4.1 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");

2.4.2 a schedule and date of Substantial Completion of the Project upon which the Contract Price for the Project is based;

2.4.3 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* (2010 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* (2010 Edition), with the accompanying General Conditions of Contract, DBIA Document 535; and

2.4.4 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:

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

3.3.2 Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

3.3.3 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;

3.3.4 A legal description of the Site;

3.3.5 To the extent available, as-built and record drawings of any existing structures at the Site; and

3.3.6 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including, but not limited to, 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 but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth below.

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 in full 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:

4.2.1 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 and against 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

4.2.2 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.

[At the parties’ option, one of the following may be used in lieu of Section 4.2]:

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 in full of the amounts due Design-Builder under this Agreement: (a) grants Owner a limited license to use the Work Product in connection with the Owner’s completion of the Project; and (b) transfers all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in those portions of the Work Product that consist of architectural and other design elements and specifications that are unique to the Project. The parties shall specifically designate those portions of the Work Product for which ownership in the Work Product shall be transferred. Such grant and transfer are conditioned on the following:

4.2.1 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 and against 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

4.2.2 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.

or

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 in full of the amounts due Design-Builder under this Agreement, transfers to Owner all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in the Work Product. Such transfer is conditioned on the following:

4.2.1 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 and against 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

4.2.2 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: *(Insert terms)*

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

Electronic Data

8.1 Electronic Data.

8.1.1 The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

8.2 Transmission of Electronic Data.

8.2.1 Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

8.2.2 Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

8.2.3 By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

8.3 Electronic Data Protocol.

8.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 8.3.

8.3.2 Electronic Data will be transmitted in the format agreed upon in Section 8.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

8.3.3 The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information if such information changes prior to Final Completion.

8.3.4 The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

Article 9

Other Provisions

9.1 Initial Dispute Resolution. The parties agree that any claim, dispute or controversy arising out of or relating to this Agreement or the breach thereof that cannot be resolved through discussions by the parties shall be submitted to non-binding mediation administered by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated 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.

9.2 Confidentiality. Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies it as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the services set forth in this Agreement.

9.3 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.

9.4 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.

9.5 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.

9.6 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.

9.7 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.

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

SAMPLE

In executing this Agreement, Owner and Design-Builder each individually 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:

DESIGN-BUILDER:

(Name of Owner)

(Name of Design-Builder)

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

Date: _____

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