
**ARIZONA STATE UNIVERSITY
STANDARD FORM AGREEMENT BETWEEN OWNER AND
DESIGN-BUILDER
ON THE BASIS OF A GUARANTEED MAXIMUM PRICE
NOVEMBER 25, 2014 EDITION**

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ARIZONA STATE UNIVERSITY
STANDARD FORM AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER
ON THE BASIS OF A GUARANTEED MAXIMUM PRICE

This “**Agreement**” is made this _____ day of _____ in the year _____, by and between Arizona Board of Regents for and on behalf of Arizona State University (“**Owner**”, located at 1551 S. Rural Road, Tempe, Arizona 85281 and **DESIGN-BUILDER**: _____ (“**Design-Builder**”), located at _____, (each a “Party” or collectively the “Parties”) for services in connection with the following **PROJECT**: _____ ASU Project No. _____.

[INSTRUCTION TO DRAFTER - INSERT A DESCRIPTION OF THE WORK HERE. INCLUDE THE APPROXIMATE SQUARE FOOTAGE INVOLVED IN THE PROJECT - NET AND GROSS AS APPLICABLE. INSERT THE ANTICIPATED CONSTRUCTION BUDGET.]

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

Article 1 Scope of Work

1.1 Design-Builder shall perform all needed services in the Design and Construction Phases of the project and provide all material, equipment, tools, and labor necessary to satisfactorily complete all work, deliverables and services described in and reasonably inferable from the Contract Documents (collectively “Scope of Work”, “Project Work” or “the Work”). The Parties agree that this Agreement shall not be effective as a contract for Construction Phase services until such time as the parties agree on a Guaranteed Maximum Price (GMP) and Construction Phase Fee in the form of a written amendment to this Agreement specifically incorporating those contract terms.

1.1.1 Subphasing of Design Phase. Phase X is defined to include the _____ subphases of the Design Phase. Phase XX is defined to include the _____ subphases of the Design Phase. Current Design Phase services are authorized for Phase [x] only.

1.1.2 Subphasing of Construction Phase. The parties agree that the Work may be completed through multiple, phased GMPs which, with the final GMP, will be incorporated into one GMP for the Work. If the Owner elects to require Design-Builder to perform the Work in phased GMPs, the Owner will provide written notice to Design-Builder during the Design Phase, requesting an initial GMP for an initial limited scope of work. The parties shall thereafter agree on another GMP, or series of GMPs, for the remaining portions of the Work, which shall, when the final phased GMP is proposed, be incorporated into one GMP for the Work. The phased GMPs for the phased scopes of the Work will be incorporated into the Agreement according to Section 2.1.10 of the “Exhibit A – Design-Builder General Conditions”. The Bidding

Contingency for all phases of Work shall not exceed the agreed percentage as stated in Section 6.13.2 of the “Exhibit A – Design-Builder General Conditions”. This Bidding Contingency will be reconciled at the time of completion of each Phase, or at any time deemed necessary by the Owner, at sole discretion of the Owner.

1.2 Design-Builder shall provide services for the Design and Construction Phases in accordance with this Agreement and the Contract Documents.

During the Design Phase, the Design-Builder shall prepare a cost estimate and provide a GMP, using the format set forth in “Exhibit C – Cost of the Work – Schedule of Values” (blank template), which excludes the Design Phase Cost, for the Owner’s review and approval for all the Work required to complete the Project. If the GMP proposed by the Design-Builder is acceptable to the Owner, the Parties agree to execute an amendment to this Agreement, in the form provided on “Exhibit D – Form of Amendment – GMP and Construction Phase Fee” hereto, to establish the GMP and Construction Phase Fee, and to incorporate herein the Design Submission Documents and other Contract Documents, Design-Builder assumptions and clarifications as may be necessary to define the Scope of Work as in “Exhibit E – Design Submission Documents”, “Exhibit F – Statement of All Clarifications and Assumptions”, and “Exhibit G – Schedule of Major Milestones” hereto. If the GMP is not within the Owner’s Project Budget, the Owner reserves the right to terminate this Agreement or act as otherwise provided for in the “Exhibit A – Design-Builder General Conditions”.

Article 2 Contract Documents

2.1 The Contract Documents are comprised of the following. In the event of a conflict in the Contract Documents, the Contract Documents will be applied in the following in order of precedence:

2.1.1 This Agreement without Exhibits, as subsequently modified by Amendments or Change orders.

2.1.2 Exhibit A to this Agreement – “Design-Builder General Conditions”, as subsequently modified by Amendments or Change orders.

2.1.3 Exhibit B to this Agreement - Owner’s Project Criteria developed by Owner;

2.1.4 Exhibit C – Cost of the Work – Schedule of Values
Exhibit F – Statement of All Clarifications and Assumptions
Exhibit G – Schedule of Major Milestones

For the purposes of order of precedence only, these three documents will be treated as one document.

2.1.5 Design documents, including interim design submissions and Design Submission Documents approved by Owner all as more fully described in Exhibit E to this Agreement – “Design Submission Documents”.

2.1.6 Exhibit H to this Agreement – “[Design-Builder’s Company Name’s] Design Services Proposal”, as subsequently modified by addenda, amendments or change orders.

2.1.7 Owner’s Request for Qualifications (RFQ), dated [REDACTED] with all Addenda and Exhibits.

2.1.8 The Design-Builder’s qualifications submission, as required by the RFQ, dated [REDACTED].

Article 3 Interpretation and Intent

3.1 The Contract Documents are complementary and must be interpreted in harmony so as to avoid conflict or ambiguity, with words and phrases interpreted consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity, the Contract Documents shall take precedence in the order in which they are listed in Section 2.1.

3.2 Terms, words and phrases used in the Contract Documents shall have the meanings as defined in the “Exhibit A – Design-Builder’s General Conditions” or if not specifically defined, their ordinary and common meaning.

3.3 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the Parties as if set forth herein. No oral representations or other agreements have been made by the Parties except as specifically stated in the Contract Documents.

Article 4 Ownership of Documents

4.1 The plans, drawings, specifications, notes, reports, renderings, final models, design concepts and images, and all other documents and items to be prepared and furnished by the Design-Builder pursuant to this Agreement shall be the property of the Owner, including the right to use same on Owner’s other projects without additional cost to the Owner. The Design-Builder shall maintain for its file copies of those documents, drawings and/or other products required by law or the standards of professional practices.

4.2 In the case of reuse or modification of the Construction Documents by the Owner, the Design Professional’s name and seal shall be removed, and the Design-Builder shall not be liable to the Owner or third parties in their reuse.

4.3 By execution of this Agreement, the Design-Builder transfers all copyright, ownership, and other intellectual property interest in the Construction Documents and the completed Project to the Owner and further agrees to execute any separate assignment agreement necessary to implement such transfer. Design-Builder may use on other projects any standard details and other parts of the Construction Documents not prepared exclusively for Owner.

Article 5 Contract Time

5.1 Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents. Design-Builder understands that the time(s) for completion(s) set forth in these documents are essential to the Owner and a material consideration for this Agreement.

5.2 For the Design Phase Services, the Work and Contract Time shall commence within five (5) days of execution of this Agreement, unless the parties mutually agree otherwise in writing. For the Construction Phase Services, the Work and Contract Time shall commence (hereinafter referred to as the Date of Commencement) within five (5) days of Design-Builder’s receipt of Owner’s Notice to Proceed unless the parties mutually agree otherwise in writing.

5.3 Design Phase Completion.

Below is a list of preliminary dates for completion of each subphase of this project. Delivery of all documents and services by Design-Builder for each subphase are required as follows:

	<u>Phase X</u>	<u>Phase X</u>	<u>Phase X</u>
a) Program Development Subphase	<u>Month Day, Year for each phase</u>		
b) Conceptual Design Subphase	<u>Month Day, Year for each phase</u>		
c) Schematic Design Subphase	<u>Month Day, Year for each phase</u>		
d) Design Development Subphase	<u>Month Day, Year for each phase</u>		
e) GMP-Setting Documents Subphase	<u>Month Day, Year for each phase</u>		
f) Construction Documents Subphase	<u>Month Day, Year for each phase</u>		
g) Construction Administration Subphase	<u>Month Day, Year for each phase</u>		
h) Closeout Subphase	<u>Month Day, Year for each phase</u>		
i) Warranty Subphase	<u>Month Day, Year for each phase</u>		

Design-Builder shall inform Owner in writing as soon as possible, at any time during the project, of any expected delays to any subphase completion dates.

5.4 Substantial Completion.

5.4.1 Substantial Completion of the Work (the Substantial Completion Date) shall be achieved no later than _____() calendar days after receipt of the NTP, or by date certain _____, subject to adjustments in accordance with the Contract Documents.

5.4.2 Interim milestones and/or Substantial Completion of identified portions or phases of the Work shall be achieved as follows, subject to adjustments in accordance with the Contract Documents: _____.

5.5 Final Completion

5.5.1 Final Completion of the Work or portion or phase thereof shall be achieved within [] () calendar days after the date established for Substantial Completion of the Work, or by date certain [], unless otherwise mutually agreed by amendment or change order.

5.6 Liquidated Damages. Design-Builder understands and acknowledges that if Substantial Completion is not achieved by the Substantial Completion Date provided in Article 5.4.1, and Article 5.4.2 above for identified portions or phases of the Work, Owner will suffer damages, which are difficult to accurately quantify and ascertain. Design-Builder agrees that if Substantial Completion for each portion or phase of the Work is not timely achieved, Design-Builder shall pay Owner [] dollars (\$ []) per day as liquidated damages for each calendar day that Substantial Completion for each portion or phase extends beyond the Scheduled Substantial Completion Date(s). In addition, if Final Completion is not attained within the time period defined by Article 5.5 above, Design-Builder shall pay Owner [] dollars (\$ []) per day as additional liquidated damages for each calendar day that Final Completion extends beyond the required date. The liquidated damages provided for herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in Design-Builder achieving Substantial Completion or Final Completion on or after the established dates.

Article 6 Design-Builder Costs

6.1 Owner shall pay Design-Builder a Design Phase Cost for the Design Phase Services. The Owner shall pay Design-Builder a Construction Phase Cost for the Construction Phase Services, using a Guaranteed Maximum Price which includes a Construction Phase Fee as provided in the Contract Documents. The Design-Builder's Construction Phase Fee, plus the Direct and Indirect Construction Costs, each as defined in the "Exhibit A – Design-Builder General Conditions", will comprise the GMP to be established in compliance with the "Exhibit A – Design-Builder General Conditions". Unless otherwise agreed to, Design-Builder's GMP is deemed to include all required sales, use, as well as all applicable bond and insurance costs.

6.1.1 The Design Phase Cost, as defined in Section 1.2 of the "Exhibit A – Design-Builder General Conditions", shall be fixed at [] dollars (\$ []).

6.1.2 The Construction Phase Fee, as defined in Section 1.2 of the "Exhibit A – Design-Builder General Conditions", shall be a fixed fee, shall be set forth in written amendment to this Agreement described in Article 1.1 above and, if approved by the Owner, shall be incorporated into this Agreement as a fixed dollar fee.

6.2 If the GMP requires an adjustment due to changes in the Scope of Work during the Construction Phase, the cost of such changes shall be priced under Section 9 of the "Exhibit A – Design-Builder General Conditions".

6.3 For Owner-caused construction delays, either agreed to or awarded, Design-Builder will provide all the necessary extended Construction General Conditions for a daily sum as provided for in Sections 8.6 and 9.4 of the “Exhibit A – Design-Builder General Conditions”. The specific amount of extended Construction General Conditions will be determined by the Owner on a case-by-case basis prior to issuance of a change order and must be determined to be fair and reasonable to the satisfaction of the Owner

6.4 It is agreed that the Design Phase work will be done by the Design-Builder utilizing sketches, models, preliminary drawings and similar work products until finalization of the design, at which time the Design Submission Documents, identified in Article 1.2 of this Agreement, will be prepared. The Design Phase scope of work includes the design and consultation work necessary to refine and finalize the Design-Builder’s construction proposal, the completion of Construction Documents reflecting the Owner’s concept and requirements, and providing the project GMPs. Design-Builder shall not begin the Construction Phase of the Work until this task is approved by Owner and the drawings are approved by the authority having jurisdiction.

Article 7 Procedure for Payment

7.1 Progress Payments. For Design Phase Services, Design-Builder shall submit to Owner on the last business day of each month an Application for Payment based on the percentage completed for each Design Phase as agreed to by the Owner. The Design-Builder shall use Owner’s Design-Build Application for Payment form. Payment for Design-Builder’s Construction Services shall be made in accordance with Section 6 of the “Exhibit A – Design-Builder General Conditions”. All costs, which exceed the GMP and are not authorized by amendment or change order, are to be paid by the Design-Builder and not the Owner.

7.3 Record Keeping and Finance Controls. With respect to all Work performed by Design-Builder, its Subcontractors and Subconsultants, under this Agreement, Design-Builder, its Subcontractors and Subconsultants, shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems approved by the Owner. During performance of the Work and for five (5) years after Final Payment, the Design-Builder shall retain and shall also require all Subcontractors and Subconsultants to retain for review and/or audit by the Owner all correspondence, meeting minutes, memoranda, electronic media, books, accounts, reports, files, time cards, material invoices, payrolls, and evidence of all communications, direct and indirect costs and all other matter related to the Work. Upon request by the Owner, a legible copy or the original of any or all such records shall be produced by the Design-Builder at any time during or after the Work as the Owner may request. The Design-Builder shall submit to the Owner upon request all payrolls, reports, estimates, records and any other data concerning Work performed or to be performed and concerning materials supplied or to be supplied, as well as Subcontractor or Subconsultant payment applications or invoices and such Subcontractor’s or Subconsultant’s progress payment checks. The requirements of this Section shall be provided for in all contracts between the Design-Builder and any Subcontractors and Subconsultants employed by the Design-Builder.

Article 8 Termination for Convenience

8.1 This Agreement may be terminated for the convenience of Owner as provided for in Section 11.1 of the “Exhibit A – Design-Builder General Conditions”.

8.2 During its work under the Design Phase, before authorization of the Construction Phase, Design-Builder agrees that it will not unilaterally undertake any irreversible commitment or make any non-cancelable agreement for the provision of future goods, materials, or services and for which the Owner would or may be responsible should the Owner exercise its rights to terminate this Agreement for the convenience of the Owner in accordance with Article 8.1 above. During the course of Design Phase work, when Design Builder determines that irrevocable commitments for future goods, materials, or services are necessary for the efficient and timely completion of the Project, Design-Builder shall notify the Owner of its opinion and the reasons therefor. However, no such commitments shall be made without the prior written authorization of the Owner, which shall not be unreasonably withheld.

Article 9 Representatives of the Parties

9.1 Owner’s Representatives.

9.1.1 Agnes Drogi, Director of Planning, Design, & Construction, Facility Services, ASU, PO Box 5637, Flagstaff, AZ 86011, as its Senior Representative (“Owner’s Senior Representative”), which individual has the authority and responsibility set forth in the Contract Documents, including the authority and responsibility for avoiding and resolving disputes under Section 10 of the General Conditions.

9.1.2 Owner—designates as its “Representative”, which individual has the authority and responsibility set forth in the Contract Documents.

9.2 Design-Builder’s Representatives.

9.2.1 Design-Builder designates , as its Senior Representative (“Design-Builder’s Senior Representative”), which individual has the authority and responsibility set forth in the Contract Documents, including the authority and responsibility for avoiding and resolving disputes under Section 10 of the General Conditions.

9.2.2 Design-Builder designates , as its “Representative” which individual has the authority and responsibility set forth in the Contract Documents.

9.2.3 Design-Builder designates , as its “Superintendent”, which individual has the authority responsibility set forth in the Contract Documents.

9.2.4 Design-Builder’s Representatives and Superintendent as approved by the Owner, shall not be replaced without the Owner’s prior written approval.

9.2.5 Design-Builder warrants and shall ensure that only representatives who are authorized to legally bind Design-Builder will sign documents associated with this Agreement.

Article 10 Bonds and Insurance

10.1 Prior to, and as a condition for, the Design-Builder to perform Design Phase Services, Design-Builder shall obtain and provide proof of insurance coverage as provided in Section 5 of the “Exhibit A – Design-Builder General Conditions”. Prior to, and as a condition for, Design-Builder to perform Construction Phase Services and Owner issuance of a Notice-To-Proceed, Design-Builder shall obtain and provide proof of Performance and Payment Bonds and insurance coverage, as provided in Section 5 of the “Exhibit A – Design-Builder General Conditions”.

Article 11 Other Provisions

11.1 Other provisions, are as follows: Subconsultants and Subcontractors submitted initially and approved by the Owner shall not be replaced without the Owner’s prior written approval. Any additional costs due to an approved change shall not be the Owner’s responsibility and will not increase the Guaranteed Maximum Price.

Design-Builder represents that it has the necessary financial resources to fulfill its obligations under the Contract Documents, and has the necessary corporate approvals to execute the Agreement, and perform the Work described herein.

DESIGN-BUILDER:

[Design-Builder Company Name]
By Its Authorized Representative

OWNER:

Arizona Board of Regents
For and on behalf of
Arizona State University

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

(Date)

(Date)

EXHIBIT A
Design-Builder General Conditions
dated [Month Day, Year]

(x pages)

EXHIBIT B
Owner's Project Criteria

(x pages)

EXHIBIT C
Cost of the Work – Schedule of Values

(Twelve (12) pages – template)

(TBD pages – final document)

EXHIBIT D
Form of Amendment - GMP and Construction Phase Fee

(Two (2) pages - template)
(**TBD** pages – final document)

AMENDMENT # X

PROJECT NAME: _____ **DATE:** _____
PROJECT NUMBER: _____

This Amendment to that certain Standard Form Agreement dated _____ by and between the Arizona Board of Regents on behalf of Arizona State University and **Design-Builder Company Name** (Design-Builder) for services, deliverables and work related to Project No. _____, Project Name: _____, (the "Agreement") is made and entered into effective this _____ day of _____, 20__.

1. This Amendment # _____ establishes a Guaranteed Maximum Price ("GMP") and Construction Phase Fee for Construction Services and incorporates such terms into the Agreement, making the Agreement effective for Construction Phase Services:
 - a. **The total fee for Construction Phase Services, which is included in the Guaranteed Maximum Price (GMP) as defined under the Agreement, shall be fixed at \$ _____ Dollars (\$ _____).**
 - b. **The Guaranteed Maximum Price ("GMP") for Construction Services, as defined under the Agreement, shall be \$ _____ Dollars (\$ _____).**
 - c. **The total compensation under the Agreement, as amended by this Amendment, shall be:**

	<u>Design Phase</u>	<u>Construction Phase</u>	<u>Total</u>
Original Agreement:	\$ _____	\$ N/A	\$ _____
Previous Amendments:	\$ _____	\$ _____	\$ _____
This Amendment:	\$ _____	\$ _____	\$ _____
Total (including this Amendment):	\$ _____	\$ _____	\$ _____

2. DELETE the blank template "Exhibit C – Cost of the Work – Schedule of Values" from the Agreement, and ADD "Exhibit C – [**Design-Builder's Company Name**] Cost of the Work – Schedule of Values" dated (**Month, Day, Year**) (**x** Pages), attached herein.
3. ADD "Exhibit E – Design Submission Documents necessary to define Scope of Work and deliverables for the Construction Phase Services, including plans, designs, drawings, specifications and other required Contract Documents" dated (**Month, Day, Year**) (**x** Pages), attached herein.
4. ADD "Exhibit F - Statement of All Clarifications and Assumptions" dated (**Month, Day, Year**) (**x** Pages), attached herein.
5. ADD "Exhibit G – Schedule of Major Milestones" dated (**Month, Day, Year**) (**x** Pages), attached herein.
6. All other provisions, terms and conditions of the Agreement shall remain unchanged and in full effect.

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment, effective as of the date first written above.

OWNER
Arizona Board of Regents
on behalf of Arizona State University

Design-Builder
[Design-Builder Company Name]
[Design-Builder Address]

By:

By Its Authorized Representative:

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

EXHIBIT E

Design Submission Documents necessary to define Scope of Work and Deliverables for the Construction Phase Services, including plans, designs, drawings, specifications and other required Contract Documents

(TBD pages - To be Incorporated by Amendment)

EXHIBIT F
Statement of All Clarifications and Assumptions
(TBD pages - To be Incorporated by Amendment)

EXHIBIT G
Schedule of Major Milestones

(TBD pages - To be Incorporated by Amendment)

EXHIBIT H
[Design-Builder's Company Name] Design Phase Proposal
dated [Month Day, Year]

(x pages)