



Standard Form of Agreement Between Owner and Design-Builder - Lump Sum

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

This **AGREEMENT** is made as of the _____ 15th _____ day of _____ April _____ in
the year of 20 20 _____, by and between the following parties, for services in connection with the Project
identified below.

OWNER:

Weber County Sheriff's Office
2380 Washington Blvd Suite 260
Ogden, UT 84401

DESIGN-BUILDER:

E.K. Bailey Construction
1342 North Washington Blvd.
Ogden, UT 84404

PROJECT:

Weber County Warehouse

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

Article 1

Scope of Work

- 1.1** Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.
- 1.1.1** Provide Design-Build Services for a New Pre-engineered Metal Building, approximately 32,400SF. Shall include all site work required, new building and interior finishes per the RFP requirements and Design-Builder's latest proposal with Phase 1 and Phase 2 pricing.
- 1.1.2** Design Development schedule duration is estimated at 6-8 weeks. Weekly meetings shall occur with Owner, Contractor, Architect, and Engineer's, as required, during this design phase duration.

Article 2

Contract Documents

- 2.1** The Contract Documents are comprised of the following:
- 2.1.1** All written modifications, amendments, minor changes and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition) ("General Conditions of Contract");
- 2.1.2** The Basis of Design Documents, including the Owner's RFP, Design-Builder's Proposal and the Exclusion List, if any, contained in the Design-Builder's Proposal, which shall specifically identify any and all deviations from Owner's Project Criteria;
- 2.1.2.1** Design-Builder's Budget and Design/Engineering Fees is attached as 'Exhibit A'
- 2.1.3** This Agreement, including all exhibits and attachments, executed by Owner and Design-Builder;
- 2.1.4** The General Conditions of Contract; and
- 2.1.5** Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract.
- 2.1.5.1** Construction Document List shall be added via Amendment as 'Exhibit B' upon completion of the Design Phase.

Article 3

Interpretation and Intent

- 3.1** Design-Builder and Owner, prior to execution of the Agreement, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.
- 3.2** The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract

Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof. Conflicts existing within Section 2.1.2 shall be resolved by giving precedence first to the Deviation List, if any, then the Owner's Project Criteria, and then the Design-Builder's Proposal.

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

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

3.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 4

Ownership of Work Product

4.1 Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder and Owner shall retain mutual ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.

4.2 Owner's Limited License Upon Project Completion and Payment in Full to Design-Builder. Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a full license to use the Work Product in connection with Owner's occupancy of the Project, conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and 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"), and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below.

4.3 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate. If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a full license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:

4.3.1 Use of the Work Product by Owner under a license set forth in Section 4.3 and without using Design-Builder is at Owner's sole risk without liability or legal exposure to any Indemnified Party and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below; and

4.4 Owner's Limited License upon Design-Builder's Default. If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a full license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.

4.5 Owner's Indemnification for Use of Work Product. If Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify and hold harmless such Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product.

Article 5

Contract Time

5.1 Date of Commencement. The Work shall commence within 5 days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

5.2 Substantial Completion and Final Completion.

5.2.1 Completion of the entire Phase 1 Scope of Work shall be achieved no later than 150 calendars days after the Date of Commencement. Substantial Completion of the entire Project (Phase 1 & Phase 2) Scope of Work shall be achieved no later than 240 calendars days after the Date of Commencement. If Phase 2 scope of work is not released via change order one month prior to completion of Phase 1, a schedule extension shall be granted to the Design-Builder. This schedule delay shall be a day-for-day delay until Phase 2 scope is work is released.

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work ("Scheduled Interim Milestone Dates") shall be achieved as follows:

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

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

5.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

Article 6

Contract Price

6.1 Contract Price. Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the estimated sum of One Million One Hundred Twenty-Eight Thousand One Hundred Eighty-Four Dollars and Zero Cents (\$1,128,184.00) ("Contract Price"), subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.1.1 The final Contract Price shall be established upon completion of the design. Design-Builder shall provide a final Contract Price no later than 15 days to the Owner, upon completion and sign-off of the design by the Owner.

6.1.2 Final price adjustments shall be made via change order to this agreement. The above mention Contract Price only reflects the Phase 1 – Core & Shell Budget Pricing. Phase 2 shall be added at a later date.

6.1.3 Design-Builder shall be paid for Design Services, per the Fee amount listed Exhibit A, in up to 3 separate progress draws based on the following percent completion values: 30%, 60%, & 95%.

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

6.2.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of ten percent (10%) of the additional costs incurred for that Change Order, plus any other markups set forth at Exhibit 'B & C' hereto.

6.3 Allowance Items and Allowance Values.

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

6.3.2 Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values.

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

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

Article 7

Procedure for Payment

7.1.0 Progress Payments

7.1.1 Design-Builder shall submit to Owner on the 25th day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.1.2 Owner shall make payment within 30 days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.2 Retainage on Progress Payments.

7.2.0 Owner will retain five percent (5%) of each Application for Payment provided, until 100% of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations.

7.2.1 Within 30 days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within 30 days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract. Final payment is hereto contingent upon final acceptance of the Owner on the finish project and a Certificate of Occupancy.

7.4 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five days after payment is due at the rate of 1.2% per month until paid.

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

Article 8

Termination for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Upon written notice (the "Written Notice") from the Owner of such a termination, the Contractor shall (1) cease all operations as directed by the Owner in the Written Notice, (2) take those actions as directed by the Owner in the Written Notice to protect and preserve the work performed prior to the termination, and (3) terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders. Because such a termination is for convenience and without cause, the Owner shall accept the Project in its as-is condition on the date of termination, and shall pay the Contractor for all work performed and material supplied or ordered through the date of termination, as well as costs incurred on account of the termination, including without limitation all costs of complying with this provision and the Written Notice, demobilizing from the Project..

Article 9

Representatives of the Parties

9.1 Owner's Representatives.

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

Sheriff Ryan Arbon
801-710-4117

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

9.2 Design-Builder's Representatives.

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

Brent Bailey, President
801-563-3702

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

Article 10

Bonds and Insurance

10.1 Insurance. Design-Builder and Owner shall procure the insurance coverages set forth in this Article below, and in accordance with Article 5 of the General Conditions of Contract. Weber County shall be listed on the insurance certificates as an additional insured.

10.2 Design-Builder's Insurance.

10.2.1 Design-Builder shall obtain and maintain, at Design-Builder's own expense during the term of this agreement, insurance as set forth below. The insurance shall be obtained from insurance carriers authorized to do business in the State of Utah. If any of the required coverage is provided on a claims-made basis, then Design-Builder shall maintain the policy for no less than four years after termination of this agreement.

10.2.2 Worker's Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of the Work under this agreement.

10.2.3 Commercial General Liability insurance with contractual liability coverage to cover Design-Builder's obligations under the Indemnification section of this agreement, with minimum combined single limits of \$2,000,000 for each occurrence and \$5,000,000 aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent Design-Builder s, products, and completed operations. The policy shall include coverage for explosion and collapse. The policy shall be primary and noncontributory to any other policy or coverage available to Owner, whether such coverage be primary, contributing, or excess.

10.2.4 Commercial Automobile Liability insurance that provides coverage for owned, hired, and non-owned automobiles, in the minimum amount of \$1,000,000 per person, \$2,000,000 per accident, and, for property damage, \$500,000 per occurrence, or a combined single limit of \$5,000,000.

10.2.5 Professional/Contractor Liability insurance with minimum limits of \$1,000,000 for each occurrence and \$1,000,000 aggregate.

10.2.6 A certificate of insurance shall be completed by Design-Builder 's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by Owner prior to commencement of the Work. The certificate shall provide that the coverages afforded under the policies shall not be cancelled, terminated, or materially changed until at least 30 days' prior written notice has been given to Owner

10.2.7 Failure on the part of Design-Builder to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of this agreement upon which Owner may immediately terminate this agreement, or at its discretion Owner may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by Owner shall be repaid by Design-Builder to Owner upon demand, or Owner may offset the cost of the premiums against any monies due to Design-Builder from Owner.

Article 11

Other Provisions

11.1 Other provisions, if any, are as follows:

Contingency

The parties acknowledge that the Design-Builder's lump sum contract amount does not include any contingency for uncertainties, unforeseen conditions, omissions and other similar situations ("Contingency Items") that often arise and are usually funded by such contingency. The Owner agrees to accept the risk of the occurrence of such Contingency Items and agrees to fund the cost of such items through formal change orders to the Design Builder. Specifically, such Contingency Items include, but are not limited to, costs resulting from incompatible design, errors or omissions in design, unforeseen or unpredictable conditions, incomplete or changes in the definition of the scope of Work, and construction errors and deficiencies not caused by the negligence of the Design Builder or its consultants or subcontractors.

Change orders related to the Contingency Items will include a preliminary cost estimate and related information as requested by the Owner and shall be presented to the Owner's Representative for approval prior to the Design Builder incurring any costs related thereto. Owner will respond to Contingency Item change order requests after the next County Commission Meeting. Owner and Design Builder recognize that time is of the essence regarding these requested change orders and delays by the Owner in responding to such requests could impact the construction schedule and associated Substantial Completion Date, resulting in additional costs incurred by the Design Builders.

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.

DESIGN-BUILDER:

E.K. Bailey Const. Inc.
(Name of Owner)

Brent Bailey
(Signature)

Brent Bailey
(Printed Name)

President
(Title)

Date: 4/17/2020

BOARD OF COUNTY COMMISSIONERS
OF WEBER COUNTY

By _____
Gage Froerer Chair

Commissioner Froerer voted _____
Commissioner Harvey voted _____
Commissioner Jenkins voted _____

ATTEST:

Ricky Hatch, CPA
Weber County Clerk/Auditor

Approved as to form and compliance
with applicable law:

County Attorney

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.



Bid Proposal Summary
Weber County Warehouse
2/27/2020

			Phase 1 - Core	Phase 2 - Interior
			& Shell	Finishes & Finish Site Work
01 General Conditions			\$59,056	\$40,000
02 Existing Conditions			\$0	
03 Concrete			\$161,833	
04 Masonry			\$0	
05 Metals			\$250,825	\$80,000
06 Woods & Plastics			\$0	
07 Thermal & Moisture Protection			\$57,000	
08 Doors & Windows			\$99,800	\$25,000
09 Finishes				\$183,500
10 Specialties			\$0	
11 Equipment			\$0	
12 Furnishings			\$0	
13 Special Construction			\$0	
14 Conveying Systems			\$0	
21 Fire Protection			\$38,851	\$30,000
22 Plumbing			\$8,100	\$24,000
23 Mechanical				\$47,500
26 Electrical			\$136,650	\$40,000
31-33 Site work			\$160,080	\$120,000
Design Fee			\$72,000	
Payment/Performance Bond			\$30,266	
		Subtotal:	\$1,074,461	\$590,000
		Fee:	\$0	\$0
		Total:	\$53,723	\$29,500
			\$1,128,184	\$619,500

Clarifications:

Exclusions:

- Permits and Impact Fees
- Builder's Risk Insurance
- Hazardous Material Survey & Abatement (Unless otherwise noted in the Construction Documents)
- Delegated Design except for Fire Sprinkler Systems
- Winter Conditions (Unless otherwise noted in the Construction Documents)
- A/V Equipment and Tele/data Cabling
- Security Systems
- FF&E and Appliances
- Non-code related Signage
- Temporary Power
- Special Inspections

If you have any questions regarding our proposal, please reach out to Ryan Tanzie at 801.803.3854 We look forward to becoming an active team member on this project.

Sincerely,

Brent Bailey - Owner
E.K. Bailey Construction