

Standard Form of Agreement Between Owner and Design-Builder

Editing Template

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This AIA Document A141 - 2004 has been revised with 2006 Arizona Modifications and approved by the Office of the Arizona Attorney General.

AGREEMENT made as of the <> day of <> in the year of <> (In words, indicate day, month and year)

BETWEEN the Owner: (Name, address and other information)

<><> >
<>
<><> >

and the Design-Builder: (Name, address and other information)

<><> >
<>
<><> >

For the following Project: (Name, location and detailed description)

<>
<>
<>

The Owner and Design-Builder agree as follows. (SCOPE OF WORK)

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ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

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ARTICLE 1 THE DESIGN-BUILD DOCUMENTS

§ 1.1 The Design-Build Documents form the Design-Build Contract. The Design-Build Documents consist of this Agreement between Owner and Design-Builder (hereinafter, the "Agreement") and its attached Exhibits; Supplementary and ~~other~~ Conditions; Addenda issued prior to execution of the Agreement; the Project Criteria, including changes to the Project Criteria proposed by the Design-Builder and accepted by the Owner, if any; the Design-Builder's Proposal and written modifications to the Proposal accepted by the Owner, if any; other documents listed in this Agreement; and Modifications issued after execution of this Agreement. The Design-Build Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Owner, (2) between the Owner and a Contractor or Subcontractor, or (3) between any persons or entities other than the Owner and Design-Builder, including but not limited to any consultant retained by the Owner to prepare or review the Project Criteria. An enumeration of the Design-Build Documents, other than Modifications, appears in Article 8. **The Design/Builder shall be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Design/Builder's duties.**

§ 1.2 The Design-Build Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, ~~either written or oral.~~ **the A141- Exhibit A, General Conditions with Arizona Modifications last approved by the Office of the Arizona Attorney General and the Amendment No. 1 to the AIA A141 shall be used and be all inclusive with the A141 Contract between Owner and Design/Builder.**

§ 1.3 The Design-Build Contract may be amended ~~or modified only by a Modification.~~ A Modification is (1) a ~~written amendment to the Design-Build Contract signed by both parties,~~ (2) by a Change Order **AIA G701**, (3) a Construction Change Directive **AIA G714** or (4) a **Design Change Notice (DCN)**, written order for a minor change in the Work issued by the Owner **and signed by both parties.**

ARTICLE 2 THE WORK OF THE DESIGN-BUILD CONTRACT

§ 2.1 The Design-Builder shall fully execute the Work described in the Design-Build Documents, except to the extent specifically indicated in the Design-Build Documents to be the responsibility of others. **The Design Builder shall prepare a Design Build Plan for the Project. In preparing the Design Build Plan, the Design Builder**

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shall consider the Owner's schedule, cost, and design requirements for the Project. The Design Builder shall then develop various alternatives for the sequencing and management of the Project and shall make recommendations to the Owner. The Design Build Plan shall also include a description of the various bid packages recommended for the Project. The Design Build Plan shall be developed by the project team based upon mutual concurrence.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be issued in a written Notice to Proceed ~~the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice issued by the Owner.~~ (Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

« »

If, prior to the commencement of Work, the Owner requires time to file mortgages, documents related to mechanic's liens and other security interests, the Owner's time requirement shall be as follows:
(Insert Owner's time requirements.)

« »

§ 3.2 The Contract Time shall be measured from the date of commencement, ~~subject to adjustments of this Contract Time as provided in the Design-Build Documents.~~

(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)

« »

§ 3.3 The Design-Builder shall achieve Substantial Completion of the Work not later than « » Calendar days from the date of commencement, ~~or as follows:~~
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Design-Build Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

« »

Portion of Work

Substantial Completion Date

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Design-Build Contract. The Contract Sum shall be one of the following:
(Check the appropriate box.)

« »] Stipulated Sum in accordance with Section 4.2 below;

« »] Cost of the Work Plus Design-Builder's Fee in accordance with Section 4.3 below;

« »] Cost of the Work Plus Design-Builder's Fee with a Guaranteed Maximum Price in accordance with Section 4.4 below.

(Based on the selection above, complete either Section 4.2, 4.3 or 4.4 below.)

§ 4.2 STIPULATED SUM

§ 4.2.1 The Stipulated Sum shall be « » (« »), subject to additions and deductions as provided in the Design-Build Documents.

§ 4.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

« »

§ 4.2.3 Unit prices, if any, are as follows:

Description	Units	Price (\$ 0.00)

§ 4.2.4 Allowances, if any, are as follows A list of allowances and a statement of their basis shall be provide: (Identify and state the amounts of any allowances, and state whether they include labor, materials, or both)

Allowance	Amount (\$ 0.00)	Included Items

§ 4.2.5 Assumptions or qualifications, if any, on which the Stipulated Sum is based, are as follows:

« »

§ 4.3 COST OF THE WORK PLUS DESIGN BUILDER'S FEE

§ 4.3.1 The Cost of the Work is as defined in Exhibit B.

§ 4.3.2 The Design Builder's Fee is:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design Builder's Fee and the method of adjustment to the Fee for changes in the Work.)

« »

§ 4.4 COST OF THE WORK PLUS DESIGN BUILDER'S FEE WITH A GUARANTEED MAXIMUM PRICE

§ 4.4.1 The Cost of the Work is as defined in Exhibit B, plus the Design Builder's Fee.

§ 4.4.2 The Design Builder's Fee is:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design Builder's Fee and the method of adjustment to the Fee for changes in the Work.)

« »

§ 4.4.3 GUARANTEED MAXIMUM PRICE

§ 4.4.3.1 The sum of the Cost of the Work and the Design Builder's Fee is guaranteed by the Design-Builder not to exceed « (To be provided in Amendment No. 1) », subject to additions and deductions by changes in the Work as provided in the Design-Build Documents. Such maximum sum is referred to in the Design-Build Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner. The Guaranteed Maximum Price is the total Cost of the Project, as defined herein. The Guaranteed Maximum Price includes the cost of labor, equipment, supplies, materials, services and allowances to complete the Project. The cost data shall be directly correlated to the specific design drawings and specifications in existence at the time the Guaranteed Maximum Price is prepared. The assumptions used in the preparation of the Guaranteed Maximum Price shall be identified by the Design/Builder as part of the Guaranteed Maximum Price documentation, in accordance with Article 1 of Amendment #1 of A141 and appended hereto.

Deleted: See Amendment No. 1

Deleted: (« »)

(Insert specific provisions if the Design-Builder is to participate in any savings.)

« »

§ 4.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

§ 4.4.3.3 Unit Prices, if any, are as follows:

Description	Units	Price (\$ 0.00)

§ 4.4.3.4 Allowances, if any, are as follows: *The Design/Builder shall provide a list of allowances and a statement of their basis.*
(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)

Allowance	Amount (\$ 0.00)	Included Items

§ 4.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based, are as follows: *A list of the clarifications and assumptions made by the Design/Builder in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.*
(Identify the assumptions on which the Guaranteed Maximum Price is based.)

§ 4.5 CHANGES IN THE WORK

§ 4.5.1 ~~Adjustments of the Contract Sum on account of changes in the Work may be determined by any of the methods listed in Article A.7 of Exhibit A, Terms and Conditions.~~ *The cost to the Owner resulting from an increase in the Work shall be determined in one of the following ways:*

- 1 *by unit prices stated in the Contract Documents;*
- 2 *by cost, as defined below, properly itemized and supported by sufficient substantiating data to permit evaluation, plus a fee, such costs shall be itemized by crafts as defined within the schedule of values and limited to the following items directly attributable to the change in Work:*
 - 1 *costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance.*
 - 2 *Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;*
 - 3 *rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;*
 - 4 *additional costs of supervision and field office personnel directly attributable to the increase in the Work; and*
 - 5 *costs of premiums for all bonds and insurance, permit fees and sales, use or similar taxes relating to the Work.*

§ 4.5.2 Where the Contract Sum is the Cost of the Work, with ~~or without~~ a Guaranteed Maximum Price, and no specific provision is made in Sections 4.3.2 ~~or~~ 4.4.2 for adjustment of the Design-Builder's Fee in the case of Changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment will cause substantial inequity to the Owner or Design-Builder, the Design-Builder's Fee shall be equitably adjusted on the basis of the Fee established for the original Work, and the Contract Sum shall be adjusted accordingly.

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents. *Before the first Application for Payment, the Design/Builder shall submit to the Owner a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to*

substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design/Builder's Applications for Payment

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows: Except to the extent otherwise provided by statute, including A.R.S. § 41-2577, payments on account of this Contract will be made monthly as Work progresses.

« »

§ 5.1.3 ~~Provided that an Application for Payment is received not later than the « » day of month, the Owner shall make payment to the Design-Builder not later than the « » day of the « » month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than « » days after the Owner receives the Application for Payment. The Design/Builder shall submit to the Owner, consistent with AIA G702 and G703, an application for each payment, and, if required, receipts or other vouchers showing its payments for materials suitably stored at the construction site and labor, including applications from and payments the Architect, Consultants, Contractor or to Subcontractors.~~

§ 5.1.4 ~~As required by A.R.S. § 41-2577 w~~With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment. The Owner will, on request, furnish to an Architect or other Owner and or a Sub-Contractor, if practicable, information regarding percentages of completion or amounts applied for by the Design/Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect or Sub-Contractors

§ 5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections 5.1.4 or 5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid on account of the Agreement. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ 5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 PROGRESS PAYMENTS - STIPULATED SUM

§ 5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. In consultation with the Owner, the Design-Builder shall review the payment applications submitted by each Subcontractor and determine whether the amount requested reflects the progress of the Subcontractor's work. The Design-Builder shall make appropriate adjustments to each payment application and shall prepare and forward to the Owner a Progress Payment Report. The Report shall state the total contract price, payments to date, current payment requested retainage and actual amounts owed for the current period. Included in this report shall be a Certificate of Payment that shall be signed by the Design-Builder and delivered to the Owner. The Design-Builder

shall make payments that are due to all Subcontractors, suppliers and material men within ten (10) days following receipt of payment for the Work from the Owner. Receipt by the Design-Builder of payment from the Owner is a condition precedent to payment to a Subcontractor. In addition, the Design-Builder shall keep the Project and the site on which work is performed free and clear of all liens and claims from its contractors, subcontractors, suppliers or material men.

§ 5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- 1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of « » (« ») on the Work, other than services provided by design professionals and other consultants retained directly by the Design-Builder. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;
- 2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of « » (« »);
- 3 Subtract the aggregate of previous payments made by the Owner; and
- 4 Subtract amounts, if any, for which the Owner has withheld payment from or nullified an Application for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.2.3 ~~The progress payment amount determined in accordance with Section 5.2.2 shall be further modified under the following circumstances:~~

- 1 ~~add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and (Section A.9.8.6 of Exhibit A, Terms and Conditions requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)~~
- 2 ~~add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section A.9.10.3 of Exhibit A, Terms and Conditions. The Certificate of Substantial Completion, G704 and final punch list shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. The Project shall not be deemed substantially complete until the Certificate is issued. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design/Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design/Builder without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design/Builder to the Owner prior to certification of such payment. Such payment shall be made.~~

§ 5.2.4 Reduction or limitation of retainage, if any, under Section 5.2.2 shall be as follows: Neither final payment nor any remaining retainage or substituted securities shall become due until the Design/Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents ~~to~~ will remain in force through the warranty period and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) consent of surety, to final payment or release of substituted securities and (4), other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Design/Builder may furnish a bond or substitute security satisfactory to the Owner to indemnify the Owner against the Claim. If the Claim remains unsatisfied after payments are made, the

Design/Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging the Claim, including all costs and reasonable attorneys' fees

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.2.2.1 and 5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert here provisions for such reduction or limitation.)

« »

§ 5.3 PROGRESS PAYMENTS - COST OF THE WORK PLUS A FEE

§ 5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design Builder through the end of the period covered by the Application for Payment and for which Design Builder has made or intends to make actual payment prior to the next Application for Payment.

§ 5.3.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

1. Take the Cost of the Work as described in Exhibit B;
2. Add the Design Builder's Fee, less retainage of « » (« »). The Design Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section 5.3.2.1 at the rate stated in Section 4.3.2; or if the Design Builder's Fee is stated as a fixed sum in that section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the preceding section bears to a reasonable estimate of the probable Cost of the Work upon its completion;
3. Subtract the aggregate of previous payments made by the Owner;
4. Subtract the shortfall, if any, indicated by the Design Builder in the documentation required by Section 5.1.4 or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
5. Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate for Payment as provided in the Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.3.3 Retainage in addition to the retainage stated at Section 5.3.2.2, if any, shall be as follows: In lieu of the retainage, the Design-Builder may furnish securities as provided by A.R.S. §§ 35-155 or 41-2576 and 41-2577 and A.A.C. R2-7-506 and R2-7-507.

« »

§ 5.3.4 Except with the Owner's prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Design Builder, shall be subject to retainage of not less than « » (« »). The Owner and Design Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors. The balance of 10% of the estimate or substituted securities shall be retained by the Owner until the Work is 50% completed at which time the retainage or substituted securities shall be reduced to 5% of the estimate, provided the Contractor is making satisfactory progress on the contract and there is no specific cause or claim allowing or requiring a greater amount to be retained. Thereafter, the Owner shall pay the Contractor 95% of the value of the Work in place and suitably stored at the construction site unless and until the Owner determines that satisfactory progress is not being made or there is a specific claim or cause allowing or requiring a greater amount to be retained

§ 5.4 PROGRESS PAYMENTS - COST OF THE WORK PLUS A FEE WITH A GUARANTEED MAXIMUM PRICE

§ 5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design Builder on account of that portion of the Work for which the Design Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. In consultation with the Owner, the Design-Builder shall review the payment applications submitted by each Subcontractor and determine whether the amount requested reflects the progress of the Subcontractor's work. The Design-Builder shall make appropriate adjustments to each payment application and shall prepare and forward to

the Owner a Progress Payment Report. The Report shall state the total contract price, payments to date, current payment requested retainage and actual amounts owed for the current period. Included in this report shall be a Certificate of Payment that shall be signed by the Design-Builder and delivered to the Owner. The Design-Builder shall make payments that are due to all Subcontractors, suppliers and material men within ten (10) days following receipt of payment for the Work from the Owner. Receipt by the Design-Builder of payment from the Owner is a condition precedent to payment to a Subcontractor. In addition, the Design-Builder shall keep the Project and the site on which work is performed free and clear of all liens and claims from its contractors, subcontractors, suppliers or material me

§ 5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

1. Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;
2. Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
3. Add the Design-Builder's Fee, less retainage of « » (« »). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the two preceding sections at the rate stated in Section 4.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding sections bears to a reasonable estimate of the probable Cost of the Work upon its completion;
4. Subtract the aggregate of previous payments made by the Owner;
5. Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section 5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
6. Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

~~§ 5.4.3 Except with the Owner's prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Design-Builder, shall be subject to retainage of not less than « » (« »). The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors. In consultation with the Owner, the Design-Builder shall review the payment applications submitted by each Subcontractor and determine whether the amount requested reflects the progress of the Subcontractor's work. The Design-Builder shall make appropriate adjustments to each payment application and shall prepare and forward to the Owner a Progress Payment Report. The Report shall state the total contract price, payments to date, current payment requested retainage and actual amounts owed for the current period. Included in this report shall be a Certificate of Payment that shall be signed by the Design-Builder and delivered to the Owner. The Design-Builder shall make payments that are due to all Subcontractors, suppliers and material men within ten (10) days following receipt of payment for the Work from the Owner. Receipt by the Design-Builder of payment from the Owner is a condition precedent to payment to a Subcontractor. In addition, the Design-Builder shall keep the Project and the site on which work is performed free and clear of all liens and claims from its contractors, subcontractors, suppliers or material men.~~

§ 5.5 FINAL PAYMENT

§ 5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder no later than 30 days after the Design-Builder has fully performed the Design-Build Contract, including the requirements in Section A.9.10 of Exhibit A, Terms and Conditions, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 ~~The parties appoint the following individual to serve as a Neutral pursuant to Section A.4.2 of Exhibit A, Terms and Conditions:~~

(Insert the name, address and other information of the individual to serve as a Neutral. If the parties do not select a Neutral, then the provisions of Section A.4.2.2 of Exhibit A, Terms and Conditions, shall apply.)

« »« »« »« »« »

The Parties agree that the Arizona Procurement Code and rules issued there under shall be the exclusive means for resolving disputes arising under the Contract.

Any dispute between the Design-Builder and the Owner or the Owner's authorized representative arising out of or relating to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in sections from the A141 General Conditions, shall be resolved pursuant to the Arizona Procurement Code (Chapter 23, Title 41, A.R.S.) and the Rules of the Director of the Department of Administration.

§ 6.2 If the parties do not resolve their dispute through mediation pursuant to Section A.4.3 of Exhibit A, Terms and Conditions, the method of binding dispute resolution shall be the following:

(If the parties do not select a method of binding dispute resolution, then the method of binding dispute resolution shall be by litigation in a court of competent jurisdiction.)

(Check one.)

Arbitration pursuant to Section A.4.4 of Exhibit A, Terms and Conditions

Litigation in a court of competent jurisdiction

Other (Specify)

« »

§ 6.3 ARBITRATION

~~§ 6.3.1 If Arbitration is selected by the parties as the method of binding dispute resolution, then any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration as provided in Section A.4.4 of Exhibit A, Terms and Conditions.~~

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 The Architect, other design professionals and consultants engaged by the Design-Builder shall be persons or entities duly licensed to practice their professions in the ~~State of Arizona jurisdiction~~ where the Project is located and are listed as follows: The Architect is responsible to the Design/Builder for any services designed, approved, certified, or accepted by its Engineers, Architects, Consultants, agents and employees. As used in this Agreement, the term "Architect" refers to the Owner registered as an architect, professional engineer, or other design specialist

In designing the Project and preparing the Construction Documents, the Architect shall design the Work in compliance with applicable laws, Executive Orders, codes and generally accepted engineering and design standards. Local codes shall be applicable and local inspection requirements shall be satisfied as required by A.R.S. §34-461. If no local or State codes apply, the editions of Building, Plumbing, Mechanical and Electrical Code in effect on the date this Agreement is signed by the Design/Builder shall apply. Also applicable are: AAC R10-3-401 through 412 relating to their implementation, the American National Standards Institute's Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped, The State of Arizona Fire Code; A.R.S. §34-451, the latest edition of ASHRAE 90.1, adopted by the Department of Commerce, A.R.S. §34-452, solar energy and life cycle cost analysis and Executive Order 91-3, relating to Water Conservation for State Facilities. A.R.S. §34.452, for the energy conservation and equipment selection shall be incorporated in the Design of the Project.

The Life Cycle Cost Analysis requirements of A.R.S. §34.452, for the energy conservation and equipment selection shall be incorporated in the Design of the Project.

A.R.S. §41-793.02. Renovation or replacement of state buildings; building life extension study; definition

- A. To ensure that proper consideration is given to economically effective options for extending the life of an existing building, the agency responsible for each building system that is established pursuant to section 41-793, subsection A may support each request for funding of the renovation and shall support

each request for funding of the replacement of a building with a floor area greater than twenty-five thousand square feet with a building life extension study.

B. The building life extension study shall calculate:

1. The current service life of the building by considering:

(a) The design life of the major components of the building.

(b) The installed cost of the major components.

(c) The remaining useful life of the major components.

2. The cost of extending the service life by five, ten and twenty-five years respectively.

C. The agency shall compare the calculations with the proposed cost and extended service life of the proposed renovated or replaced building.

D. For the purposes of this section, "major component" includes the following elements of a building:

1. Foundation.

2. Roofing.

3. Interior construction.

4. Plumbing.

5. Electrical systems.

6. Heating and cooling systems.

Executive Order 2005-05 – Implementing Renewal Energy and Energy Efficiency in New State Buildings.

Renewal Energy: *All new state funded-buildings constructed after the date of this Executive Order shall be designed and constructed to derive at least 10 percent (10%) of their energy from a renewable resource. A renewable resource may include: solar, wind, or the use of thermal energy from biomass fuels for heating and or cooling. This goal may also be met through the purchase of renewable energy credits (as defined by the Department of Commerce Energy Office) from an energy producer.*

Energy Efficiency: *The design for all state-funded buildings constructed after the date of this Executive Order shall include energy efficiency standards consistent with Arizona Revised Statutes § 34-451 and Executive Order 2003-14.*

LEED Standard: *All state-funded buildings constructed after the date of this Executive Order shall meet at least the "silver" Leadership in Energy and Environmental Design (LEED) standard.*

(Insert name, address, license number, relationship to Design-Builder and other information.)

Name and Address	License Number	Relationship to Design-Builder	Other Information
[Redacted]	[Redacted]	[Redacted]	[Redacted]

§ 7.2 Consultants, if any, engaged directly by the Owner, their professions and responsibilities are listed below:

(Insert name, address, license number, if applicable, and responsibilities to Owner and other information.)

Name and Address	License Number	Responsibilities to Owner	Other Information
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

§ 7.3 Separate contractors, if any, engaged directly by the Owner, their trades and responsibilities are listed below:
(Insert name, address, license number, if applicable, responsibilities to Owner and other information.)

Name and Address	License Number	Responsibilities to Owner	Other Information
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

§ 7.4 The Owner's Designated Representative is:
(Insert name, address and other information.)

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§ 7.4.1 The Owner's Designated Representative identified above shall be authorized to act on the Owner's behalf with respect to the Project. The Owner is the State of Arizona acting by and through the governmental agency designated as Owner in the Owner Design/Builder Agreement and is so referred to throughout the Contract Documents. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. The term "Owner" means the Owner or its authorized representative.

§ 7.5 The Design-Builder's Designated Representative is:
(Insert name, address and other information.)

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§ 7.5.1 The Design-Builder's Designated Representative identified above shall be authorized to act on the Design-Builder's behalf with respect to the Project.

§ 7.6 Neither the Owner's nor the Design-Builder's Designated Representative shall be changed without ten days written notice to the other party.

§ 7.7 Other provisions:

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§ 7.7.1 Where reference is made in this Agreement to a provision of another Design-Build Document, the reference refers to that provision as amended or supplemented by other provisions of the Design-Build Documents.

§ 7.7.2 Payments due and unpaid under the Design-Build Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

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(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Design-Builder's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

ARTICLE 8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS

§ 8.1 The Design-Build Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 8.1.1 The Agreement is this executed edition of the Standard Form of Agreement Between Owner and Design-Builder, AIA Document A141-2004 with 2006 Arizona Modifications.

§ 8.1.2 The Supplementary and other Conditions of the Agreement, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

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Document	Title	Pages

§ 8.1.3 The Project Criteria, including changes to the Project Criteria proposed by the Design-Builder, if any, and accepted by the Owner, consist of the following:
(Either list applicable documents and their dates below or refer to an exhibit attached to this Agreement.)

« »

Title	Date

§ 8.1.4 The Design-Builder's Proposal, dated « » , consists of the following:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

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§ 8.1.5 Amendments to the Design-Builder's Proposal, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

« »« »

§ 8.1.6 The Addenda, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

« »

Number	Date	Pages

§ 8.1.7 Exhibit A, Terms and Conditions.
(If the parties agree to substitute terms and conditions other than those contained in AIA Document A141-2004, Exhibit A, Terms and Conditions, then identify such terms and conditions and attach to this Agreement as Exhibit A.)

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§ 8.1.8 Exhibit B, Determination of the Cost of the Work, if applicable.
(If the parties agree to substitute a method to determine the cost of the Work other than that contained in AIA Document A141-2004, Exhibit B, Determination of the Cost of the Work, then identify such other method to determine the cost of the Work and attach to this Agreement as Exhibit B. If the Contract Sum is a Stipulated Sum, then Exhibit B is not applicable.)

§ 8.1.9 Exhibit C, Insurance and Bonds, if applicable.
(Complete AIA Document A141-2004, Exhibit C, Insurance and Bonds or indicate "not applicable.")

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§ 8.1.10 Other documents, if any, forming part of the Design-Build Documents are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

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This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Design-Builder and one to the Owner.

OWNER (Signature)

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(Printed name and title)

DESIGN-BUILDER (Signature)

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(Printed name and title)

AMERICAN
INSTITUTE
OF
ARCHITECTS