



Office of Management & Enterprise Services ■ Capital Assets Management ■ Construction and Properties

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

AGREEMENT made as of the _____ day of _____ in the year 20__.

BETWEEN THE OWNER:

PROJECT:

State of Oklahoma
OMES/CAM/CAP
P.O. Box 53448
Oklahoma City, OK 73152-3448
cap@omes.ok.gov

(CAP Project Number) (Solicitation Number)

(CAP Project Name)

(Address/Location)

ON BEHALF OF THE USING AGENCY:

(Using Agency Name)

AND THE DESIGN-BUILDER:

(Company Name) (City, State ZIP)

(Address) (Email) (Telephone Number)

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

ARTICLE 1: Scope of Work.

1.1 Design-Builder shall perform all management, design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

ARTICLE 2: Contract Documents.

2.1 The Contract Documents are comprised of the following.

2.1.1 All written modifications, amendments, minor changes and Change Orders to this Agreement issued in accordance with CAP Form 535 *General Conditions of the Contract for Design-Build* ("General Conditions of Contract");

2.1.2 The Basis of Design Documents, including the Owner's Project Criteria, Design-Builder's Proposal and the Deviation List, if any, contained in the Design-Builder's Proposal, which shall specifically identify any and all deviations from Owner's Project Criteria;

2.1.3 This Agreement, including all exhibits and attachments, executed by Owner and Design-Builder (List for example, performance standard requirements, performance incentive requirements, markup exhibits, allowances, or unit prices);

2.1.4 The General Conditions of Contract; and

2.1.5 Construction Documents prepared and accepted in accordance with Section 2.4 of the General Conditions of Contract.

ARTICLE 3: Interpretation and Intent.

3.1 Design-Builder and Owner, prior to execution of the Agreement, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

3.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally. Conflicts existing within Section 2.1.2 shall be resolved by giving precedence first to the accepted Deviation List, if any, then the Owner's Project Criteria, and then the Design-Builder's Proposal.

3.3 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

3.4 If Owner's Project Criteria contain design specifications: (a) Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any performance specifications; and (b) Design-Builder shall be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design specification.

3.5 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 repeated 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 Work Product.

4.1 Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are the property of the State of Oklahoma. Owner shall retain ownership and property interests therein, including the copyrights thereto.

ARTICLE 5: Contract Time.

5.1 Date of Commencement. The Work shall commence within ten (10) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

5.2 Substantial Completion and Final Completion.

5.2.1 Substantial Completion of the entire Work shall be achieved no later than _____ (_____) calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work ("Scheduled Interim Milestone Dates") shall be achieved, if applicable, and set forth in **Exhibit _____** hereto.

5.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.7 of the General Conditions of Contract.

5.2.4 All of the dates set forth in this Article 5 (collectively the "Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

5.3 Time is of the Essence. 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.

5.4 Liquidated Damages. Design-Builder and Owner have agreed not to provide for liquidated damages in this Agreement for failure of Design-Builder to achieve the Contract Time(s) set forth in this Article 5. Design-Builder understands, however, that Owner may suffer actual damages in the event the Contract Time(s) set forth herein are not timely achieved. Design-Builder agrees that if Substantial Completion is not attained by _____ (_____) calendar days after the Scheduled Substantial Completion Date (the "LD Date"), Owner shall be able to recover such actual damages from Design-Builder to the extent it can demonstrate that actual damages have been incurred, are directly related and caused by Design-Builder's failure to meet the Contract Time(s) set forth herein, and are not waived by Section 10.5.1 of the General Conditions of Contract.

(If following clause is selected with an "X," it shall become a supplemental part of the 5.4 clause of this Agreement)

Furthermore, Design-Builder understands that if Final Completion is not achieved within _____ (_____) calendar days of the Substantial Completion Date, Owner shall be able to recover such actual damages from Design-Builder to the extent it can demonstrate that actual damages have been incurred, are directly related and caused by Design-Builder's failure to meet the Contract Time(s) set forth herein, and are not waived by Section 10.5.1 of the General Conditions of Contract.

5.5 Reserved.

5.6 *(If following clause is selected with an "X," it shall become the 5.6 clause of this Agreement; otherwise 5.6 shall be Reserved)*

Early Completion Bonus. If Substantial Completion is attained on or before _____ (_____) calendar days before the Scheduled Substantial Completion Date (the "Bonus Date"), Owner shall pay Design-Builder at the time of Final Payment under Section 7.3 hereof an early completion bonus of _____ Dollars (_____) for each day that Substantial Completion is attained earlier than the Bonus Date.

(If following clause is selected with an "X," it shall become a supplemental part of the 5.6 clause of this Agreement)

Owner and Design-Builder agree that the maximum aggregate amount that Design-Builder shall receive as the early Completion Bonus is _____ Dollars (_____).

5.7 *(If following clause is selected with an "X," it shall modify Article 8.2.2 of the General Conditions of Contract and become the 5.7 clause of this Agreement; otherwise 5.7 shall be Reserved)*

In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 of the General Conditions of Contract, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price for those events set forth in Section 8.2.1 of the General Conditions of Contract, provided, however, for Force Majeure Events, Design-Builder shall only be entitled to an increase in the Contract Price if said events exceed _____ (_____) cumulative days. Said additional compensation shall be limited to:

(The clause selected with an "X" shall become the valid supplemental clause to 5.7 of this Agreement)

_____ Dollars (_____) a day for each day work is delayed beyond the Scheduled Substantial Completion Date.

the direct costs and expenses Design-Builder can demonstrate it has reasonably and actually incurred as a result of such event.

ARTICLE 6: Contract Price.

6.1 Contract Price. Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of _____ Dollars (_____) ("Contract Price"), subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.2 Markups for Changes. If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Sections 9.4.1.3 or 9.4.1.4 of the General Conditions of Contract, the following markups shall be allowed on such changes:

6.2.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of _____ percent (____%) of the additional costs incurred for that Change Order, plus any other markups set forth at **Exhibit _____** hereto.

6.2.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

(The clause selected with an "X" shall become the valid supplemental clause to 6.2.2 of this Agreement)

No additional reduction to account for Design-Builder's Fee or any other markup.

An amount equal to the sum of: (a) _____ percent (____%) applied to the direct costs of the net reduction (which amount will account for a reduction associated with Design-Builder's Fee); plus (b) any other markups set forth at **Exhibit _____** hereto applied to the direct costs of the net reduction.

6.3 Allowance Items and Allowance Values.

6.3.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in an Exhibit hereto.

6.3.2 Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

6.3.3 No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed on an Allowance Item by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

6.3.4 *(The clause selected with an "X" shall become the valid 6.3.4 clause of this Agreement)*

The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and fee, are deemed to be included in the original Contract Price, and are not subject to adjustment, regardless of the actual amount of the Allowance Item.

In the event the actual direct cost of labor, materials, equipment, transportation, taxes and insurance associated with an Allowance Item is _____ percent (____%) greater than or less than the Allowance Value for such Allowance Item, Design-Builder and Owner agree that Design-Builder's right to Fee and markup shall be adjusted in accordance with Section 6.2.

6.3.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.3.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

6.4 Performance Incentives.

6.4.1 Owner and Design-Builder have agreed to the performance incentive arrangements set forth in **Exhibit _____**.

ARTICLE 7: Procedure for Payment.

7.1 Progress Payments.

7.1.1 Design-Builder shall submit to Owner by the _____ (____) day of each month, beginning with the first month after the Date of Commencement, *Design-Builder Invoice* (CAP Form DB500-D1) in accordance with Article 6 of the General Conditions of Contract.

7.1.2 Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract. All Payments shall be in accordance with the Title 61, Fair Pay Act for Construction.

7.2 Retainage on Progress Payments.

7.2.1 *(The clause selected with an "X" shall become the valid 7.2.1 clause of this Agreement)*

Owner will retain _____ percent (____%) of each Design-Builder's Invoice provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional retention amounts from Design-Builder's subsequent Invoices. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.

Owner will retain _____ percent (___%) from Design-Builder's Invoice, exclusive of general conditions costs, and any amounts paid to Design-Builder's Design Consultant, from each Invoice provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional amounts from Design-Builder's subsequent Invoices. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.

7.2.2 Within fifteen (15) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within thirty (30) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.4 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest in accordance with Title 61, Fair Pay for Construction Act.

7.5 Record Keeping and Finance Controls. With respect to changes in the Work performed on a cost basis by Design-Builder pursuant to the Contract Documents, Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to changes in the Work performed on a cost basis in accordance with the Contract Documents, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

ARTICLE 8: Termination for Convenience.

8.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

8.1.1 All Work executed and for proven loss, cost or expense in connection with the Work;

8.1.2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

8.1.3 *(The clause selected with an "X" shall become the valid 8.1.3 clause of this Agreement)*

The fair and reasonable sums for overhead and profit on the sum of items 8.1.1 and 8.1.2 above.

Overhead and profit in the amount of _____ percent (___%) on the sum of items 8.1.1 and 8.1.2 above.

8.2 In addition to the amounts set forth in Section 8.1 above, Design-Builder shall be entitled to receive one of the following as applicable:

8.2.1 If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid _____ percent (___%) of the remaining balance of the Contract Price.

8.2.2 If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid _____ percent (___%) of the remaining balance of the Contract Price.

8.3 If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Article 4.

ARTICLE 9: Representatives of the Parties.

9.1 Owner and Owner's Representatives.

9.1.1 Owner designates the individual listed below as its Senior Individual ("Owner's Senior Contact"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

Individual Name _____ Direct Telephone _____ Direct Email _____

9.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract:

Individual Name _____ Direct Telephone _____ Direct Email _____

9.2 Design-Builder’s Representatives.

9.2.1 Design-Builder designates the individual listed below as its Senior Representative (“Design-Builder’s Senior Representative”), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

Individual Name _____ Direct Telephone _____ Direct Email _____

9.2.2 Design-Builder designates the individual listed below as its Design-Builder’s Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract:

Individual Name _____ Direct Telephone _____ Direct Email _____

9.3 Using Agency’s Representative.

9.3.1 Using Agency designates the individual listed below as its Senior Representative (“Using Agency’s Senior Representative”), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

Individual Name _____ Direct Telephone _____ Direct Email _____

9.3.2 Using Agency designates the individual listed below as its Using Agency Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract:

Individual Name _____ Direct Telephone _____ Direct Email _____

ARTICLE 10: Bonds and Insurance.

10.1 Insurance. Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract.

10.2 Bonds and Other Performance Security. Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

10.2.1 Performance Bond. Required Not Required

10.2.2 Payment Bond. Required Not Required

10.2.3 Warranty (Defect) Bond. Required Not Required

ARTICLE 11: Other Provisions.

11.1 Other Provisions, if any, are as follows:

11.1.1 Notwithstanding Section 2.3.1 of the General Conditions of Contract, if the parties agree upon specific performance standards in the Basis of Design Documents, the design professional services shall be performed to achieve such standards.

11.1.2 Key Personnel, Subcontractors and Outside Associates or Consultant. In connection with this contract, any in-house personnel, subcontractors, and outside associates or consultants will be limited to individuals or firms that were specifically identified in the Design-Builder’s accepted proposal. The Design-Builder will obtain the Owner’s written consent before making any substitution for these designated in-house personnel, subcontractors, associates, or consultants.

11.1.3 Responsibility of the Design-Builder for Design. The Design-Builder will be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other non-construction services furnished by the Design-Builder under this contract. The Design-Builder will, without additional compensation, correct or revise any errors or deficiency in its designs, drawings, specifications, and other non-construction services and perform any necessary rework or modifications, including any damage to real or personal property, resulting from the design error or omission.

The standard of care for all design services performed under this agreement will be the care and skill ordinarily used by members of the architectural or engineering professions practicing under similar conditions at the same time and locality. Notwithstanding the above, in the event that the contract specifies that portions of the Work be performed in accordance with a performance standard, the design services shall be performed so as to achieve such standards.

Neither the Owner’s review, approval or acceptance of; nor payment for, the services required under this contract, will be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract. The Design-Builder will be and remain liable to the Owner in accordance with applicable law for all damages to the Owner caused by the Design-Builder’s negligent performance of any of these services furnished under this contract

The rights and remedies of the Owner provided for under this contract are in addition to any other rights and remedies provided by law.

If the Design-Builder is comprised of more than one legal entity, each entity will be jointly and severally liable hereunder.

11.1.4 Fair Pay for Construction Act. Design Consultant shall have the same rights and terms as a Subcontractor.

11.1.5 State of Oklahoma Governor’s Executive Order 2012-01. Per the State of Oklahoma Governor’s Executive Order 201201, filed February 6, 2012 and effective July 1, 2012, the use of any tobacco product shall be prohibited on any and all properties owned, leased or contracted for use by the State of Oklahoma, including but not limited to all buildings, land and vehicles owned, leased or contracted for use by agencies or instrumentalities of the State of Oklahoma.

11.1.6 Oklahoma Taxpayer and Citizen Protection Act of 2007. The Contractor certifies that it and all proposed subcontractors and suppliers, whether known or unknown at the time this contract is executed or awarded, will comply with the provisions of the Oklahoma Taxpayer and Citizen Protection Act of 2007 and participate in the Status Verification System. The Status Verification System is defined in the Oklahoma Statutes, Title 25 §1312.

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:		USING AGENCY:	
State of Oklahoma Office of Management and Enterprise Services Capital Assets Management Construction and Properties		The Using Agency certifies that funds are available and dedicated to completing the contract sums stated in this Contract. The Using Agency agrees to pay all project related costs including but not limited to work related to unknown site conditions, remediation of discovered environmental conditions, legal expenses, judgments and any reasonable project related expense.	
_____	_____	_____	_____
<i>(Owner's Signature)</i>	<i>(Date Signed)</i>	<i>(Authorized Representative Signature)</i>	<i>(Date Signed)</i>
_____	_____	_____	_____
<i>(Owner's Printed Name)</i>		<i>(Authorized Representative Printed Name)</i>	
_____	_____	_____	_____
<i>(Owner's Printed Title)</i>		<i>(Authorized Representative Printed Title)</i>	

DESIGN-BUILDER:

Non-Collusion Statement
The Authorized Representative for the Design-Builder, of lawful age, solemnly swears or affirms, under penalty of perjury, that (s)he is the duly authorized agent of the Company indicated herein under the contract which is attached to this statement, for the purpose of certifying the facts pertaining to the giving of things of value to government personnel in order to procure said Contract.

(S)He is fully aware of the facts and circumstances surrounding the making of the Contract to which this statement is attached and has been personally and directly involved in the proceedings leading to the procurement of said Contract: and

Neither the Company nor anyone subject to the Company's direction or control has paid, given or donated or agreed to pay, give or donate to any office or employee of the State of Oklahoma any money or other thing of value, either directly or indirectly, in procuring the Contract to which this statement is attached.

Exhibits/Attachments list:

(Authorized Representative Signature) _____ *(Date Signed)*

(Authorized Representative Printed Name)

(Authorized Representative Printed Title)

(EIN/TIN number)