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# STANDARD FORM OF TEAMING AGREEMENT BETWEEN DESIGN-BUILDER AND TEAMING PARTY

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Washington, D.C.



## Design-Build Institute of America – Contract Documents LICENSE AGREEMENT

**By using the DBIA Contract Documents, you agree to and are bound by the terms of this License Agreement.**

- 1. License.** The Design-Build Institute of America (“DBIA”) provides DBIA Contract Documents and licenses their use worldwide. You acknowledge that DBIA Contract Documents are protected by the copyright laws of the United States. You have a limited nonexclusive license to: (a) Use DBIA Contract Documents on any number of machines owned, leased, or rented by your company or organization; (b) Use DBIA Contract Documents in printed form for bona fide contract purposes; and (c) Copy DBIA Contract Documents into any machine-readable or printed form for backup or modification purposes in support of your permitted use.
- 2. User Responsibility.** You assume sole responsibility for the selection of specific documents or portions thereof to achieve your intended results and for the installation, use, and results obtained from the DBIA Contract Documents. You acknowledge that you understand that the text of the DBIA Contract Documents has important legal consequences and that consultation with an attorney is recommended with respect to use or modification of the text. You will not represent that any of the contract documents you generate from DBIA Contract Documents are DBIA documents unless (a) the document text is used without alteration or (b) all additions and changes to, and deletions from, the text are clearly shown.
- 3. Copies.** You may not use, copy, modify, or transfer DBIA Contract Documents, or any copy, modification, or merged portion, in whole or in part, except as expressly provided for in this license. Reproduction of DBIA Contract Documents in printed or machine-readable format for resale or educational purposes is expressly prohibited. You will reproduce and include DBIA’s copyright notice on any printed or machine-readable copy, modification, or portion merged into another document or program.
- 4. Transfers.** You may not transfer possession of any copy, modification, or merged portion of DBIA Contract Documents to another party, except that a party with whom you are contracting may receive and use such transferred material solely for purposes of its contract with you. You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement, and any attempt to do so is void.
- 5. Term.** The license is effective for one year from the date of purchase. DBIA may elect to terminate it earlier, by written notice to you, if you fail to comply with any term or condition of this Agreement.
- 6. Limited Warranty.** DBIA warrants the electronic files or other media by which DBIA Contract Documents are furnished to be free from defects in materials and workmanship under normal use during the Term. There is no other warranty of any kind, expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state. DBIA does not warrant that the DBIA Contract Documents will meet your requirements or that the operation of DBIA Contract Documents will be uninterrupted or error free.
- 7. Limitations of Remedies.** DBIA’s entire liability and your exclusive remedy shall be: the replacement of any document not meeting DBIA’s “Limited Warranty” which is returned to DBIA with a copy of your receipt, or at DBIA’s election, your money will be refunded. In no event will DBIA be liable to you for any damages, including any lost profits, lost savings, or other incidental or consequential damages arising out of the use or inability to use DBIA Contract Documents even if DBIA has been advised of the possibility of such damages, or for any claim by any other party. Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.
- 8. Acknowledgement.** You acknowledge that you have read this agreement, understand it, and agree to be bound by its terms and conditions, and that it will be governed by the laws of the District of Columbia. You further agree that it is the complete and exclusive statement of your agreement with DBIA which supersedes any proposal or prior agreement, oral or written, and any other communications between the parties relating to the subject matter of this 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. Moreover, care should also be taken when using different editions of the DBIA Standard Form Document on the same project to ensure consistency.
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 its Documents consistent with the License Agreement accompanying these Documents. At least two original versions of the Agreement should be signed by the parties. Any other reproduction of DBIA Documents is strictly prohibited.
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. DBIA's latest revisions to its Documents provide the parties an opportunity to customize their contractual relationship by selecting various optional contract clauses that may better reflect the unique needs and risks associated with the project.</p> <p>Any modifications to these Documents should be initialed by the parties. 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>
7.	Execution	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.

## Specific Instructions

Section	Title	Instruction
General	Purpose of This Document	This Teaming Agreement is entered into by parties who desire to pursue a Project together as a Team. The Design-Builder enters into separate Teaming Agreements with each Team Member, and all Team Members are listed on Exhibit D.
Page 1	The Team	The term "Design-Builder" is generic, and according to the DBIA Position Statement "Organization of the Design-Build Entity," the "Design-Builder" can take many forms, including but not limited to a single purpose entity, a joint venture between two companies, an integrated design-builder, or a contractor-led, designer-led, or developer-led design-build entity. The "Design-Builder" in this Teaming Agreement is the entity that intends to be the prime contracting entity with the Owner, provided that the Design-Builder is the successful proposer on the Project. The "Teaming Party" can be a subcontractor, design consultant, specialty design-build contractor, or any other type of entity that intends to enter into a lower tier agreement with the Design-Builder, should the Design-Builder be the successful proposer on the Project. DBIA best practices promote full cooperation, communication, and collaboration between all parties to the Design-Build team, with the Design-Builder providing overall coordination to the Proposal effort.
1.2.1	Definitions	For a complete set of definitions, the parties should refer to the definitions in the Subsequent Agreement referenced in Section 1.3.1.
1.3.1	Subsequent Agreement	<p>This provision requires the Parties to negotiate the terms and conditions of the Subsequent Agreement that they will enter into if the Design-Build Team is chosen for the Project. The parties should also negotiate and agree on the Teaming Party's anticipated Scope of Work for the Subsequent Agreement. It is not necessary for the Parties to negotiate compensation at the time that they negotiate the other terms and conditions of the Subsequent Agreement. The Teaming Party provides its Teaming Party Price pursuant to Section 2.5 prior to the submission of the Proposal.</p> <p>If one of the DBIA Standard Forms will be used, the Parties may simply check the appropriate box. If the Parties do not utilize one of the DBIA Standard Forms or if the parties modify one of the Standard Forms, then the Agreement must be attached as Exhibit A.</p>
1.3.3	Communications With the Owner and Stakeholders	It is often necessary or desired during the Proposal process for a Teaming Party to communicate either directly with the Owner or with various stakeholders associated with the Project. Design-Builders should encourage and facilitate such communications; however, to assure compliance with the procurement process and overall coordination of the Statement of Qualifications and Proposal, it is essential that the Design-Builder remain involved in these communications, and the Teaming Party should coordinate these communications through the Design-Builder.
1.3.4	Conflicts	Conflicts of interest can seriously jeopardize the entire Team's ability to submit a Statement of Qualifications or a Proposal. The Parties must discuss all actual and potential conflicts as soon as they are known by any Party. The existence of a conflict of interest is a termination for cause event under Section 9.3.1.3. The failure to disclose an actual or potential conflict of interest is a termination for cause event under 9.3.1.4. Either Party may also terminate the Teaming Agreement for convenience pursuant to Section 9.2.
1.3.5	Requirements for the Proposal	The Parties must fully review the Request for Qualifications and the Request for Proposals to ensure that they have the requisite qualifications and personnel to not only pursue the Project but also perform the Work. The failure to disclose the information in this Section is a termination for cause event under Section 9.3.1.4. Either Party may also terminate the Teaming Agreement for convenience pursuant to Section 9.2.
1.3.6	Insurance	The Subsequent Agreement contains insurance requirements. The Parties must have that insurance in place before performing the Work in the Teaming Agreement.

Section	Title	Instruction
2.1	Preparation of Deliverables	The Parties should further define the responsibilities with respect to the preparation of the deliverables to the Owner through the Matrix of Responsibilities table in Exhibit B.
2.2	RFQ and RFP	The Parties must familiarize themselves with the terms of the Request for Qualifications and the Request for Proposals, including but not limited to, the selection criteria, the proposed Design-Build Agreement, and the Basis of Design Documents.
2.3	Proposal Schedule	Although the Design-Builder is responsible for completing and coordinating the Proposal Schedule, all Parties should collaborate and provide input into the process. In addition, the Parties should specifically identify and assign their respective roles and responsibilities in the Matrix of Responsibilities in Exhibit B.
2.5	Teaming Party Price	Pursuant to the Schedule established by the Design-Builder, the Teaming Party must submit its Teaming Party Price. The Teaming Party agrees to perform the Work in the Subsequent Agreement for the Teaming Party Price; however, the Design-Builder may reject the Teaming Party Price and negotiate further with the Teaming Party. If there are qualifications and/or clarifications to the Teaming Party Price, the Teaming Party should include these with the Teaming Party Price. The Teaming Party Price need not be a fixed sum. It can be any means of compensation, including but not limited to, fixed sum, cost plus with a fixed fee, or a guaranteed maximum price, hourly rates, or percentage of project cost.
3.1	Compensation	The Parties should check all boxes that are applicable to how the Teaming Party will be compensated for the Work in the Teaming Agreement. In some cases, more than one box should be checked. If the Teaming Party is required to keep track of Proposal Preparation Costs, the parties should set forth any agreed upon unit rates, hourly rates, or costs in Exhibit C.
3.2	Stipend	DBIA Best Practices strongly recommend stipends for the unsuccessful proposers in a competitive selection process. See <i>DBIA Position Statement "Use of Stipends."</i> If the Owner awards a stipend to the unsuccessful proposers, the parties should negotiate how the stipend will be distributed. The parties need to consider the compensation to the Teaming Party in Section 3.1 when negotiating this section. For example, if the Teaming Party is compensated in Section 3.1, it is less likely that the Teaming Party will receive a portion of the Stipend.
4.2	Negotiation of the Design-Build Agreement	In many procurements, the Owner negotiates with the Design-Builder to arrive at a final Design-Build Agreement after the Design-Builder is chosen as the best scored proposal. The Parties should communicate during this process, and the Teaming Party may review the agreement before it is signed; however, the final terms of the Design-Build Agreement are within the sole discretion of the Design-Builder.
4.3	Terms of Subsequent Agreement	One of the reasons that communications between the Design-Builder and the Teaming Party are vital during the negotiations with the Owner is that the Design-Builder may not make commitments on behalf of the Teaming Party that are materially inconsistent with the Subsequent Agreement. Therefore, the final negotiations between the Design-Builder and the Owner may prompt additional negotiations of the Subsequent Agreement.
5.1	Exclusivity	The Teaming Party may not participate in a competing team. However, if either party terminates the Teaming Agreement for convenience, the non-terminating party may continue to pursue the Project pursuant to Section 9.2.1.
6.1	Confidential Information	In the Proposal process, the Parties exchange Confidential Information in many different forms. Therefore, the term "Confidential Information" is not limited to written materials.

<b>Section</b>	<b>Title</b>	<b>Instruction</b>
Article 7	Work Product	Although the Teaming Agreement provides for the transfer of only a limited license, the Parties should carefully review the Request for Qualifications and Request for Proposals to determine if the Owner has required the transfer of ownership of the Work Product in the Proposal process. Any requirement to transfer ownership rights to Owner in the Proposal process is passed through to the Teaming Party.
7.4	Use of Work Product on Termination	This paragraph establishes the parties' rights to the Work Product upon termination. The Parties' rights vary depending on the reason for the termination. To minimize disputes, the parties should negotiate prior to execution of the Teaming Agreement the amount the Design-Builder will pay Teaming Party (if any) for the use of Teaming Party's Work Product in the event the Teaming Agreement is terminated under Sections 9.1.1.5 or 9.2.
Article 8	Contract Adjustments and Disputes	DBIA endorses the use of partnering, negotiation, mediation, and arbitration for the prevention and resolution of disputes. The Teaming Agreement provides for the parties' Representatives to attempt to negotiate the dispute or disagreement. If this attempt fails, the dispute shall be submitted to mandatory, non-binding mediation. Any dispute that cannot be resolved by mediation shall then be submitted to binding arbitration.
8.2.4	Arbitration	The prevailing party in any arbitration shall receive reasonable attorneys' fees from the other party. DBIA supports this "loser pays" provision to encourage parties to negotiate or mediate their differences and to minimize the number of frivolous disputes.
8.2.5	Duty to Continue Performance	Pending the resolution of any dispute or disagreement, both Design-Builder and Teaming Party shall continue to perform their respective duties under the Teaming Agreement, unless the parties provide otherwise.
8.3	Consequential Damages	DBIA believes that it is inappropriate for either Design-Builder or Teaming Party to be responsible to the other for consequential damages arising from the performance of the Teaming Agreement.
9.1	Termination of the Agreement	The form provides a number of options for the termination of the Teaming Agreement. The parties need to consider whether there are other circumstances where termination would be appropriate or whether the provisions in this Section should be modified to fit the circumstances or time frames more appropriate for the individual Procurement.
9.5	Failure to Agree on the Subsequent Agreement	There are several optional outcomes if the Parties cannot agree on the terms of the Subsequent Agreement after award to the Design-Builder. The Parties need to determine the applicable outcome for this Teaming Agreement.
Exhibit D	Other Team Members	The Design-Builder should list other Team Members in this Exhibit, along with Team Member Representative and their contact information.



# Standard Form of Teaming Agreement Between Design-Builder and Teaming Party

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

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This **TEAMING AGREEMENT** is made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year of 20\_\_\_\_\_, by and between the Design-Builder and Teaming Party:

**DESIGN-BUILDER:**

*(Name and address)*

**TEAMING PARTY:**

*(Name and address)*

for services in connection with the Project identified below:

**PROJECT:**

*(Include Project name and location as it will appear in the Contract Documents)*

**OWNER:**

*(Name and address)*

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

# Article 1 General

## 1.1 Basic Purpose

1.1.1 Owner has issued a Request for Qualifications and Request for Proposals for the design and construction of the Project. The Parties desire to enter into this Teaming Agreement for the limited purpose of submitting a Statement of Qualifications and Proposal to the Owner for the Project.

## 1.2 Definitions

1.2.1 Terms used in this Teaming Agreement shall have the meanings set forth in the Subsequent Agreement.

1.2.2 Additional definitions are as follows:

1.2.2.1 *Matrix of Responsibilities* is the list of responsibilities and responsible parties set forth in Exhibit B of this Teaming Agreement.

1.2.2.2 *Other Team Members* are those members of the Design-Builder's Team for the Project who are not parties to this Teaming Agreement. The Other Team Members are set forth in Exhibit D.

1.2.2.3 *Parties* are the Design-Builder and Teaming Party.

1.2.2.4 *Proposal* is the submission from the Team to the Owner pursuant to the Request for Proposals for the Project.

1.2.2.5 *Proposal Price* is the overall price for the Proposal established by the Design-Builder, with input from the Team.

1.2.2.6 *Proposal Preparation Costs* are defined in Exhibit C of the Teaming Agreement.

1.2.2.7 *Proposal Schedule* is the Schedule developed by the Design-Builder, with input from the Team, for the submission of the Statement of Qualifications and the Proposal.

1.2.2.8 *Request for Proposals* is issued by the Owner to request proposals from either shortlisted teams or selected proposers for award of the Project.

1.2.2.9 *Request for Qualifications* is issued by the Owner to request qualifications from Teams to establish a short list of teams to submit Proposals.

1.2.2.10 *Statement of Qualifications* is the submission from the Team to the Owner pursuant to the Request for Qualifications from the Owner.

1.2.2.11 *Stipend or Honorarium* is the stated amount paid to unsuccessful offerors in consideration of their costs incurred in preparing a Proposal.



**1.2.2.12** *Subsequent Agreement* shall be the Agreement identified in Section 1.3.1.

**1.2.2.13** *Team* is the group of design professionals, contractors, consultants, and other persons or entities brought together by the Design-Builder to submit a Statement of Qualifications and a Proposal for the Project.

**1.2.2.14** *Teaming Party Price* is the price provided by the Teaming Party to the Design-Builder pursuant to Section 2.5.

### **1.3 Team Structure And Relationship**

**1.3.1** If the Design-Builder is awarded the Design-Build Agreement, the Parties shall enter into a Subsequent Agreement which shall be in the one of the forms identified below and shall include a Scope of Work for the Teaming Party. If the Parties use their own form or modify the terms of any of the DBIA form agreements set forth below, the Parties shall attach the Subsequent Agreement as Exhibit A to this Teaming Agreement.

#### **[Check box that applies]**

- DBIA 540, Standard Form of Agreement Between Design-Builder and Design Consultant.
- DBIA 550, Standard Form of Agreement Between Design-Builder and General Contractor, Cost Plus Fee with Guaranteed Maximum Price.
- DBIA 555, Standard Form of Agreement Between Design-Builder and General Contractor, Lump Sum.
- DBIA 560, Standard Form of Agreement Between Design-Builder and Design-Build Subcontractor, Cost Plus Fee with Guaranteed Maximum Price.
- DBIA 565, Standard Form of Agreement Between Design-Builder and Design-Build Subcontractor, Lump Sum.
- DBIA 570, Standard Form of Agreement Between Design-Builder and Subcontractor.
- Other (Attached as Exhibit A to this Teaming Agreement).

**1.3.2** For purposes of this Teaming Agreement, the Parties to the Team shall act as independent contractors, and no Party or Team Member shall act as agent for, or partner of the other, nor be authorized to incur any liability or to represent or make commitments on behalf of any other, and the employees of one shall not be deemed the employees of any other.

**1.3.3** Design-Builder shall be the primary point of contact with the Owner and Project stakeholders concerning the Project. If the Teaming Party desires to contact the Owner or Project stakeholders concerning the Project, the Teaming Party shall inform Design-Builder to ensure the coordination of efforts and understanding of commitments prior to such contact. Teaming Party acknowledges and agrees that Teaming Party and those for whom it is contractually responsible will take directions only from Design-Builder in connection with the performance of their services and that the Owner has no authority to change any element of the services without the prior written agreement of Design-Builder. Teaming Party agrees further that, in the absence of prior written agreement to the contrary, it has no authority to make any commitment to the Owner that in any way alters Design-Builder's obligations under the Design-Build Agreement, and if Teaming Party has improperly made such a commitment, Teaming Party assumes liability for the consequences thereof.

**1.3.4** Design-Builder and Teaming Party shall promptly discuss with each other and disclose any actual or potential conflicts of interest related to the Owner, the Project, an Other Team Member, a competing team (to the extent known), or similar conflict which could disqualify the Team or otherwise adversely affect the Team's ability to be successfully awarded or perform the Project.

**1.3.5** Each Party shall promptly disclose to the other Party any actual or potential disqualifying factors pursuant to the Request for Qualifications or Request for Proposals or any other information that could adversely affect the Team's ability to be successfully awarded or perform the Project.

**1.3.6** Each Party will have in place the insurance required under the Subsequent Agreement prior to performing the work set forth in this Teaming Agreement.

## **Article 2**

### **Statement of Qualifications and Proposal Preparation**

- 2.1** Unless otherwise stated below, Design-Builder shall prepare the Statement of Qualifications and Proposal.
- 2.2** Each Party shall carefully review the Request for Qualifications and Request for Proposals and become familiar with the terms, conditions, and requirements contained therein, including but not limited to, the Design-Build Agreement and the Basis of Design Documents. Each Party shall promptly, when requested by any other Party, submit such data and answer such questions as may be required by the requesting Party in the preparation of its pricing, the Statement of Qualifications and the Proposal.
- 2.3** Design-Builder, with input from Teaming Party, shall establish a Proposal Schedule. The Proposal Schedule will assign responsibilities for deliverables and assignment of personnel, as appropriate. In accordance with the Proposal Schedule, each Party will provide information and details as required and will be present at the appointed time(s) and place(s) with any required deliverables and pricing for inclusion into the overall Statement of Qualifications and/or Proposal to the Owner. In addition, the Parties shall provide information and submittals in accordance with the Matrix of Responsibilities set forth in Exhibit B to this Teaming Agreement.
- 2.4** Teaming Party shall have and maintain the capacity to perform the Scope of Work anticipated in the Subsequent Agreement.
- 2.5** Prior to the submission of the Proposal, Teaming Party will submit to Design-Builder its Teaming Party Price. Should the Owner award the Design-Build Agreement to the Design-Builder, Teaming Party agrees to perform the Scope of Work in the Subsequent Agreement for the Teaming Party Price.
- 2.6** Each Party shall have the sole discretion to establish its price for its respective Scope of Work. Each Party will establish its price in good faith to meet anticipated competition, and the Parties shall consult for the purpose of establishing an overall competitive Proposal Price; however, the Design-Builder shall have the sole discretion to establish the Proposal Price.
- 2.7** Each Party may desire or be required by their professional obligations to make certain

qualifications or exceptions in the Statement of Qualifications and/or the Proposal; and the Parties shall discuss the nature of any such qualifications prior to submitting the Statement of Qualifications and/or the Proposal.

- 2.8** Each Party shall provide appropriate and high-quality personnel and use its best efforts to prepare and submit a competitive and complete Proposal which will result in the selection of the Team for the Project. The Parties have reviewed any requirements or restrictions from the Owner regarding assignment of personnel to the Project and promise to abide in good faith to such requirements or restrictions. Teaming Party shall assign designated personnel to the Project who are acceptable to Design-Builder. Teaming Party shall not replace the designated personnel without the consent of Design-Builder, which consent shall not be unreasonably withheld.
- 2.9** Design-Builder will keep Teaming Party informed concerning preparations for, timing and status of any interviews, presentations, and contract negotiations. Teaming Party will reasonably support and participate in these activities, as requested by Design-Builder. Teaming Party agrees to collaborate with the Other Team Members, as reasonably requested by Design-Builder.
- 2.10** The Parties will make all good faith efforts to agree on the form and content of all documents submitted to the Owner. The Parties will afford each other the opportunity to review and comment on the Statement of Qualifications and the Proposal. Notwithstanding the foregoing, Design-Builder shall have the right to determine the final form and content of the Statement of Qualifications and the Proposal.
- 2.11** If design professional services are performed by the Parties pursuant to this Teaming Agreement, the standard of care for all design professional services shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project.

### **Article 3**

#### **Payment**

- 3.1** Teaming Party shall be compensated by Design-Builder as set forth below. The Parties agree that the obligations set forth in this Teaming Agreement as well as the compensation set forth below are sufficient consideration to support this Teaming Agreement.

**[Check all boxes that apply]**

- Design-Builder and Teaming Party shall bear their own Proposal Preparation Costs.
- Teaming Party shall keep track of its Proposal Preparation Costs, with the rates as set forth in Exhibit C to this Teaming Agreement.
- Design-Builder shall compensate Teaming Party pursuant to the rates in Exhibit C.
- Teaming Party's compensation shall not exceed a maximum of \$\_\_\_\_\_.
- Before Teaming Party is compensated, Teaming Party must incur a minimum of \$\_\_\_\_\_ in Proposal Preparation Costs.
- If Design-Builder is awarded the Project, and the Parties enter into an Agreement, Design-Builder shall compensate Teaming Party its Proposal Preparation Costs.

- Design-Builder shall compensate Teaming Party a lump sum of \$\_\_\_\_\_.
- Other: \_\_\_\_\_.

**3.2** If the Owner awards a Stipend or Honorarium and the Design-Builder is not awarded the Project, Design-Builder shall take the following action with respect to the stipend or honorarium:

**[Check the applicable box]**

- Design-Builder shall award \_\_\_\_ % of the Stipend or Honorarium to Teaming Party.
- Design-Builder shall pay to Teaming Party a lump sum of \$\_\_\_\_\_.
- Design-Builder shall pay Teaming Party's Proposal Preparation Costs pursuant to the rates in Exhibit C and shall keep the remainder.
- Design-Builder shall not pay Teaming Party any portion of the Stipend or Honorarium.

**3.3** Teaming Party acknowledges and agrees that Design-Builder's receipt of said Stipend or Honorarium from the Owner is an express condition precedent for Design-Builder to be obligated to reimburse Teaming Party all or any portion of Teaming Party's Stipend or Honorarium payment.

## **Article 4** **Contract Negotiation**

- 4.1** If the Proposal is accepted, the resulting Design-Build Agreement with the Owner shall be entered into by Design-Builder as the prime contracting party.
- 4.2** To the extent that negotiations of the Design-Build Agreement with the Owner are permitted, the Design-Builder shall take the lead in such negotiations. Teaming Party shall be entitled to review the terms of the Design-Build Agreement for comment before it is signed by Design-Builder.
- 4.3** Design-Builder shall not be authorized to make commitments for Teaming Party that are materially inconsistent with the Subsequent Agreement without the prior written approval of Teaming Party.

## **Article 5** **Exclusivity**

- 5.1** This Teaming Agreement establishes an exclusive arrangement between the Parties for preparation of the Statement of Qualifications and the Proposal for the design and construction of the Project. Unless specifically agreed upon in writing by Design-Builder, the Teaming Party shall not submit a competing or independent Statement of Qualifications or Proposal to the Owner for the Project either by itself or directly or indirectly through others.
- 5.2** Design-Builder reserves the right to add Other Team Members to assist in performing tasks.

## **Article 6**

## **Confidential Information**

- 6.1** Confidential Information is defined as information which is determined by the transmitting Party to be of a confidential or proprietary nature and: (i) the transmitting Party identifies as either confidential or proprietary; (ii) the transmitting Party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving Party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.
- 6.2** Either Party may receive Confidential Information from the other. Each Party agrees to maintain the confidential nature of such information and to execute any such additional agreements as may be required by the transmitting Party with respect to such information.
- 6.3** In the event the Request for Qualifications, the Request for Proposals or any laws applicable to this Teaming Agreement contain a provision governing Confidential Information, and there is a conflict between the above referenced items and this Article 6, the provision in the Request for Qualifications, Request for Proposals or applicable law takes precedence.

## **Article 7** **Ownership of Work Product**

- 7.1** All drawings, specifications, and other documents and electronic data furnished by Teaming Party to Design-Builder under this Teaming Agreement ("Work Product") are deemed to be instruments of service and Teaming Party shall retain ownership and property interests therein provided, however, that Teaming Party hereby grants Design-Builder (for the purpose of allowing Design-Builder to grant to Owner), a limited license to use the Work Product in connection with this Project. Notwithstanding the preceding sentence, if the Request for Qualifications or the Request for Proposals grants ownership and/or property rights to Owner that conflict with the above, then Teaming Party hereby grants such rights to Design-Builder (for the purpose of allowing Design-Builder to grant to Owner) under the same terms and conditions that Design-Builder grants such rights to Owner.
- 7.2** Teaming Party has reviewed the Request for Qualifications and Request for Proposals and is fully aware of the ownership and property rights to use the Work Product which may be granted to Owner therein. Teaming Party accepts and agrees to Owner's ownership and property rights with respect to the Work Product contained in the Request for Qualifications and/or Request for Proposals.
- 7.3** Neither Party hereto shall use the drawings, specifications, or other intellectual property of the other Party on any other project or proposal in the future without the express written consent of the Party furnishing such information. If, however, such written consent is given, then if either Design-Builder or Teaming Party uses the Work Product on any other project, such Party agrees that it shall do so at its sole risk and without liability or legal exposure to the other Party, Design-Builder, Owner, or anyone working through them. Such Party further agrees that it shall defend, indemnify, and hold harmless the other Party and Owner from and against any and all claims, damages, liabilities, losses, and expenses, including attorneys' fees, arising out of or resulting from such use of the Work Product on another project.
- 7.4 Use of Work Product On Termination.**

**7.4.1** If either Party terminates this Teaming Agreement in accordance with Sections 9.1.1.5 or 9.2 of this Teaming Agreement, Teaming Party, upon Design-Builder's payment in full of the amounts due Teaming Party under the Contract Documents (as applicable), grants Design-Builder and Owner the same rights as set forth in Sections 7.1 and 7.2 above to use the Work Product for the Project, conditioned on the following:

**7.4.1.1** Use of the Work Product is at Design-Builder's and Owner's sole risk without liability or legal exposure to Teaming Party or anyone working by or through Teaming Party, and on the indemnity set forth in Section 7.3 herein, and

**7.4.1.2** Design-Builder agrees to pay Teaming Party the additional sum of

**[Check one]**

- \_\_\_\_\_ dollars (\$ \_\_\_\_\_),
- \_\_\_\_\_ percent (\_\_\_\_\_% ) of the honorarium or stipend,
- No additional compensation,

for the right to use the Work Product for the Project and subsequently use the Work Product.

**7.4.2** If Teaming Party is terminated from this Teaming Agreement for Cause pursuant to Section 9.3, then Design-Builder and Owner shall have the same rights as set forth in Sections 7.1 and 7.2 above to use the Work Product for the Project and/or Proposal to Owner. Notwithstanding the preceding sentence, if it is ultimately determined that Teaming Party should not have been terminated for cause, Design-Builder shall be deemed to have terminated the Teaming Agreement for convenience, and Teaming Party shall be entitled to the rights and remedies set forth in Section 7.4.1 above.

## **Article 8** **Dispute Resolution**

### **8.1 Disputes Between the Parties**

**8.1.1** For any claim, dispute, or controversy arising out of this Teaming Agreement, the Parties will first attempt to resolve such claim, dispute, or controversy through negotiations between the Parties' Representatives. Such Representatives, upon the request of either Party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such claim, dispute, or controversy. Five (5) days prior to any meetings between the Representatives, the Parties will exchange relevant information that will assist the Parties in resolving the claim, dispute, or controversy.

**8.1.2** If after meeting the Representatives determine that the claim, dispute, or controversy cannot be resolved on terms satisfactory to both Parties, the Parties shall submit within thirty (30) days of the conclusion of the meeting by the Representatives the claim, dispute, or controversy to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the Parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. Unless otherwise mutually agreed by the Parties and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute for mediation. Persons with authority to resolve the dispute shall be present at the mediation.

## **8.2 Arbitration**

**8.2.1** Any claims, disputes, or controversies between the Parties arising out of or relating to the Teaming Agreement, or the breach thereof, which has not been resolved in accordance with the procedures set forth in Section 8.1 above, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the Parties mutually agree otherwise.

**8.2.2** The award of the arbitrator(s) shall be final and binding upon the Parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.

**8.2.3** The Parties expressly agree that any arbitration pursuant to this Section 8.2 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute, or controversy, or (ii) substantially involved in or affected by such claim, dispute, or controversy. Both Parties will include appropriate provisions in all contracts they execute with other Parties in connection with the Project to require such joinder or consolidation.

**8.2.4** The prevailing Party in any arbitration, or any other final, binding dispute proceeding upon which the Parties may agree, shall be entitled to recover from the other Party reasonable attorneys' fees and expenses incurred by the prevailing Party.

**8.2.5** Both Parties shall continue to perform under this Teaming Agreement pending the final resolution of any dispute or disagreement between the Parties.

**8.3** Notwithstanding anything to the contrary elsewhere in this Teaming Agreement, no Party shall be liable to the other Party for indirect, incidental, special or consequential damages, including but not limited to, loss of revenue, loss of profit, cost of capital, loss of business reputation or opportunity whether such liability arises out of contract, tort (including negligence), strict liability, or otherwise.

## **Article 9** **Term of Teaming Agreement**

### **9.1 Termination of Agreement**

**9.1.1** This Teaming Agreement shall be effective as of the date first set forth above upon the execution by all the Parties, and shall terminate upon the occurrence of any of the events listed below:

- 9.1.1.1** Notice from the Owner that the Project has been canceled or that the Design-Build Agreement will not be awarded to the Design-Builder;
- 9.1.1.2** Award of contracts to other bidders or proposers, to the exclusion of the Team for all, or substantially all, of the Project work contemplated by the Proposal;
- 9.1.1.3** Execution by both Parties of an agreement between them to carry out the work of the Design-Build Agreement;
- 9.1.1.4** The expiration of one hundred eighty (180) days from the effective date of this Teaming Agreement;
- 9.1.1.5** Failure to mutually agree upon outstanding terms of the Subsequent Agreement, following good faith negotiations;
- 9.1.1.6** Written notice to either Party that the Statement of Qualifications or Proposal to the Owner for the Project has been rejected;
- 9.1.1.7** The Parties mutually agree in writing to terminate this Teaming Agreement;
- 9.1.1.8** The Proposal expires by its own terms as of a given date unless all Parties agree to extend the validity period of such Proposal;
- 9.1.1.9** Termination for Convenience under Section 9.2 ; or
- 9.1.1.10** Termination for Cause under Section 9.3.

## **9.2 Termination for Convenience**

**9.2.1** Either Party has the right to terminate this Teaming Agreement for convenience, provided, however, that (a) if the Proposal process includes the submission of a Statement of Qualifications, the terminating Party shall provide at least three (3) business days' written notice of such termination, and such notice must be provided no later than three (3) business days before the date the Statement of Qualifications is due to be submitted, and (b) if the Proposal process does not include the submission of a Statement of Qualifications, then the terminating party shall provide at least ten (10) business days' written notice of such termination, and such notice must be received no later than twenty-one (21) business days before the date the Proposal is due to be submitted. In either event, the terminating party shall not pursue the Project in any capacity, and the other non-terminating party shall be permitted to continue to pursue the Project in any manner it chooses. Other provisions of this Teaming Agreement, which by their nature survive such a termination such as the Confidential Information and Ownership of Work Product provisions, shall remain in full force and effect.

## **9.3 Termination for Cause**

**9.3.1** Either Party may terminate this Teaming Agreement for cause upon the occurrence of one of the following:

- 9.3.1.1** Either Party materially fails to perform or provide the necessary information and data required for the Proposal;
- 9.3.1.2** Either Party engages in criminal, fraudulent, or other wrongful misconduct that could prejudice the acceptance of the Proposal or result in criminal or civil action against the other member;
- 9.3.1.3** The existence of a conflict of interest that would (i) disqualify the Team from submitting on the proposal or (ii) would adversely affect the Team's ability to be successfully awarded or perform the Project;
- 9.3.1.4** Failure to disclose material information that should have been disclosed pursuant to Sections 1.3.4 and 1.3.5 of the Teaming Agreement;
- 9.3.1.5** Teaming Party replaces the personnel designated in Section 2.8 without Design-Builder's approval;
- 9.3.1.6** In the good faith evaluation of Design-Builder, Teaming Party cannot perform the



Scope of Work anticipated in the Subsequent Agreement; or

**9.3.1.7** Material failure by either Party to comply with the obligations set forth in this Teaming Agreement.

**9.3.2** If the Teaming Party is terminated by the Design-Builder for cause, the Teaming Party may be removed from the Team, and the Design-Builder may substitute the Teaming Party with one or more new parties to fulfill the obligations of the member so terminated. If the Teaming Party terminates this Teaming Agreement for cause, the obligations herein regarding exclusivity for the Teaming Party are voided, and the Teaming Party may pursue the Project with another team. Other provisions of this Teaming Agreement, which by their nature survive such a termination such as the Confidential Information and Ownership of Work Product provisions, shall remain in full force and effect.

**9.4** Termination of this Teaming Agreement shall not terminate rights and obligations of the Parties which arose prior to such termination, but nothing in this Article shall confer, create, or expand any rights in the Owner or in any other third Parties.

**9.5** If the Design-Builder is awarded the Project and the parties fail to mutually agree upon outstanding terms of the Subsequent Agreement following good faith negotiations, and this Teaming Agreement is terminated pursuant to Section 9.1.1.5, the Design-Builder

**[Check one]**

- Shall pay to Teaming Party the amount set forth in Article 3 of this Teaming Agreement and shall not owe any additional payment to Teaming Party.
- Shall pay to Teaming Party the amount set forth in Article 3 of this Teaming Agreement and shall, in addition, pay a sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) as a liquidated remedy and not as a penalty.
- Shall not be required to pay any amount to Teaming Party.

## **Article 10 Miscellaneous**

**10.1** Any news release, public announcement, advertisement, or publicity proposed to be released by any Party, concerning the Project and identifying any other Party in connection with this Teaming Agreement or resulting agreements shall be subject to the approval of the Design-Builder prior to release, which approval shall not be unreasonably withheld.

**10.2** Each Party represents and warrants to the others that it is a corporation or other entity duly authorized to do business in the State in which the Project is located, holding proper licenses (where required by law) to provide the services necessary to meet the requirements of the respective Party under this Teaming Agreement, the Proposal and the Subsequent Agreement. Further, each Party represents that it has full corporate power and authority to enter this Teaming Agreement and to do all things necessary for the performance of the Design-Build Agreement contemplated herein.

**10.3** This Teaming Agreement will be interpreted and the rights of the Parties construed in accordance with law of the State where the Project is located, excluding the conflicts of laws principles

thereof, and any mediation or arbitration concerning this Teaming Agreement shall be conducted in that State.

**10.4** This Teaming Agreement shall relate only to the Project specified herein and nothing herein shall be deemed to:

**10.4.1** Confer any right or impose any obligation or restriction on a Party with respect to any other project at any time undertaken by any Party hereto, or

**10.4.2** Preclude a Party hereto from soliciting or accepting any design-build agreement or subcontract from the Owner or any third Party for any other project (other than this same Project);

or

**10.4.3** Limit the rights of any Party to otherwise promote, market, sell, license or in any other manner dispose of its standard products or services unrelated to this Project.

**10.5** Neither this Teaming Agreement nor any interest herein may be assigned, in whole or in part, by any Party without the prior written consent of the other Party, such consent shall not be unreasonably withheld.

**10.6** Both Parties to this Teaming Agreement and any and all of their affiliated companies, parents, or subsidiaries agree that they will not initiate actions aimed at hiring each other's personnel who may be part of, or identified as a result of, the Proposal for a period of one (1) year after the expiration of this Teaming Agreement, or for one (1) year after the completion of the Project if the Design-Build Agreement is awarded to the Team, whichever is longer.

**10.7** Whenever the Contract Documents require that notice be provided to the other Party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement, or (iii) if transmitted by facsimile or by email, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient. Notices shall be addressed as follows:

Design-Builder \_\_\_\_\_

Teaming Party \_\_\_\_\_

Attn: \_\_\_\_\_

Attn: \_\_\_\_\_

- 10.8** If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements or court order, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provisions or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.
- 10.9** This Teaming Agreement constitutes the entire understanding and agreement of and among the Parties with respect to the Team, the Statement of Qualifications, the Proposal and the Project, and supersedes all prior representations and agreements, verbal or written. It shall not be modified, except in writing signed by an authorized representative of each Party.
- 10.10** Paragraph headings herein are for convenience only and shall not limit in any way the scope or interpretation of any provision to this Teaming Agreement.
- 10.11** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

IN WITNESS WHEREOF, the Parties have executed this Teaming Agreement the day and year written below.

**DESIGN-BUILDER:**

**TEAMING PARTY:**

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

\_\_\_\_\_  
*(Teaming Party)*

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

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

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

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

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

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

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

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

**Caution: You should sign an original DBIA document which has this caution printed in blue. An original assures that changes will not be obscured as may occur when documents are reproduced.**

**Exhibit A**  
**Teaming Agreement Between Design-Builder and Teaming Party**  
**Form of Subsequent Agreement**

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*[Attach the Form of Subsequent Agreement]*

SAMPLE

**Exhibit B**  
**Teaming Agreement Between Design-Builder and Teaming Party**  
**Matrix of Responsibilities**

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The Parties agree to assign responsibilities pursuant to the following schedule:

*[Note: The matrix below is given as an example only. Parties are encouraged to develop their own matrix to assign tasks.]*

Task/Deliverable	Party Responsible	Person Responsible	Deadline

SAMPLE

**Exhibit C**  
**Teaming Agreement Between Design-Builder and Teaming Party**  
**Proposal Preparation Costs**

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- 1.1 Accounting Records.** If the Parties checked the box in either Section 3.1 or 3.2 requiring Teaming Party to keep track of its Proposal Preparation Costs, Teaming Party shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. Design-Builder shall be afforded access to and the right to audit from time-to-time, upon reasonable notice, Teaming Party's accounting records which Teaming Party shall preserve for a period of one (1) year after termination of the Teaming Agreement, unless there is an ongoing dispute between the Parties regarding this Teaming Agreement. Such inspection shall take place at Teaming Party's offices during normal business hours unless another location and time is agreed by the Parties.
- 1.2 Proposal Preparation Costs** are defined as (a) Teaming Party's costs for labor, in the rates set forth in this Exhibit C; and (b) Teaming Party's expenses, defined as those necessary costs and charges incurred for this Proposal, limited to: (i) the direct costs of software, reference material, IT support, transportation, meals and lodging and subcontracts for services, and (ii) Teaming Party's cost for laboratory tests and analysis, and outside printing and reproduction services.
- 1.3 Costs.** The Parties agree to the following rates and/or costs to fulfill the obligations set forth in Sections 3.1 or 3.2 of the Agreement:

Description	Unit	Rate/Cost

**Exhibit D**  
**Teaming Agreement Between Design-Builder and Teaming Party**  
**Other Team Members**

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The Other Team Members are listed as follows:

*[List Other Team Members with Representative and contact information below]*

SAMPLE