



AIA[®] Document A141[™] – 2004

Standard Form of Agreement Between Owner and Design-Builder

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)

Regents of the University of Minnesota
400 Donhowe Building
319 15th Avenue Southeast
Minneapolis, MN 55455

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

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

University of Minnesota Project Name:
University of Minnesota Project No.:

Design and construction of

As more fully described in the Project Criteria attached to and incorporated in this Agreement.

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The Owner and Design-Builder agree as follows.

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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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.

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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, this "Agreement") and its attached Exhibits; Supplementary and other Conditions; Addenda issued prior to execution of this Agreement; the Project Criteria, including changes to the Project Criteria proposed by the Design-Builder and accepted by the Owner prior to execution of this Agreement, if any; the Design-Builder's Proposal and written modifications to the Proposal accepted by the Owner prior to execution of this Agreement, if any; other documents listed in this Agreement; and Modifications issued after execution of this Agreement, including the Modification incorporating the Final GMP Proposal (as defined in Section 4.4.3.1) completed by the Design-Builder and accepted by the Owner. 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. An enumeration of the Design-Build Documents, other than Modifications, appears in Article 8. The term "Addenda" (or singular "addendum") means any written revision or clarification of the Design-Build Documents issued and incorporated in the Design-Build Documents before the parties execute the Design-Build Contract.

§ 1.2 The term Design-Build Contract means the entire and integrated agreement between the Owner and Design-Builder. The Design-Build Contract supersedes prior negotiations, representations or agreements, either written or oral.

§ 1.3 The Design-Build Contract may be amended or modified only by a Modification. The term "Modification" means (1) a written amendment to the Design-Build 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 Owner.

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.

§ 2.2 The Design-Builder shall perform all Work through Contractors or through the Design-Builder's own forces, selected and paid in accordance with Article A.5 of Exhibit A, Terms and Conditions.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement.

(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.)

The Design-Builder shall commence design services on the date of this Agreement. The Design-Builder shall proceed with construction documents and construction in accordance with the schedule incorporated in the Design-Build Documents as of the date of this Agreement, subject to adjustments approved by the parties and incorporated in the Final GMP Proposal.

(Paragraphs deleted)

§ 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.)

See Final GMP Proposal for provisions relating to liquidated damages and early completion bonuses, if any.

§ 3.3 The Design-Builder shall achieve Substantial Completion of the Work 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.)

(Table deleted)

The date(s) of Substantial Completion of the Work, and of any separately designated portion of the Work, shall be the date(s) stated in Design-Builder's Proposal as of the date of this Agreement, subject to adjustments approved by the parties and incorporated in the Final GMP Proposal.

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;

Cost of the Work Plus Design-Builder's Fee;

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

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

§ 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, Determination of the Cost of Work.

§ 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.)

[INSERT FEE OR BASIS OF FEE FROM RFP OR DESIGN-BUILDER'S PROPOSAL]

§ 4.4.3 GUARANTEED MAXIMUM PRICE

§ 4.4.3.1 The Owner has established a budget for the Contract Sum (sum of the Cost of the Work plus the Design-Builder's Fee), in the amount of _____ Dollars (\$_____) (the "GMP Budget"), based on the Design-Build Documents, including the Design-Builder's Proposal, as of the date of this Agreement. The Design-Builder shall make good faith efforts to prepare a GMP Proposal that conforms with the Design-Build Documents and the GMP Budget, in accordance with Section A.3.2.5 and Article A.15 of Exhibit A, Terms and Conditions. The GMP Budget shall not be a guaranteed maximum price, and the Design-Builder shall not be deemed to have agreed to complete the Work for a guaranteed maximum price until the Owner accepts a GMP Proposal from the Designer-Builder and the parties incorporate that GMP Proposal in this Agreement by Modification executed by both parties. The term "Final GMP Proposal" means the GMP Proposal as incorporated in this Agreement. The term "Guaranteed Maximum Price" means the guaranteed maximum price as enumerated in the Final GMP Proposal.

After the parties incorporate the Final GMP Proposal in this Agreement, the following shall apply:

- .1 The Design-Builder shall be responsible for any amount by which the Contract Sum, as adjusted by Change Orders, if any, exceeds the Guaranteed Maximum Price.
- .2 Unless the Final GMP Proposal expressly provides for shared savings, the Owner shall be entitled to retain any amount by which the Contract Sum, as adjusted by Change Orders, if any, is less than the Guaranteed Maximum Price.
- .3 Design-Builder shall accept its compensation under the Final GMP Proposal as compensation for design, cost estimating and other pre-construction services Design-Builder provides before Design-Builder submits the Design-Builder's Proposal.

If the Owner rejects the Design-Builder's Proposal and terminates this Agreement, Owner shall pay the Design-Builder a termination fee in the amount of \$_____, which is _____% of the estimated Design-Builder's Fee, based on the GMP Budget.

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

§ 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.

(Paragraphs deleted)

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.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

(Paragraphs deleted)

§ 5.1.3 The Owner shall make payment to the Design-Builder, or provide the Design-Builder written notice of the reason the Owner is withholding such payment, no later than 30 days after the Owner receives an Application for Payment duly completed and submitted by the Design-Builder.

§ 5.1.4 With each Application for Payment, 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.

§ 5.1.5 With each Application for Payment, 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. 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 this 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, which the Owner may withhold in its sole discretion, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

(Paragraphs deleted)

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

§ 5.4.1 Applications for Payment 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 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 5%. 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 5%. The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors.

§ 5.4.4 The Design-Builder shall pay its Contractors, and require its Contractors to pay their Subcontractors at any tier within ten days of receipt of payment from the Owner, in accordance with Section A.9.6 Exhibit A, Terms and Conditions.

§ 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 Owner shall provide the initial decision pursuant to Section A.4.2 of Exhibit A, Terms and Conditions.

(Paragraphs deleted)

§ 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)*

Litigation in Hennepin County, Minnesota, subject to negotiation and mediation as provided in Section 4.3 of Exhibit A, Terms and Conditions.

(Paragraphs deleted)

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 jurisdiction where the Project is located and are listed as follows:

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

Name and Address	License Number	Relationship to Design-Builder	Other Information
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§ 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
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§ 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
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§ 7.4 The Owner's Designated Representative is:

(Insert name, address and other information.)

§ 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.

§ 7.5 The Design-Builder's Designated Representative is:

(Insert name, address and other information.)

§ 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 The Owner's Designated Representative shall not be changed without ten days written notice to the Design-Builder's Designated Representative shall not be changed without the written consent of the Owner.

§ 7.7 Other provisions:

§ 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 In no event shall any interest be due and payable by the Owner to the Design-Builder, or any other party, on any of the sums which the Owner is authorized to retain pursuant to the Design-Build Documents.

(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.)

(Paragraphs deleted)

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 This Agreement is this executed edition of the Standard Form of Agreement Between Owner and Design-Builder, AIA Document A141™-2004.

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

Title of the Supplementary and Other Conditions exhibit:

(Table deleted)

§ 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 of the Project Criteria exhibit:

(Table deleted)

§ 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.)

Title of the Design-Builder's Proposal:

§ 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.)

Title of the Amendments to Design-Builder's Proposal exhibit:

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

Title of the Addenda exhibit:
(Table deleted)

§ 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.)

AIA Document A141™-2004, Exhibit A, Terms and Conditions, as modified and attached to this Agreement.

§ 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.)

AIA Document A141™-2004, Exhibit B, Determination of Cost of Work, as modified and attached to this Agreement.

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

AIA Document A141™-2004, Exhibit C, Insurance and Bonds, as modified and attached to this Agreement.

§ 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.)

Title of the Other Documents exhibit:

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

OWNER (Signature)

(Printed name and title)

DESIGN-BUILDER (Signature)

(Printed name and title)

Additions and Deletions Report for **AIA[®] Document A141[™] – 2004**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 13:25:21 on 06/09/2008.

PAGE 1

Regents of the University of Minnesota
400 Donhowe Building
319 15th Avenue Southeast
Minneapolis, MN 55455

...

(Name, location and detailed description)

University of Minnesota Project Name:
University of Minnesota Project No.:

Design and construction of

As more fully described in the Project Criteria attached to and incorporated in this Agreement.

For use on University of Minnesota Projects only and published pursuant to License No. M28100 granted by The American Institute of Architects. Publication by the University of Minnesota is not to be construed as consent to further publication or as a publication in derogation of rights reserved by The American Institute of Architects.

The Owner and Design-Builder agree as follows.

§ 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 this~~ "Agreement") and its attached Exhibits; Supplementary and other Conditions; Addenda issued prior to execution of ~~the this~~ Agreement; the Project Criteria, including changes to the Project Criteria proposed by the Design-Builder and accepted by the ~~Owner,~~ Owner prior to execution of this Agreement, if any; the Design-Builder's Proposal and written modifications to the Proposal accepted by the ~~Owner,~~ Owner prior to execution of this Agreement, if any; other documents listed in this Agreement; and Modifications issued after execution of this ~~Agreement.~~ Agreement, including the Modification incorporating the Final GMP Proposal (as defined in Section 4.4.3.1) completed by the Design-Builder and accepted by the Owner. 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.~~ Design-Builder. An enumeration of the Design-Build Documents, other than Modifications, appears in Article 8. The term "Addenda" (or singular "addendum") means any written revision or clarification of the Design-Build Documents issued and incorporated in the Design-Build Documents before the parties execute the Design-Build Contract.

§ 1.2 The ~~term~~ Design-Build Contract ~~represents~~ means the entire and integrated agreement between the ~~parties hereto and~~ Owner and Design-Builder. The Design-Build Contract supersedes prior negotiations, representations or agreements, either written or oral.

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

§ 2.2 The Design-Builder shall perform all Work through Contractors or through the Design-Builder's own forces, selected and paid in accordance with Article A.5 of Exhibit A, Terms and Conditions.

§ 3.1 The date of commencement of the Work shall be the date of this Agreement. (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.)

The Design-Builder shall commence design services on the date of this Agreement. The Design-Builder shall proceed with construction documents and construction in accordance with the schedule incorporated in the Design- Build Documents as of the date of this Agreement, subject to adjustments approved by the parties and incorporated in the Final GMP Proposal.

§ 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 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.)

...

See Final GMP Proposal for provisions relating to liquidated damages and early completion bonuses, if any.

§ 3.3 The Design-Builder shall achieve Substantial Completion of the Work ~~not later than~~ — days from the date of commencement, or as follows:

...

Portion of Work

Substantial Completion Date

The date(s) of Substantial Completion of the Work, and of any separately designated portion of the Work, shall be the date(s) stated in Design-Builder's Proposal as of the date of this Agreement, subject to adjustments approved by the parties and incorporated in the Final GMP Proposal.

...

§ 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;

Cost of the Work Plus Design-Builder's Fee;

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

~~§ 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)
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§ 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 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.~~ Determination of the Cost of Work.

PAGE 4

[INSERT FEE OR BASIS OF FEE FROM RFP OR DESIGN-BUILDER'S PROPOSAL]

...

§ 4.4.3.1 The Owner has established a budget for the Contract Sum (sum of the Cost of the Work plus the Design-Builder's Fee), in the amount of _____ Dollars (\$ _____) (the "GMP Budget"), based on the Design-Build Documents, including the Design-Builder's Proposal, as of the date of this Agreement. The Design-Builder shall make good faith efforts to prepare a GMP Proposal that conforms with the Design-Build Documents and the GMP Budget, in accordance with Section A.3.2.5 and Article A.15 of Exhibit A, Terms and Conditions. The GMP Budget shall not be a guaranteed maximum price, and the Design-Builder shall not be deemed to have agreed to complete the Work for a guaranteed maximum price until the Owner accepts a GMP Proposal from the Designer-Builder and the parties incorporate that GMP Proposal in this Agreement by Modification executed by both parties. The term "Final GMP Proposal" means the GMP Proposal as incorporated in this Agreement. The term "Guaranteed Maximum Price" means the guaranteed maximum price as enumerated in the Final GMP Proposal.

After the parties incorporate the Final GMP Proposal in this Agreement, the following shall apply:

- .1 The Design-Builder shall be responsible for any amount by which the Contract Sum, as adjusted by Change Orders, if any, exceeds the Guaranteed Maximum Price.

- .2 Unless the Final GMP Proposal expressly provides for shared savings, the Owner shall be entitled to retain any amount by which the Contract Sum, as adjusted by Change Orders, if any, is less than the Guaranteed Maximum Price.
- .3 Design-Builder shall accept its compensation under the Final GMP Proposal as compensation for design, cost estimating and other pre-construction services Design-Builder provides before Design-Builder submits the Design-Builder's Proposal.

If the Owner rejects the Design-Builder's Proposal and terminates this Agreement, Owner shall pay the Design-Builder a termination fee in the amount of \$ _____, which is _____ % of the estimated Design-Builder's Fee, based on the GMP Budget.

§ 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 (_____), 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.
(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)
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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:
(Identify the assumptions on which the Guaranteed Maximum Price is based.)

§ 4.5 CHANGES IN 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.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

~~§ 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 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 Owner shall make payment to the Design-Builder, or provide the Design-Builder written notice of the reason the Owner is withholding such payment, no later than 30 days after the Owner receives an Application for Payment duly completed and submitted by the Design-Builder.~~

~~§ 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 Payment, 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; 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 Payment, 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 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 this 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, which the Owner may withhold in its sole discretion, 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.~~

§ 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.

§ 5.2.4 Reduction or limitation of retainage, if any, under Section 5.2.2 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 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:

~~§ 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.

~~§ 5.4 PROGRESS PAYMENTS -~~

~~COST OF THE WORK PLUS A FEE WITH A GUARANTEED MAXIMUM PRICE~~
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~~, 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.

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- .3 Add the Design-Builder's Fee, less retainage of ~~(—)~~, 5%. 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;

...

~~§ 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 ~~(—)~~, 5%. The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors.

~~§ 5.4.4~~ The Design-Builder shall pay its Contractors, and require its Contractors to pay their Subcontractors at any tier within ten days of receipt of payment from the Owner, in accordance with Section A.9.6 Exhibit A, Terms and Conditions.

...

~~§ 6.1~~ The Owner shall provide the initial decision pursuant to Section A.4.2 of Exhibit A, Terms and Conditions.

~~§ 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.)

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~~Other (Specify)~~

Litigation in Hennepin County, Minnesota, subject to negotiation and mediation as provided in Section 4.3 of Exhibit A, Terms and Conditions.

§ 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

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~~§ 7.6 Neither the Owner's nor the Design-Builder's~~ The Owner's Designated Representative shall not be changed without ten days written notice to the other party. ~~Design-Builder's Designated Representative shall not be changed without the written consent of the Owner.~~

...

§ 7.7.2 In no event shall any interest be due and payable by the Owner to the Design-Builder, or any other party, on any of the sums which the Owner is authorized to retain pursuant to the Design-Build Documents.

(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.)

~~§ 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.)

(→)

(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.)

...

~~§ 8.1.1 The~~ This Agreement is this executed edition of the Standard Form of Agreement Between Owner and Design-Builder, AIA Document A141™-2004.

~~§ 8.1.2 The Supplementary and other Conditions of the~~ this Agreement, if any, are as follows:

...

Title of the Supplementary and Other Conditions exhibit:

Document

Title

Pages

...

Title of the Project Criteria exhibit:

Title

Date

...

Title of the Design-Builder's Proposal:

...

Title of the Amendments to Design-Builder's Proposal exhibit:

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Title of the Addenda exhibit:

Number

Date

Pages

...

AIA Document A141™-2004, Exhibit A, Terms and Conditions, as modified and attached to this Agreement.

...

AIA Document A141™-2004, Exhibit B, Determination of Cost of Work, as modified and attached to this Agreement.

...

AIA Document A141™-2004, Exhibit C, Insurance and Bonds, as modified and attached to this Agreement.

...

Title of the Other Documents exhibit:

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Nick Deffley, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:25:21 on 06/09/2008 under Order No. 1000347394_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2004 - Standard Form of Agreement Between Owner and Design-Builder, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)