



STANDARD FORM OF CONTRACT FOR DESIGN-BUILD CONSULTANT SERVICES

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STANDARD FORM OF CONTRACT FOR DESIGN-BUILD CONSULTANT SERVICES

This model contract form is designed for use by an Owner who engages a criteria professional/owner's consultant to assist him in the selection of a design-builder using the competitive selection process (described in detail in the Design-Build Manual of Practice document number 202, "Competitive Acquisition of Design-Build Services". It also provides for the retention of the consultant after selection and award of a design-build contract, to assist during the design and construction phase.

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)

CONSULTANT:
(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

Consultant Basic Services

1.1 Study and Report Phase.

1.1.1 In this phase, Consultant shall:

1.1.1.1 Consult with Owner to define and clarify Owner's requirements for the Project, to identify and obtain available data regarding Owner's requirements and objectives.

1.1.1.2 Identify, consult with, and analyze requirements of governmental authorities having jurisdiction.

1.1.1.3 Prepare a report which will, as appropriate, contain: a summary description of Project, Owner's objectives for the Project, recommendations of design-build solicitation procedures, recommendations for the composition of a Selection Panel, outline of a Request for Design-Build Qualifications (RFQ), outline of a Request for Design-Build Proposals (RFP), and design-build competition schedule.

Consultant's services under the Study and Report Phase will commence upon the execution of this Agreement, and will be considered complete on the date the Report is satisfactorily delivered to Owner.

1.2 RFQ and Shortlisting Phase. In this phase, Consultant shall:

1.2.1 Prepare, subject to the Owner's approval, the following RFQ Documents:

1.2.1.1 Announcement and/or Advertisement of Intent to Request Design-Build Qualifications;

1.2.1.2 Request for Design-Build Qualifications (RFQ), including selection criteria for Design-Builder shortlisting;

1.2.1.3 Announcement mailing list;

1.2.1.4 Information to assist Selection Panel in shortlisting process;

1.2.1.5 Any Addenda required to the RFQ.

1.2.2 Upon completion of the above documents:

1.2.2.1 Publish Advertisement: Request for Design-Build Qualifications;

1.2.2.2 Distribute RFQ to all requesting same and to Owner's project staff, and maintain list of RFQ holders;

1.2.2.3 Conduct pre-submittal meeting(s) for interested parties, if appropriate;

1.2.2.4 Respond to questions from interested parties and, after review and approval by Owner, publish answers in addenda to RFQ; and

1.2.2.5 Report progress to Owner as necessary.

1.2.3 Upon receipt of prequalification statements:

1.2.3.1 Summarize the information contained in the qualification statements and distribute to Selection Panel and Owner;

1.2.3.2 Assist Selection Panel in evaluation of qualifications;

1.2.3.3 Assist Selection Panel in presenting recommendations to Owner;

1.2.3.4 Notify all respondents of the Owner's actions on the Selection Panel's recommendations for shortlisting.

Consultant's services under the RFQ and Shortlisting Phase will be considered complete on the date the Owner acts on the Selection Panel's recommendations for shortlisting

Note: Although the RFQ and Shortlisting Phase, and the RFP and Proposal Phase, are shown separately in this agreement form, it is recommended that they overlap one another in order to save time and enhance the momentum of the overall process.

1.3 RFP and Proposal Phase. In this phase, Consultant shall:

1.3.1 Prepare, subject to the Owner's approval, the following RFP Documents:

1.3.1.1 Instructions to proposors, including proposal evaluation and selection criteria;

1.3.1.2 Proposal Form;

1.3.1.3 Agreement Form;

1.3.1.4 Bond Forms (if required);

1.3.1.5 General and Special Conditions of the Design-Build Contract;

1.3.1.6 Program of Facility Requirements;

1.3.1.7 Schematic Site Plan and Floor Plans, if appropriate;

1.3.1.8 Space Standards and Environmental Requirements;

1.3.1.9 Performance Standards;

1.3.1.10 Materials to assist Selection Panel in proposal selection; and

1.3.1.11 Addenda to the RFP.

Based on the information provided by Owner and contained in the RFP Document, submit an opinion of probable design-build cost and any adjustments to the Project Budget cost breakdown, and make adjustments to the RFP Document that may be required to maintain the total Project Budget.

1.3.2 After acceptance by the Owner of the RFP Documents, and upon authorization by the Owner to proceed:

1.3.2.1 Distribute RFP Document and attachments to all proposors to Owner's project staff and Selection Panelists, and maintain list of RFQ holders;

1.3.2.2 Conduct pre-proposal meeting(s) for proposors;

1.3.2.3 Respond to questions from proposors and, after review and approval by Owner, publish answers in addenda to RFP;

1.3.2.4 Assist the Owner to receive proposals, determine and certify if they meet the deadline and the minimum submittal.

1.3.3 After receipt by the Owner of the design-build proposals, and upon authorization by the Owner to proceed:

1.3.3.1 Distribute copies of the proposals to the Selection Panel and the Owner;

1.3.3.2 Examine each proposal for compliance with the minimum requirements of the RFP;

1.3.3.3 Assist the Selection Panel in evaluation of the design-build proposals based on the selection criteria published in and selection of a winning proposal for recommendation to Owner;

1.3.3.4 Note the Selection Panel deliberations and record their votes for inclusion in a written Final Report of the Selection Panel;

1.3.3.5 Assist the Selection Panel in presenting the Panel's recommendation to Owner;

1.3.3.6 Assist the Owner to take appropriate action on the recommendation;

1.3.3.7 Assist the Owner and the Design-Builder to complete and execute the design-build contract, including the development of the Basis of Design Documents, the GMP Exhibit, if applicable, and the clarification and documentation of appropriate sections of the Design-Builder's proposal, if necessary.

The RFP and Proposal Phase will be considered complete upon the execution of the design-build contract by the parties or by the cessation of negotiations by the parties, unless the parties decided to establish the GMP after execution of the design-build contract, in which case, the Consultant will assist the Owner in reviewing and negotiating the Design-Builder's GMP Proposal.

Note: The following Article D presumes that the Consultant will be engaged to represent the Owner during design and construction. If the Owner does not wish to engage the consultant to represent it during the design and construction phases (or wishes to defer making this decision) the following Paragraph F shall not appear here, but may be placed under Part II, Consultant's Additional Services.

1.4 Design and Construction Phases. In this phase, Consultant shall:

1.4.1 Consult with Owner and act as Owner's representative during design and/or construction phases.

1.4.2 Assist Owner in the selection of independent testing laboratories.

1.4.3 Participate in initial conferences between Owner and Design-Builder after execution of the design-build contract.

1.4.4 Review submittals prepared by or for Design-Builder including drawings, specifications, shop drawings and samples and other submittals required by the Basis of Design Documents for acceptability and conformance with the Basis of Design Documents.

1.4.5 Make visits to the Site during construction for general inspection and observation, meetings with the parties, and to determine in general if the work is proceeding in accordance with the Basis of Design Documents.

1.4.6 Assist Owner in issuing clarifications and interpretations of the Basis of Design Documents.

1.4.7 Recommend change orders or change requests.

1.4.8 Advise Owner as to the necessity of special inspections, and to receive and review certifications of inspections, tests, etc.

1.4.9 Advise the Owner on claims between Owner and Design-Builder.

1.4.10 Review and approve Design-Builder's requests for payment.

1.4.11 Review maintenance and operating instructions, schedules and guarantees, receive bonds, certificates or other evidence of insurance required by the Contract Documents.

1.4.12 Conduct pre-occupancy and/or final inspections of the completed work.

The Design and Construction Phase shall be considered complete when the Project has been finally accepted under the design-build contract and final payment authorized to the design-builder.

Article 2

Consultant's Additional Services

2.1 Advance Authorization Required

2.1.1 If authorized in writing by Owner, Consultant shall furnish or obtain from others Additional Services of the types listed below. These services will be paid by the Owner as indicated in Article V - Payments to Consultant.

2.2 Additional Services During Basic Services Phases

2.2.1 Prepare applications for governmental approvals;

2.2.2 Make measured drawings of or investigate existing conditions or facilities;

2.2.3 Perform services resulting from significant changes in scope, extent or character;

2.2.4 Undertake investigations and studies in addition to those specified in Basic Services;

2.2.5 Furnish services attributable to more than one prime design-build contract;

2.2.6 Perform services during out-of-town travel required of Consultant other than for visits to site or Owner's office;

2.2.7 Prepare for, coordinate with, participate in and respond to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering and constructability reviews requested by Owner;

2.2.8 Assist Owner in connection with proposal protests, re-bidding or renegotiating contracts for design, construction, equipment or services;

2.2.9 Perform services resulting from significant delays, changes or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.

2.3 Other Additional Services.

2.3.1 Prepare to serve or serve as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.

Article 3

Owner's Responsibilities

3.1 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall:

3.1.1 Provide Consultant with information as to Owner's requirements for the project, including design objectives and constraints, space, capability and performance requirements, security needs, flexibility and expandability, and budgetary limitations.

3.1.2 Furnish copies of design and construction standards which Owner will require to be included in RFP and/or the Basis of Design Documents (except public laws, codes and or ordinances applicable to the Project).

3.1.3 Furnish copies of Owner's standard forms, conditions and related documents for inclusion in the RFP and/or Basis of Design Documents, when applicable.

3.1.4 Furnish Consultant any other available information pertinent to the Project including any reports and data relative to previous design efforts, or investigations at or adjacent to the Site.

3.1.5 Upon Consultant's request, furnish or otherwise make available such additional Project-related information and data as is reasonably required to enable Consultant to complete its Basic and Additional Services. Such additional information or data would generally include the following:

3.1.5.1 property, boundary, easement, right-of-way, and engineering surveys or data;

3.1.5.2 deed and other land use restrictions;

3.1.5.3 data relating to subsurface conditions at the Site and drawings relating to existing surface or subsurface structures at the Site;

3.1.5.4 environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project and the Site;

3.1.5.5 data or consultations as required for the Project but not otherwise identified in the Agreement;

3.1.5.6 specific requirements of governmental authorities and/or regulatory agencies having jurisdiction over the Project, of which the Owner has knowledge thereof.

3.1.6 Give prompt written notice to Consultant whenever Owner observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of Consultant's services, or any defect or nonconformance in Consultant's services or in the work of the Design-Builder.

3.1.7 Examine all studies, reports, drawings, specifications, proposals and other documents presented by Consultant and render timely decisions pertaining thereto.

3.1.8 Provide or obtain reviews, approvals and permits from all governmental authorities having jurisdiction to approve all phases of the Project specified by Consultant and such reviews, approvals and consents from others as may be necessary by completion of each phase of the Project.

3.1.9 Attend the pre-submission, pre-proposal conferences, Proposal opening, proposors' in-person presentations, initial conference, design and construction progress and other Project related meetings, and pre-occupancy and final inspections.

3.1.10 Provide the services of an independent testing laboratory to perform all inspections, tests and approvals of samples, materials and equipment required by the Basis of Design Documents, or to evaluate the performance of materials, equipment and facilities of Owner, prior to incorporation into the work, with appropriate professional interpretation thereof.

Article 4

Times for Rendering Services

4.1 Consultant's services and compensation under this Agreement have been agreed to in anticipation of the orderly and reasonably continuous progress of the Project through completion. Unless specific periods of time or specific dates for providing services are specified in this Agreement, Consultant's obligations to render services hereunder will be for a period which may reasonably be required for the completion of said services.

4.2 If in this Agreement specific periods of time for rendering services are set forth or specific dates by which services are substantially to be completed are provided and if such periods of time or dates are changed through no fault of Consultant, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If Owner authorizes, or requests changes in scope, extent or character of the project, the time of performance of Consultant's services shall be adjusted equitably.

4.3 If Owner fails to give reasonably prompt written authorization to proceed with any phases of services after completion of the immediately preceding phase, or if Consultant's services are substantially delayed or suspended through no fault of Consultant, Consultant shall be entitled to equitable adjustment of the rates and amounts of compensation provided for elsewhere in this Agreement.

Article 5

Payments To Consultant

5.1 For Basic Services.

5.1.1 *(Choose one or a combination of the following options):*

Hourly Rate Option.

Owner shall pay Consultant for Basic Services an amount equal to cumulative hours devoted to the Project by each class of Consultant's employees' Standard Hourly Rates for each applicable billing class for all Basic Services performed on the Project. Consultant's Standard Hourly Rates and Reimbursable Expenses Schedule is attached to this as Appendix _____.

Lump Sum Option.

The total compensation for Basic Services shall be a lump sum of _____ Dollars (\$ _____) based on the following distribution of compensation.

5.1.1.1 Study and Report Phase (\$ _____)

5.1.1.2 RFQ/Prequalification Phase (\$ _____)

5.1.1.3 RFP/Proposal Phase (\$ _____)

5.1.1.4 Design and Construction Phase (\$ _____)

When the Hourly Rate option is utilized, the preceding paragraph may be deleted entirely, or modified to read "The total compensation for services under this paragraph is estimated to be _____ Dollars (\$ _____)"

5.1.2 For Additional Services. Owner shall pay Consultant for Additional Services an amount equal to cumulative hours devoted to the Project by each class of Consultant's employees' Standard Hourly Rates for each applicable billing for all Additional Services performed on the Project.

5.1.3 For Reimbursable Expenses. Owner shall pay Consultant for the following categories of Reimbursable Expenses at actual cost thereof: transportation and subsistence thereto; providing and maintaining field office facilities, including furnishings and utilities; postage, courier or delivery services; printing of drawings and other documents beyond those copies necessary for Owner's review and records and the Consultant's own use; Selection Panel expenses, if any; exhibition expenses, if any; and the cost of advertisements authorized by Owner.

5.1.4 For Consultant's Sub-Consultants' Charges. Whenever compensation to Consultant herein is stated to include charges of Consultant's Subconsultants, those charges to Owner shall be the amounts billed to Consultant times a factor of one and one tenth (1.1).

5.1.5 Standard Hourly Rates. Standard Hourly Rates set forth in Appendix _____ to this Agreement include salaries and wages paid to personnel in each billing class, plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.

5.1.6 Progress Payments. Portions of the amounts contracted for Consultant's services will be billed monthly based upon:

5.1.6.1 The cumulative hours devoted to the Project by each class of Consultant's employees, times the Standard Hourly Rate for each such employee class, where applicable;

5.1.6.2 The percentage of each phase of the Consultant's Services completed during that month multiplied by the lump sum value of that phase (if applicable) in paragraph V.A. above;

5.1.6.3 Reimbursable Expenses and Consultant's sub-consultants' charges, if any, incurred during the billing month.

5.1.7 Adjustments.

5.1.7.1 Except for any agreed lump sum, the compensation rates and sums stated in the Standard Hourly Rates set forth in Appendix _____ to this Agreement will be equitably adjusted one year from the Effective Date of this Agreement and annually thereafter, if necessary.

5.1.7.2 In the event of legislative actions after the Effective Date of this Agreement by any level of government that imposes taxes or fees on Consultant's services, such new taxes shall be invoiced to and paid by Owner as a Reimbursable Expense, but without any multiplier factor applied.

5.1.8 Other Provisions Concerning Payments.

5.1.8.1 Preparation of Invoices. Invoices will be prepared in form mutually agreeable to Owner and Consultant and calculated on the basis set forth herein and submitted to Owner once per month.

5.1.8.2 Payment of Invoices. Invoices are due and payable within 30 days of receipt.

5.1.8.3 Disputed Invoices. In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

5.1.8.4 Payment Upon Termination. In the event of any termination under this Agreement, Consultant will be entitled to invoice Owner and will be paid for all services performed or furnished and Reimbursable Expenses incurred through the effective date of termination.

Article 6

General Conditions

6.1 Use of Documents.

6.1.1 All documents are instruments of service in respect to this Project and Consultant shall retain an ownership and property interest therein (including the right to reuse at discretion of Consultant) whether or not the Project is completed.

6.1.2 Owner may make and retain copies of Consultant's documents for information and reference in connection with use on the Project by Owner. Such documents are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project.

6.2 Opinions of Cost.

6.2.1 Consultant's opinion of probable cost for design and construction provided herein are to be made on the basis of Consultant's experience and qualifications and represent Consultant's best judgment as an experienced and qualified professional generally familiar with the industry. However, Consultant cannot and does not guarantee that proposals, bids or actual design and construction cost will not vary from opinions of probable design and construction costs prepared by Consultant.

6.3 Responsibility for Design-Builder's Actions.

6.3.1 The Consultant shall not be responsible for, nor have control of, Design-Builder's design or construction methods or procedures, and shall not be responsible for Design-Builder's failure to carry out its responsibilities under its contract with the Owner. The Consultant shall not be responsible for, nor have control over, the acts or omissions of the Design-Builder or its subcontractors, agents or employees.

6.4 Consultant's Insurance.

6.4.1 Prior to undertaking any work under this Agreement, the Consultant, at no expense to the Owner, shall obtain and file with the Owner evidence of a policy or policies of insurance as enumerated below.

6.4.1.1 A policy of workman's compensation, as may be required by the appropriate statutory authority in the Consultant's office location(s).

6.4.1.2 A policy of commercial general liability insurance, written on an occurrence form, including all the usual coverages known as:

6.4.1.2.1 Premises/Operations Liability

6.4.1.2.2 Products/Completed Operations

6.4.1.2.3 Personal/Advertising Injury

6.4.1.2.4 Explosion, Collapse and Underground Property Damage

Said policy must provide the following minimum coverage: Bodily Injury and Property Damage: \$1,000,000 per occurrence, and \$1,000,000 annual aggregate. Any deductible or self-insured retention must be disclosed and is subject to the Owner's approval.

6.4.1.3 A policy of commercial automobile liability, including coverage for owned, non-owned, leased or hired vehicles. Such policy must provide the following minimum coverage; Liability: \$300,000 per accident.

6.4.1.4 A policy of professional liability ("errors and omissions") insurance to include the Consultant, and all professional sub-consultants employed on the Project under this Agreement. Such policy must provide a minimum coverage of _____ Dollars (\$ _____) for each occurrence.

If such a policy is written on a claims made form, the retroactive date shall be prior to or coincident with the date of this Agreement. This insurance may be maintained by the Owner for the duration of this Agreement, plus an extended three year reporting period ("tail").

6.5 Termination.

6.5.1 The obligation to provide further services under this Agreement may be terminated:

6.5.1.1 For Cause.

6.5.1.1.1 by either party:

Upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. However, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven (7) days of receipt of such notice to correct its failure to perform and proceeds diligently to cure such failure within no more than thirty (30) days of receipt thereof, or as such period may be mutually extended.

6.5.1.1.2 by the Consultant:

Upon ten (10) days written notice if the Consultant's services for the Project are delayed or suspended for more than ninety (90) days for reasons beyond Consultant's control.

6.5.1.2 For Convenience.

6.5.1.2.1 by Owner effective upon the receipt of notice by Consultant.

6.6 Controlling Law.

6.6.1 This Agreement is to be governed by the law of the state in which the Project is located.

6.7 Dispute Resolution.

6.7.1 Owner and Consultant agree to negotiate all disputes between them in good faith for a period of thirty (30) days from the date of notice prior to the exercising of their rights under other provisions of this Agreement, or under law.

6.7.2 Except as indicated herein above, all claims, disputes and other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise.

6.8 Indemnification.

6.8.1 To the fullest extent permitted by law, Consultant shall indemnify and hold harmless Owner, Owner's officers, directors, partners, and employees from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by the negligent acts or omissions of Consultant or Consultant's officers, directors, partners, employees, and Consultant's sub-consultants in the performance and furnishing of Consultant's services under this Agreement.

6.8.2 To the fullest extent permitted by law, Owner shall indemnify and hold harmless Consultant, Consultant's officers, directors, partners, and employees and Consultant's sub-consultants from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by the negligent acts or omissions of Owner or Owner's officers, directors, partners, employees, and other consultants retained by Owner with respect to this Agreement or the Project.

6.9 Notices.

6.9.1 Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by certified mail (return receipt requested), by facsimile, or by commercial courier service. All notices shall be effective upon the date of receipt.

6.10 Survival and Severability.

6.10.1 All express representations, indemnifications or limitations of liability made in or given in this Agreement will survive its completion or termination for any reason.

6.10.2 Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

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:

CONSULTANT:

(Name of Owner)

(Name of Consultant)

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

Date: _____

Date: _____

Caution: You should sign an original DBIA document which has this caution printed in blue. An original assures that changes will not be obscured as may occur when documents are reproduced.