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# **STANDARD FORM OF PRELIMINARY AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER**

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## **Document No. 520**

First Edition, 1998  
© Design-Build Institute of America  
Washington, DC

# INSTRUCTIONS

For DBIA Document No. 520 Standard Form of Preliminary Agreement  
Between Owner and Design-Builder (1998 Edition)

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## Checklist

Use this Checklist to ensure that the Agreement is fully completed and all exhibits are attached.

_____	Page 1	Owner's name, address and form of business
_____	Page 1	Design-Builder's name, address and form of business
_____	Page 1	Project name and address
_____	Section 2.7	Attach exhibit for Additional Services (optional)
_____	Section 4.2.2	Complete blanks for additional sum for use of Work Product
_____	Section 5.1	Complete blanks for calendar days
_____	Section 5.2	Attach exhibit for interim milestone dates (optional)
_____	Section 6.1	Insert the Contract Price
_____	Section 7.1	Insert the payment method
_____	Section 7.2	Complete blanks for interest rate
_____	Section 8.7	Insert any other provisions (optional)
_____	Page 6	Owner's and Design-Builder's execution of the Agreement

## General Instructions

No.	Subject	Instruction
1.	Standard Forms	Standard form contracts have long served an important function in the United States and international construction markets. The common purpose of these forms is to provide an economical and convenient way for parties to contract for design and construction services. As standard forms gain acceptance and are used with increased frequency, parties are able to enter into contracts with greater certainty as to their rights and responsibilities.
2.	DBIA Standard Form Contract Documents	Since its formation in 1993, the Design-Build Institute of America ("DBIA") has regularly evaluated the needs of owners, design-builders, and other parties to the design-build process in preparation for developing its own contract forms. Consistent with DBIA's mission of promulgating best design-build practices, DBIA believes that the design-build contract should reflect a balanced approach to risk that considers the legitimate interests of all parties to the design-build process. DBIA's Standard Form Contract Documents reflect a modern risk allocation approach, allocating each risk to the party best equipped to manage and minimize that risk, with the goal of promoting best design-build practices.
3.	Use of Non-DBIA Documents	To avoid inconsistencies among documents used for the same project, DBIA's Standard Form Contract Documents should not be used in conjunction with non-DBIA documents unless the non-DBIA documents are appropriately modified on the advice of legal counsel.
4.	Legal Consequences	DBIA Standard Form Contract Documents are legally binding contracts with important legal consequences. Contracting parties are advised and encouraged to seek legal counsel in completing or modifying these Documents.
5.	Reproduction	DBIA hereby grants to purchasers a limited license to reproduce up to five copies of completed original Documents for use on a particular project. At least two original versions of the Agreement should be signed by the parties. Any other reproduction of DBIA Documents is prohibited.

No.	Subject	Instruction
6.	Modifications	<p>Effective contracting is accomplished when the parties give specific thought to their contracting goals and then tailor the contract to meet the unique needs of the project and the design-build team. For that reason, these Documents may require modification for various purposes including, for example, to comply with local codes and laws, or to add special terms. Also, in some instances, these Documents must be modified to indicate the selection of a particular contract term.</p> <p>Any modifications to these Documents should be underlined to distinguish them from original language. Any handwritten modifications should be initialed by the parties. To delete provisions, strike through the printed words so that original language remains legible. At no time should a document be re-typed in its entirety. Re-creating the document violates copyright laws and destroys one of the advantages of standard forms-familiarity with the terms.</p> <p>Additions to DBIA Document No. 535, <i>Standard Form of General Conditions of Contract Between Owner and Design-Builder</i>, 2009 Edition, (“General Conditions of Contract”) shall be in the form of written Supplementary Conditions. These are referenced in Section 2.1.3 of DBIA Document No. 525, <i>Standard Form of Agreement Between Owner and Design-Builder - Lump Sum</i>, 2009 Edition, (“DBIA Document No. 525”) and DBIA Document No. 530, <i>Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price</i>, 2009 Edition, (“DBIA Document No. 530”).</p>
7.	Execution	<p>It is good practice to execute two original copies of the Agreement. Only persons authorized to sign for the contracting parties may execute the Agreement.</p>

### Specific Instructions

Section	Title	Instruction
General	Purpose of This Document	<p>DBIA Document No. 520, <i>Standard Form of Preliminary Agreement Between Owner and Design Builder</i> (“Agreement”) is for preliminary services only, not for construction services, and shall be used when Owner decides not to contract for the complete design and construction at one time. Use of this Agreement anticipates a two stage approach to the Project, whereby Owner retains the Design-Builder to assist in the review and/or development of Owner’s Project Criteria and for preliminary Schematic Design Documents. Then, depending upon the Design-Builder’s Proposal, Owner has the option of contracting for final design and construction services by executing either DBIA Document No. 525 or DBIA Document No. 530. DBIA Document No. 525 and DBIA Document No. 530 can also be used when Owner desires preliminary services as part of a complete design-build contract.</p> <p>Under this Agreement, Design-Builder provides a Schematic Design and a Proposal for the completion of the design and construction. If Owner has not completed its Project Criteria before executing this Agreement, the Agreement allows for Owner to pay Design-Builder to assist in the development of Owner’s Project Criteria as an Additional Service.</p> <p>If Owner does not accept the Proposal Design-Builder prepares under this Agreement, Owner may select another design-builder to complete the final design and construction. This Agreement allows Owner a limited license to use the Schematic Design and other Work Product created by Design-Builder under this Agreement to complete the Project, providing that Owner indemnifies Design-Builder for claims arising out of the use of the Work Product, and further agrees to compensate Design-Builder for the use of its Work Product. It is anticipated that Owner and Design-Builder will negotiate the compensation for the use of the Work Product prior to the execution of this Agreement.</p>

Section	Title	Instruction
General	Purpose of These Instructions	These Instructions are not part of this Agreement, but are provided to aid the parties in their understanding of the Agreement and in completing the Agreement.
General	Related Documents	<p>This Agreement includes its own abbreviated general conditions and does not require the use of the General Conditions of Contract.</p> <p>Upon completion of the services under this Agreement, the parties may complete the final design and construction of the Project by executing either DBIA Document No. 525 or DBIA Document No. 530, and the accompanying General Conditions of Contract.</p>
General	Date	On Page 1, enter the date when both parties reach a final understanding. It is possible, due to logistical reasons, that the dates when the parties execute the Agreement may be different. Once both parties execute the Agreement, the effective date of the Agreement will be the date recorded on Page 1. This date does not, however, determine Contract Time, which is measured according to the terms of Article 5.
General	Parties: Owner and Design-Builder	On Page 1, enter the legal name and full address of Owner and Design-Builder, as well as the legal form of each entity, e.g., corporation, partnership, limited partnership, limited liability company, or other.
1.2	Definitions	Although this Agreement is a stand-alone document, terms, words and phrases used in the Agreement shall have the same meanings used in the General Conditions of Contract.
2.1	Design Services	The parties should be aware that in addition to requiring compliance with state licensing laws for design professionals, some states also require that the design professional have a corporate professional license.
2.2.2	Preliminary Services	<p>If Owner's Project Criteria are provided, Design-Builder's review and written evaluation of the Project Criteria will promote a clear understanding of Owner's program prior to Design-Builder's preparation of Schematic Design Documents.</p> <p>This Agreement acknowledges that Owner may not have developed its Project Criteria prior to the execution of this Agreement, and provides that Owner may pay Design-Builder an additional fee to assist in this effort pursuant to Section 2.7, Additional Services.</p>
2.4	Proposal	Upon completion of the Schematic Design Documents, Design-Builder shall prepare its Proposal, which shall contain the information described in Sections 2.4.1, 2.4.2, 2.4.3, and 2.4.4. If the parties agree to additional or other requirements, state these requirements in Section 8.7, Other Provisions, or modify Section 2.4 appropriately.
2.4.2	Schedule	Given that expedited delivery is one of the primary factors driving many owners to select the design-build method, DBIA strongly believes that the parties should discuss and understand what each party must do to support the Project schedule. The entire Work, both design and construction, should be scheduled. The schedule should indicate the dates for the start and completion of the various stages of the Work, including the date when Owner information and approvals are required and any Owner created constraints.
2.4.3	Other information	<p>Other information may be required to enter into a subsequent agreement for final design and construction. For example, if a Guaranteed Maximum Price ("GMP") is proposed, Design-Builder will need to provide all documents used as the basis for the GMP and identify them in a GMP Exhibit. For a Lump Sum proposal, Design-Builder may need to create a Design-Builder's Deviation List to identify any deviations from Owner's Project Criteria.</p> <p>To identify other information that may be required, Design-Builder should familiarize itself with the terms of DBIA Document No. 525 or DBIA Document No. 530, and the accompanying General Conditions of Contract.</p>

Section	Title	Instruction
2.6	Completion of the Agreement	If Design-Builder and Owner are unable to reach agreement on mutually acceptable revisions to the Proposal, and Owner does not accept the Proposal, Design-Builder will have no further involvement in the Project. Design-Builder's ownership of the Work Product prepared under this Agreement, and Owner's limited license to its use are described in Article 4, Ownership of Work Product.
2.7	Additional Services	Attach as a separate exhibit to this Agreement the scope of work for any Additional Services to be performed by Design-Builder, such as the development of Owner's Project Criteria pursuant to Section 2.2.2.
Article 4	Ownership of Work Product	<p>This Agreement provides that in all circumstances Design-Builder shall retain ownership of the Work Product it produces, but obligates Design-Builder to grant a limited license to Owner to use the Work Product conditioned on the terms of Sections 4.2.1 and 4.2.2.</p> <p>DBIA recognizes that the critical decisions affecting the success of the Project and the greatest intellectual effort are typically developed during the preliminary phase. The purpose of Article 4 is to balance the interests of Owner, whose schedule will be adversely affected if it cannot use the Work Product created under this Agreement, and Design-Builder, who may not have been compensated for the full market value of its preliminary work, and who must be protected from liability for design that it does not complete or construct.</p>
4.2.2	Additional Compensation	To minimize disputes, the parties should negotiate prior to execution of the Agreement the amount of additional compensation Owner will pay Design-Builder for the right to use the Work Product. Enter the amount of this additional compensation.
5.1	Commencement Date	Design-Builder will commence its services within five (5) days of its receipt of Owner's Notice to Proceed, and complete its services no later than the calendar day duration of time negotiated between the parties. Enter the calendar days duration of this negotiated Contract Time.
5.2	Interim Dates	Attach an exhibit for interim dates, if any.
6.1	Contract Price	Insert the Contract Price, or the basis for its calculation as agreed to by the parties.
7.1	Payment	Insert the method agreed upon by Owner and Design-Builder for partial and final payment.
7.2	Interest	Enter the rate at which interest will accrue on Design-Builder's payments, if unpaid five (5) days after due.
8.1	Dispute Resolution	DBIA endorses the use of partnering, negotiation, mediation and arbitration for the prevention and resolution of disputes. This Agreement provides for mandatory, non-binding mediation followed by binding arbitration for any dispute not resolved by mediation. The parties are encouraged to attempt to negotiate a mutually satisfactory resolution of any claim, dispute, or controversy prior to resorting to mediation.
8.7	Other Provisions	Insert any other provisions.



# Standard Form of Preliminary Agreement Between Owner and Design-Builder

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

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This **AGREEMENT** is made as of the \_\_\_\_\_ day of \_\_\_\_\_  
in the year of 2010, by and between the following parties, for services in connection with the Project identified  
below.

**OWNER:**

City of Shawnee  
11110 Johnson Drive  
Shawnee, Kansas 66203

**DESIGN-BUILDER:**

*(Name and address)*

**PROJECT:**

Shawnee Town, 1929

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

## **Article 1**

### **General**

**1.1 Duty to Cooperate.** Owner and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith to permit each party to realize the benefits afforded under this Agreement.

**1.2 Definitions.** Terms, words and phrases used in this Agreement shall have the meanings given them in DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2009 Edition) ("General Conditions of Contract").

**1.3 Standard of Care for Professional Services.** The standard of care for all professional services described in this Agreement, either performed for or furnished by the Design-Builder under this Agreement will be the care and skill ordinarily used by members of the design profession, practicing under similar conditions at the same time and in the same locality.

## **Article 2**

### **Design-Builder's Services and Responsibilities**

**2.1 Design Services.** Design-Builder shall, consistent with applicable state licensing laws, provide design services, including architectural, engineering and other design professional services, required by this Agreement. Such design services shall be provided through qualified, licensed design professionals who are either (i) employed by Design-Builder, or (ii) procured by Design-Builder from independent sources. Nothing in this Agreement is intended to create any legal or contractual relationship between Owner and any independent design professional.

The scope of work for design services is included in the Design Services Exhibit attached hereto.

#### **2.2 Preliminary Services**

**2.2.1** Owner shall provide Design-Builder with Owner's Project Criteria describing Owner's program requirements and objectives for the Project. Owner's Project Criteria shall include Owner's use, space, price, time, site, performance and expandability requirements. Owner's Project Criteria may include conceptual documents, design criteria, performance requirements and other technical materials and requirements prepared by or for Owner.

**2.2.2** ~~If Owner's Project Criteria have not been developed prior to the execution of this Agreement, Design-Builder will assist Owner in developing Owner's Project Criteria, with such service deemed to be an Additional Service pursuant to Section 2.7 hereof. If Owner has developed Owner's Project Criteria prior to executing this Agreement, Design-Builder shall review and prepare a written evaluation of such criteria, including recommendations to Owner for different and innovative approaches to the design and construction of the Project. The parties shall meet to discuss Design-Builder's written evaluation of Owner's Project Criteria and agree upon what revisions, if any, should be made to such criteria.~~

**2.3 Schematic Design Documents.** Design-Builder shall prepare Schematic Design Documents based on Owner's Project Criteria, as may be revised in accordance with Section 2.2.2 hereof. The Schematic Design Documents shall include design criteria, drawings, diagrams and specifications setting forth the requirements of the Project. The parties shall meet to discuss the Schematic Design Documents and agree upon what revisions, if any, should be made. Design-Builder shall perform such agreed-upon revisions.

**2.4 Proposal.** Based on Owner's Project Criteria, the Schematic Design Documents, as each may be revised pursuant to Sections 2.2.2 and 2.3 above, and any other documents upon which the parties may agree, Design-Builder shall submit a proposal to Owner (the "Proposal"), which shall include the following unless the parties mutually agree otherwise:

- .1 a proposed contract price for the design and construction of the Project, which price shall be in the form of ~~a lump sum~~ or the cost of the work plus a fee with an option for a Guaranteed Maximum Price ("GMP");
- .2 a schedule and date of Substantial Completion of the Project upon which the Contract Price for the Project is based;
- .3 all other information necessary for the parties to enter into ~~DBIA Document No. 525, Standard Form of Agreement Between Owner and Design-Builder - Lump Sum (2009 Edition)~~ or DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2009 Edition), with the accompanying General Conditions of Contract; and
- .4 the time limit for acceptance of the Proposal.

**2.5 Review of Proposal.** Design-Builder and Owner shall meet to discuss and review the Proposal. If Owner has any comments regarding the Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If Design-Builder finds the revisions acceptable, Design-Builder shall, upon receipt of Owner's notice, adjust the Proposal.

**2.6 Completion of This Agreement.** Design-Builder's services under this Agreement shall be deemed completed upon meeting with Owner to discuss the Proposal and making those revisions to the Proposal, if any, Design-Builder finds acceptable.

**2.7 Additional Services.** Design-Builder shall perform the Additional Services set forth in a separate exhibit to this Agreement. The cost for such services shall be as mutually agreed upon by Owner and Design-Builder, with the Contract Price for this Agreement, as set forth in Section 6.1 hereof, being adjusted accordingly.

## Article 3

### **Owner's Services and Responsibilities**

**3.1 Timely Performance.** Owner shall throughout the performance of this Agreement cooperate with Design-Builder. Owner shall perform its responsibilities, obligations and services, including its reviews and approvals of Design-Builder's submissions, in a timely manner so as not to delay or interfere with Design-Builder's performance of its obligations under this Agreement.

**3.2 Owner's Project Criteria.** Owner shall provide Design-Builder with Owner's Project Criteria. ~~If Owner desires that Design-Builder assist Owner in developing such criteria as an Additional Service under Section 2.7 hereof, Owner shall provide Design-Builder with its objectives, limitations and other relevant information regarding the Project.~~

**3.3 Owner Provided Information.** Owner shall provide, at its own cost and expense, for Design-Builder's information and use, the following, all of which Design-Builder is entitled to rely upon in performing its obligations hereunder:

- .1 Surveys describing the property, boundaries, topography and reference points for use during construction, ~~including existing service and utility lines and as modified by the Design-Builder;~~
- .2 ~~Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;~~
- .3 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project;
- .4 A legal description of the Site;
- .5 To the extent available, as-built and record drawings of any existing structures at the Site; and
- .6 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

## Article 4

### Ownership of Work Product

**4.1 Work Product.** All drawings, specifications and other documents and electronic data furnished by Design-Builder to Owner under this Agreement (“Work Product”) are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including the copyright thereto.

**4.2 Owner’s Limited License.** If Owner fails to enter into a contract on this Project with Design-Builder to complete the design and construction of the Project and Owner proceeds to design and construct the Project through its employees, agents or third parties, Design-Builder, upon payment of the amounts due Design-Builder under this Agreement, shall grant Owner a limited license to use the Work Product to complete the Project, conditioned on the following:

- .1 Use of the Work Product is at Owner’s sole risk without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the “Indemnified Parties”). Owner shall defend, indemnify and hold harmless the Indemnified Parties from any and all claims, damages, liabilities, losses and expenses, including attorneys’ fees, arising out of or resulting from the use of the Work Product; and
- .2 Owner agrees ~~to pay Design-Builder~~ would be entitled to a reasonable sum ~~the additional sum of~~ \_\_\_\_\_ Dollars (\$\_\_\_\_\_) as compensation for the right to use the Work Product in accordance with this Article 4.

## Article 5

### Contract Time

**5.1 Commencement Date.** Design-Builder shall commence performance of the services set forth in this Agreement within five (5) days of Design-Builder’s receipt of Owner’s Notice to Proceed (“Date of Commencement”) unless the parties mutually agree otherwise in writing. Design-Builder shall complete such services no later than \_\_\_\_\_ (\_\_\_\_\_) calendar days after the Date of Commencement.

**5.2 Interim Dates.** Interim milestone dates, if any, of identified portions of the services set forth in this Agreement shall be achieved as described in a separate exhibit to this Agreement.

## Article 6

### Contract Price

**6.1 Contract Price.** ~~The Contract Price for this Agreement is as set forth below: (Provide for a fixed lump sum amount, cost of the work plus a fee with a GMP, hourly rates, or some other basis of compensation)~~ The Contract for this Agreement shall be hourly with a not-to-exceed upper limit of \$ \_\_\_\_\_.

**6.2 Scope of Contract Price.** The Contract Price shall be the full compensation due Design-Builder for the performance of all services set forth in this Agreement, and shall be deemed to include all the sales, use, consumer and other taxes mandated by applicable Legal Requirements. The Contract Price shall be adjusted to reflect any Additional Services agreed upon by the parties after execution of this Agreement.

## Article 7

### Procedure for Payment

**7.1 Payment.** Design-Builder and Owner agree upon the following method for partial and final payment to Design-Builder for the services hereunder:

- .1 Design-Builder shall submit invoices to the Owner on the fifth (5<sup>th</sup>) day of each month beginning with the first month after the Date of Commencement.
- .2 Owner shall make payment within thirty (30) days after Owner's receipt of a properly submitted and accurate invoice.

**7.2 Interest.** ~~Payments due and unpaid by Owner to Design-Builder shall bear interest commencing five (5) days after payment is due at the rate of \_\_\_\_\_ percent (\_\_\_\_%).~~

## Article 8

### Other Provisions

**8.1 Dispute Resolution.** ~~The parties agree that any claim, dispute or controversy arising out of or relating to this Agreement or the breach thereof shall first be submitted to non-binding mediation administered by the American Arbitration Association ("AAA") pursuant to the Construction Industry Mediation Rules then in effect. Any claim, dispute, or controversy arising out of or relating to this Agreement or the breach thereof which has not been resolved by mediation shall be submitted to binding arbitration administered by the AAA pursuant to the Construction Industry Arbitration Rules then in effect.~~

**8.2 Assignment.** Neither Design-Builder nor Owner shall without the written consent of the other party assign, transfer, or sublet any portion or part of its obligations under this Agreement.

**8.3 Governing Law.** This Agreement shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

**8.4 Severability.** If any provision or any part of a provision of this Agreement shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to applicable laws by any authority having jurisdiction, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provisions or parts of the provision of this Agreement, which shall remain in full force and effect as if the unenforceable provision or part was deleted.

**8.5 Amendments.** This Agreement may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of both parties.

**8.6 Entire Agreement.** This Agreement forms the entire agreement between Owner and Design-Builder. No oral representations or other agreements have been made by the parties except as specifically stated in this Agreement.

**8.7 Other Provisions.** Other provisions, ~~if any,~~ are as follows:

.1 Independent Contractor. The Design-Builder is an independent contractor and, as such, is not an agent or employee of the Owner.

.2 Termination of Contract.

Termination for Convenience

The Owner may, when the interests of the Owner so require, terminate this Agreement in whole or in part, for the convenience of the Owner. The Owner shall give written notice of the termination to the Design-Builder specifying that the contract or a designated part thereof shall be terminated and when termination becomes effective. The Design-Builder shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Design-Builder will stop work to the extent specified. Compensation shall be limited to work already completed and shall be determined by negotiation between the parties. Compensation shall not include anticipatory profit or consequential damages which shall not be allowed.

Termination for Default

If the Design-Builder is violating any of the conditions of this agreement or is executing the same in bad faith, the Owner may serve written notice on the Design-Builder of its intention to terminate the contract and, unless within five (5) days after the serving of the notice a satisfactory arrangement has been made for the continuance thereof, this Agreement shall terminate and the Design-Builder shall be paid for those services satisfactorily rendered in accordance with the compensation schedules herein. The Owner retains the right to withhold the compensation or any portion thereof for damages incurred as a result of the Design-Builder's breach of this Agreement.

Erroneous Termination for Default

If, after notice of termination of the Design-Builder's right to proceed under the provisions of this clause, it is determined for any reason that the Design-Builder was not in default under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the clause entitled "Termination for Convenience".

**.3 Indemnification**

The Design-Builder agrees to defend, indemnify, and hold harmless the Owner and its agents and/or employees from any and all claims, settlements, and judgments for personal injury, bodily injury, property damage, and/or death arising out of the Design-Builder's or any of its agents', servants', and/or employees' negligent acts, and/or negligent failures to act, in the performance of this agreement. Neither acceptance of the completed work nor payment therefor shall release the Design-Builder from his/her obligation under this paragraph.

**.4 Compliance with Equal Opportunity Laws, Regulations, and Rules.**

During the performance of this Agreement or any subcontract or agreement resulting thereof, the Design-Builder and Owner agree that each shall observe, and shall require all subcontractors and vendors to observe, the provisions of the Kansas Acts Against Discrimination (K.S.A. 44-1001, et seq.) and Title VI of the Civil Rights Act of 1964 as amended, and shall not discriminate because of race, veteran status, religion, color, sex, national origin, ancestry, age, disability, or low income. All solicitations or advertisements for employees, subcontractors, and vendors, shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission").

If the Design-Builder, a subcontractor or vendor fails to comply with the manner in which the design-Builder, subcontractor or vendor reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Design-Builder, subcontractor, or vendor shall be deemed to have breached the Agreement and this Agreement may be cancelled, terminated or suspended, in whole or in part by the Owner.

If the Design-Builder, a subcontractor or vendor is found guilty of a violation of the Kansas Acts Against Discrimination under a decision or order of the Kansas Human Rights Commission which has become final, the Design-Builder, subcontractor or vendor shall be deemed to have breached this Agreement, and this Agreement may be cancelled, terminated or suspended in whole or in part by the Owner.

The Design-Builder shall include the above provisions in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The Design-Builder further agrees that the Design-Builder shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this Project and shall furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this project and shall furnish any certification required by any federal, state or local governmental agency in connection therewith.

**.5 Business Occupation License**

Design-Builder shall immediately upon notice from the Owner that such Design-Builder has been awarded the contract, shall apply for and obtain a city business occupation license through the City Clerk, pursuant to Chapter 5.04 of the Shawnee Municipal Code, and any amendment thereto existing at the time of such notice.

**.6 Insurance**

The Design-Builder shall maintain insurance throughout the duration of this Agreement in the amounts specified in the Insurance Exhibit attached hereto.



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:**

**DESIGN-BUILDER:**

City of Shawnee  
*(Name of Owner)*

\_\_\_\_\_  
*(Name of Design-Builder)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*

Jeff Meyers  
*(Printed Name)*

\_\_\_\_\_  
*(Printed Name)*

Mayor  
*(Title)*

\_\_\_\_\_  
*(Title)*

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Stephen Powell, City Clerk

.....  
Shawnee, Kansas \_\_\_\_\_, 2010

The forgoing Agreement and bonds are in due form, according to law, and hereby approved.

\_\_\_\_\_  
Attorney for Owner

**Caution: An original DBIA document has this caution printed in blue. This is a printable copy and an original assures that changes will not be obscured as may occur when documents are reproduced.**

## DESIGN SERVICES EXHIBIT

## **INSURANCE EXHIBIT**

The Design-Builder shall secure and maintain, throughout the duration of this Agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein.

a.     **PROFESSIONAL LIABILITY**

Architect or Engineers Professional Liability Insurance protection must be carried by the Design-Builder, for the duration of the contract, in the minimum amount of \$1,000,000 including errors and/or omissions as well as property damage and bodily injury risk.

b.     **COMMERCIAL GENERAL LIABILITY**

Limits -

Each Occurrence:	\$ 500,000
Personal & Advertising Injury:	\$ 500,000
Products/Completed Operations Aggregate:	Not Required
General Aggregate:	\$ 500,000

Policy must include the following conditions:

- Contractual Liability
- Independent Contractors
- X.C.U.

c.     **AUTOMOBILE LIABILITY**

Policy shall protect the Design-Builder against claims for bodily injury and/or property damage arising out of the ownership or use of any owned, hired and/or non-owned vehicle and must include protection for either:

1.     Any Auto  
       or
2.     All Owned Autos; Hired Autos; and Non-Owned Autos

Limits of auto liability insurance shall be the same as required in the Commercial General Liability section.

d.     **WORKERS' COMPENSATION**

This insurance shall protect the Design-Builder against all claims under applicable State Workers' Compensation Laws. The Design-Builder shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of a Workers' Compensation Law. The policy limits shall not be less than the following:

Workers' Compensation:	Statutory
Employer's Liability:	
Bodily Injury by Accident:	\$ 100,000 Each Accident
Bodily Injury by Disease:	\$ 500,000 Policy Limit
Bodily Injury by Disease:	\$ 100,000 Each Employee

**GENERAL CONDITIONS**

Design-Builder shall provide certificates of insurance and renewals thereof on standard ACORD™ forms. This inclusion shall not make the Owner a partner or joint venture with the contract Design-Builder in its operations hereunder. The Owner shall be notified by receipt of written notice from the insurer at least thirty (30) days prior to material modification or cancellation of any policy listed in the certificate. Further, the Owner will be immediately notified of any reduction or possible reduction in aggregate limits of any such policy where such reduction, when added to any previous reductions, would exceed 10% of the aggregate.

In the event of an occurrence, it is further agreed that any insurance maintained by the Owner shall apply in excess of and not contribute with insurance provided by policies named in this Agreement.

The certificate holder on the Certificate of Insurance shall be as follows:

City of Shawnee  
Finance Department  
11110 Johnson Drive  
Shawnee, KS 66203

**INDUSTRY RATINGS -**

The Owner will only accept coverage from an insurance carrier who offers proof that it:

- 1 Is licensed to do business in the State of Kansas;
- 2 Carries a Best's policy holder rating of "A" or better; and
- 3 Carries at least a Class X financial rating.

**OR**

Is a company mutually agreed upon by the Owner and Design-Builder.