



AIA[®] Document A142[™] – 2004

Standard Form of Agreement Between Design-Builder and Contractor

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

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

and the Contractor:
(Name, legal status, address and other information)

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

The Design-Builder has made a Design-Build Contract with the Owner dated:
for the following Project:
(Name, location and detailed description)

Owner:
(Name, legal status, and address)

The Design-Builder and Contractor agree as follows.

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ARTICLE 1 THE CONTRACT DOCUMENTS

§ 1.1 The Contract Documents form the Contract for Construction. The Contract Documents consist of this Agreement between Design-Builder and Contractor (hereinafter, the "Agreement") and its attached Exhibits; Supplementary and other Conditions; Drawings, Specifications, Addenda issued prior to execution of the Agreement; other documents listed in the Agreement and Modifications issued after execution of the Agreement. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents, such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements). The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Contractor or Subcontractor, (3) between the Owner and Architect or (4) between any persons or entities other than the Design-Builder and Contractor. An enumeration of the Contract Documents, other than Modifications, appears in Article 8.

§ 1.2 The Contract for Construction represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

§ 1.3 The Contract may be amended or modified only by a Modification. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Design-Builder.

ARTICLE 2 THE WORK OF THIS AGREEMENT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as set forth in Exhibit C.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be 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 Design-Builder.

(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.)

§ 3.2 The Contract Time shall be measured from the date of commencement, subject to adjustments of this Contract Time as provided in the Contract 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 Contractor shall achieve Substantial Completion of the Work not later than 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 Contract 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 Design-Builder shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of this Agreement. 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 Contractor's Fee in accordance with Section 4.3 below
- Cost of the Work Plus Contractor'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 Contract Documents.

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

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

Description

Units

Price per Unit (\$0.00)

§ 4.2.4 Allowances, if any, are as follows:

(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)

Allowance	Amount (\$0.00)	Included Items
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§ 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 Contractor's Fee

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

§ 4.3.2 The Contractor's Fee:

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

§ 4.4 Cost of the Work Plus Contractor's Fee with a Guaranteed Maximum Price

§ 4.4.1 The Cost of the Work is as defined in Exhibit D.

§ 4.4.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor'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 Contractor's Fee is guaranteed by the Contractor not to exceed

(\$ _____), subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Design-Builder.

(Insert specific provisions if the Contractor 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 Contract Documents and are hereby accepted by the Design-Builder:

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

Description	Units	Price per Unit (\$0.00)
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§ 4.4.3.4 Allowances, if any, are as follows:

(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)

Allowance	Amount (\$0.00)	Included Items
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§ 4.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based, are as follows:

§ 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.

§ 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 Contractor'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 Contractor'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 Design-Builder by the Contractor, the Design-Builder shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 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:

§ 5.1.3 Provided that an Application for Payment is received not later than the _____ day of month, the Design-Builder shall make payment to the Contractor not later than the _____ day of the _____ month. If an Application for Payment is received by the Design-Builder after the application date fixed above, payment shall be made by the Design-Builder not later than (_____) days after the Design-Builder receives the Application for Payment.

§ 5.1.4 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 Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Design-Builder to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor, less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 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 Contractor shall submit the most recent schedule of values in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Contractor'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 Design-Builder may require. This schedule of values, unless objected to by the Design-Builder, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.6 In taking action on the Contractor's Applications for Payment, the Design-Builder shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor 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 Contractor has used amounts previously paid on account of this Agreement. Such examinations, audits and verifications, if required by the Design-Builder, will be performed by the Design-Builder's accountants acting in the sole interest of the Design-Builder.

§ 5.1.7 Except with the Design-Builder's prior approval, the Contractor 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.

§ 5.2.2 Subject to other provisions of the Contract 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 _____ percent (_____ %) on the Work. Pending final determination of cost to the Design-Builder 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 Design-Builder, suitably stored off the site at a location agreed upon in writing), less retainage of _____ percent (_____ %);
- .3 Subtract the aggregate of previous payments made by the Design-Builder; and
- .4 Subtract amounts, if any, for which the Design-Builder 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.9.8.4 of Exhibit A, Terms and Conditions discusses release of applicable retainage upon Substantial Completion of Work.)

- .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.

§ 5.2.4 Reduction or limitation of retainage, if any, shall be as follows:

(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 Contract 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 Contractor through the end of the period covered by the Application for Payment and for which Contractor has made or intends to make actual payment prior to the next Application for Payment.

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

- .1 Take the Cost of the Work as described in Exhibit D;
- .2 Add the Contractor's Fee, less retainage of percent (%). The Contractor'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 Contractor'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 Design-Builder;
- .4 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.4 or resulting from errors subsequently discovered by the Design-Builder's accountants in such documentation; and
- .5 Subtract amounts, if any, for which the Design-Builder has withheld or withdrawn 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:

§ 5.3.4 Except with the Design-Builder's prior approval, payments to Subcontractors shall be subject to retainage of not less than percent (%). The Design-Builder and Contractor shall agree on a mutually acceptable procedure for review and approval of payments and retention for Subcontractors.

§ 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.

§ 5.4.2 Subject to other provisions of the Contract 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 Design-Builder 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 Design-Builder, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Contractor's Fee, less retainage of (%). The Contractor'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 Contractor'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 Design-Builder;
- .5 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Design-Builder's accountants in such documentation; and
- .6 Subtract amounts, if any, for which the Design-Builder has withheld or nullified a payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.4.3 Except with the Design-Builder's prior approval, payments to Subcontractors, shall be subject to retainage of not less than percent (%). The Design-Builder and Contractor shall agree on a mutually acceptable procedure for review and approval of payments and retention for Subcontractors.

§ 5.5 Final Payment

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Design-Builder to the Contractor not later than 30 days after the Contractor has fully performed this Agreement and the requirements of Section A.9.10 of Exhibit A, Terms and Conditions have been satisfied, except for the Contractor'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.4.2.1 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 or A.4.2.3 of Exhibit A, Terms and Conditions, shall apply.)

§ 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

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 Design professionals and consultants, if any, engaged by the Contractor shall be persons or entities duly licensed to practice their professions as required in the jurisdiction where the Project is located and are listed as follows:
(Insert name, address, license number, relationship to Contractor and other information.)

Name and Address	License Number	Relationship to Contractor	Other Information
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§ 7.2 The Architect, other design professionals and consultants, if any, engaged directly by the Design-Builder, their professions and responsibilities are listed below:
(Insert name, address, license number, if applicable, and responsibilities to Design-Builder and other information.)

Name and Address	License Number	Responsibilities to Design-Builder	Other Information
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§ 7.3 The Design-Builder's Designated Representative:
(Insert name, address and other information.)

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

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

§ 7.4.1 The Contractor's Designated Representative identified above shall be authorized to act on the Contractor's behalf with respect to the Project.

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

§ 7.6 Other provisions:

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

§ 7.6.2 Payments due and unpaid under this Agreement 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.)*

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Design-Builder's and Contractor'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 CONTRACT DOCUMENTS

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

§ 8.1.1 The Agreement is this executed edition of AIA Document A142-2004, Standard Form of Agreement Between Design-Builder and Contractor.

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

Document	Title	Pages
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§ 8.1.3 The Specifications are as follows:
(Either list the Specification by number, title and date, or refer to an exhibit attached to this Agreement.)

Number	Title	Date
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§ 8.1.4 The Drawings are as follows:
(Either list the Drawings by number, title and date or refer to an exhibit attached to this Agreement.)

Number	Title	Date
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§ 8.1.5 The Addenda, if any, are as follows:
(Either list applicable documents in the space below or refer to an exhibit attached to this Agreement.)

Number	Date	Pages
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§ 8.1.6 Exhibit A, Terms and Conditions.
(If the parties agree to substitute terms and conditions other than those contained in AIA Document A142, Exhibit A, Terms and Conditions, then identify such terms and conditions and attach to this Agreement as Exhibit A.)

§ 8.1.7 Exhibit B, Preconstruction Services, if applicable.
(Describe in Exhibit B the Preconstruction Services, if any, and the method of compensation for such services. If the Contractor will perform no preconstruction services, write “not applicable” in the space below.)

§ 8.1.8 Exhibit C, Contractor’s Scope of Work.
(If the Contractor’s Scope of Work includes performance of all Work required by the Contract Documents, write “not applicable” below. If the Contractor’s Scope of Work does not include performance of all Work required by the Contract Documents, specify the scope of the Contractor’s work in Exhibit C.)

§ 8.1.9 Exhibit D, 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 A142, Exhibit D, 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 D. If the Contract Sum is a Stipulated Sum, then Exhibit D is “not applicable.”)

§ 8.1.10 Exhibit E, Insurance and Bonds, if applicable.
(Complete AIA Document A142, Exhibit E, Insurance and Bonds or write “not applicable” in the space below.)

§ 8.1.11 Other documents, if any, forming part of the Contract Documents are as follows:
(Either list applicable documents or refer to an exhibit attached to this Agreement in the space below.)

Sample

This Agreement entered into as of the day and year first written above.

DESIGN-BUILDER (Signature)

CONTRACTOR (Signature)

(Printed name and title)

(Printed name and title)

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

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