

# Progressive Design-Build Agreement for Water and Wastewater Projects

As modified by the Parties

This Progressive Design-Build Agreement has been developed in conjunction with and endorsed by the Water Collaborative Delivery Association.





# Progressive Design-Build Agreement for Water and Wastewater Projects

*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 October in the year of 2025,  
by and between the following parties, for services in connection with the Project identified below:

**OWNER:**

Arkansas City, Kansas  
118 W Central Ave  
Arkansas City, KS 67005

**DESIGN-BUILDER:**

Burns & McDonnell / CAS Arkansas City WTP Joint Venture  
3500 SW Fairlawn Rd, Suite 200  
Topeka, KS 66614

**PROJECT:**

Water Treatment Facility Greensand Improvements Project  
City Project No.: 1056

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

## **Article 1**

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

1.1 General Services. Requirements and objectives for the Project, herein referred to as the Owner's Project Criteria as defined in Exhibit A, DBIA Contract Document 535 Standard Form of General Conditions of Contract Between Owner and Design-Builder as modified by the parties, will be collaboratively refined throughout Phase 1 as based upon the Owner's Request for Qualifications and set forth in Exhibit B, Scope of Services

1.2 Phased Services.

1.2.1 Phase 1 Services. Design-Builder shall perform the services of design, pricing and other services for the Project based on Owner's Project Criteria, as may be revised in accordance with Section 1.1 hereof, as set forth in Exhibit B, Scope of Services. Design-Builder shall perform such services to the level of completion required for Design-Builder and Owner to establish the Contract Price for Phase 2, as set forth in Section 1.3 below. The Contract Price for Phase 2 shall be developed during Phase 1 on an "open-book" basis. Design-Builder's Compensation for Phase 1 Services is set forth in Section 6.0 herein. The level of completion required for Phase 1 Services is defined in Exhibit B, Scope of Services (either as a percentage of design completion or by defined deliverables).

1.2.2 Phase 2 Services. Design-Builder's Phase 2 services shall be consist of the completion of design services for the Project, the procurement of all materials and equipment for the Project, the performance of construction services for the Project, the start-up, testing and commissioning of the Project, and the provision of warranty services, all as further described in the Contract Price Amendment. Upon receipt of Design-Builder's proposed Contract Price for Phase 2, Owner may proceed as set forth in Article 1.3.

1.3 Contract Price Proposal. Upon completion of the Phase 1 Services, Design-Builder shall submit a proposal to Owner (the "Proposal") for the completion of the design and construction for the Project for the Contract Price, based on Lump Sum.

1.3.1 The Proposal shall include the following:

1.3.1.1 The Contract Price based on a Lump Sum;

1.3.1.2 The Basis of Design Documents which will be attached as an Exhibit to the Proposal;

1.3.1.3 A list of the assumptions and clarifications made by Design-Builder in the preparation of the Proposal, which list is intended to supplement the information contained in the drawings and specifications and is specifically included as part of the Basis of Design Documents;

1.3.1.4 The Scheduled Substantial Completion Date upon which the Proposal is based, to the extent said date has not already been established under Section 5.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based and a Project Schedule for the Work;

1.3.1.5 If applicable, a list of Allowance Items, Allowance Values, and a statement of their basis;

1.3.1.6 If applicable, a schedule of alternate prices;

1.3.1.7 If applicable, a schedule of unit prices;

1.3.1.8 If applicable, a statement of Additional Services which may be performed but which are not included in the Proposal, and which, if performed, shall be the basis for an increase in the Contract Price and/or Contract Time(s);

1.3.1.9 If applicable, a Savings provision;

1.3.1.10 If applicable, Performance Incentives;

1.3.1.11 The time limit for acceptance of the Proposal; and

1.3.1.12 A permit list, a list detailing the permits and governmental approvals that Owner will bear responsibility to obtain. All other permits will be the responsibility of the Design-Builder to obtain, pay for, and maintain as required.

### 1.3.2 Review and Adjustment to Proposal.

1.3.2.1 After submission of the 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 appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the Proposal.

1.3.2.2 Acceptance of Proposal. If Owner accepts the Proposal, as may be amended by Design-Builder, the Contract Price and its basis shall be set forth in an amendment to this Agreement, when mutually agreed between the parties (Contract Price Amendment). Once the parties have agreed upon the Contract Price and Owner has issued a Notice to Proceed with Phase 2, Design-Builder shall perform the Phase 2 Services, all as further described in the Contract Price Amendment, as it may be revised.

1.3.2.3 Failure to Accept the Proposal. If Owner rejects the Proposal, or fails to notify Design-Builder in writing on or before the date specified in the Proposal that it accepts the Proposal, the Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

- i Owner may suggest modifications to the Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 1.3.2.3 above;

If Owner fails to exercise any of the above options, or fails to respond to the Proposal within time frame set forth therein, Design-Builder shall have the right to (a) continue with the Work as if Owner had elected to proceed in accordance with Section 1.3.2.3 ii above, and be paid by Owner accordingly, unless and until Owner notifies it in writing to stop the Work; (b) suspend performance of Work in accordance with Section 11.3.1 of the General Conditions of Contract, provided, however, that in such event Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof; or (c) may give written notice to Owner that it considers this Agreement completed. If Owner fails to exercise any of the options under Section 1.3.2.3 within ten (10) days of receipt of Design-Builder's notice, then this Agreement shall be deemed completed. If Owner terminates the relationship with Design-Builder under Section 1.3.2.4(iii), or if this Agreement is deemed completed under this paragraph, then Design-Builder shall have no further liability or obligations to Owner under this Agreement.

## **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 Exhibit A DBIA Document No. 535, *Standard Form of General Conditions of Contract Agreement Between Owner and Design-Builder*, attached hereto and as modified by the Parties (2022 Edition) ("General Conditions of Contract"); Exhibit B Phase 1 Scope of Services; Exhibit C KDHE SRF Contract Provisions for Consultant Contracts

2.1.2 The Contract Price Amendment referenced in Section 1.3.2.2 herein or the Proposal accepted by Owner in accordance with Section 1.3 herein;

2.1.3 This Agreement as modified by the parties, including all exhibits set forth in Article 11;

2.1.4 For Phase 2 after Owner acceptance of the Contract Price Amendment the following which may be delivered, prepared or issued after the effective date of the Agreement and are not attached here to:

2.1.4.1 Exhibit D – Work Description

2.1.4.2 Construction Documents prepared and approved in accordance with Section 1.4 of the General Conditions of Contract;

2.1.4.3 Exhibit E - Basis of Design Report developed during Phase 1 of the Work;

2.1.4.4 Exhibit F - KDHE Contract Provisions (as required for SRF Projects)

2.1.4.5 Exhibit G – Project Scope of Work and Lump Sum Price Proposal;

2.1.4.6 Exhibit H – Performance and Payment Bonds;

2.1.4.7 Exhibit I – Anticipated Lost Days to Inclement/Adverse Weather

2.1.4.8 Agreement and General Conditions.

## **Article 3**

### **Interpretation and Intent**

3.1 Design-Builder and Owner, at the time of acceptance of the Proposal by Owner in accordance with Section 1.3 hereof, 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, or if applicable, prior to Owner's acceptance of the Proposal.

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 Owner's acceptance of the Proposal, Design-Builder and Owner shall informally attempt to resolve such ambiguity, conflict or inconsistency, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof, except to the extent the Contract

Documents contradict the “Special Provisions” set for in 11.3 herein, in which event the “Special Provisions” shall govern.

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 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.

3.5 In the event of some ambiguity in the Contract Documents, the parties shall be deemed to have jointly authored them and nothing shall be construed against or in favor of one party based on it being deemed the sole author.

## **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 shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, including any Architectural Works, 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 limited license to use the Work Product in connection with Owner’s occupancy of this Project only, 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 Owner’s obligation to provide the indemnity set forth in Section 4.5 herein. The Work Product cannot be used for other projects without Design-Builder’s express written consent and appropriate compensation and agreement on terms of use and indemnity.

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 limited license to use the Work Product to complete 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 is at Owner’s sole risk without liability or legal exposure to any Indemnified Party, and on Owner’s obligation to provide the indemnity set forth in Section 4.5 herein, 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 limited 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. Owner recognizes that in the event of an early termination of the Work, whether for convenience or for cause, Design-Builder will not have the opportunity to finish or to finalize its Work Product. Therefore, if Owner uses the Work Product, in whole or in part, or 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 the 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, to the fullest extent permitted by applicable law.

4.6 Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Design-Builder's rights.

4.7 The Owner shall not utilize the Documents, designs, or specifications furnished by Design-Builder to solicit bids or obtain negotiated prices from other contractors, except in the event of termination of the Agreement as set forth in 4.3 or 4.4 above.

4.8 This Article 4 shall survive any termination of this Agreement by either Party.

## **Article 5**

### **Contract Time**

5.1 Date of Commencement. The Phase 1 Services shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed unless the parties mutually agree otherwise in writing. The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed for Phase 2 Services ("Date of Commencement") if the Proposal is accepted and the Contract Price Amendment is amended to this Agreement unless the parties mutually agree otherwise in writing.

5.2 Completion of Phase 1 Activities: Phase 1 deliverables and activities will be completed on or before the dates established in Exhibit B – Phase 1 Scope of Work.

5.3 Substantial Completion and Final Completion.

5.3.1 Substantial Completion of the entire Work shall be achieved no later than the date established in the Phase 2 Cost Proposal.

5.3.2 Substantial Completion shall be defined as set out in the General Conditions.

5.3.3 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 1.2.8 of the General Conditions of Contract.

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

5.3.5 If the Design-Builder is delayed in the progress of this Project by acts or neglect by the Owner, its employees, separate contractors employed by Owner, governmental action, or by change orders in the Work not caused in any part by the fault of the Design-Builder; then the Contract Time for completion shall be extended, and the Contract Amount shall be equitably adjusted by a written Change Order.

5.3.6 Where the Design-Builder reasonably establishes that delays as set forth above or that are caused by shortage of labor, strikes, lockout, tornado, flood, wind damage, fire, unusual delay in transportation, adverse weather conditions beyond the quantity of lost days anticipated in the Project Schedule per Exhibit "I" Anticipated Lost Days to Inclement / Adverse Weather, explosion,

sabotage, accidents, riots, civil commotion, acts of war, casualty, condemnation, or other Force Majeure beyond the Design-Builder's reasonable control impact the cost and/or Contract Time, the Design-Builder shall be entitled to an increase in the Contract Price and an appropriate extension of the Contract Time. Design-Builder shall provide written notice of the existence of such cause of delay, together with back-up documentation that verifies the impact in accordance with the Contract Documents.

5.3.7 For purposes of determining weather delays, the parties shall use Exhibit "I," Anticipated Lost Days to Inclement / Adverse Weather. The days shown on Exhibit "I" shall not accumulate month-to-month, but are to be used for determining only the anticipated adverse weather in a given month. Adverse weather for a period of four (4) hours on any day shall constitute one complete day since crews sent home are not able to be re-called once they abandon the Work. Adverse weather days shall also include those days when site conditions are such that Work cannot be performed, or cannot be performed efficiently, due to adverse weather on the preceding day or days (including a weekend) which impact on site conditions.

5.4 Time. Owner and Design-Builder mutually agree that time is important with respect to the dates and times set forth in the Contract Documents.

5.5 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by thirty (30) days after the Scheduled Substantial Completion Date (the "LD Date"), Design-Builder shall pay Owner Fifteen Hundred Dollars (\$1,500 ) as liquidated damages for each day that Substantial Completion extends beyond the LD Date. *(If a GMP is not established upon execution of this Agreement, the parties should consider setting liquidated damages after GMP negotiations.)*

5.6 Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature, incurred by Owner which are occasioned by any delay in achieving Substantial Completion, Interim Milestone Dates (if any) or Final Completion.

☐ Owner and Design-Builder agree that the maximum aggregate liability Design-Builder has for any liquidated damages that may be assessed under this Agreement shall be One Hundred Fifty Thousand Dollars (\$150,000).

5.7 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 of the General Conditions of Contract, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price for those events set forth in Section 8.2.1 of the General Conditions of Contract.

5.8 Owner's Review Time. The parties have established the following maximum amount of time for Owner to review Design Submissions and the Project Schedule or any updates thereto unless the parties agree in writing otherwise.

5.8.1 Owner shall review and (if applicable) provide a response to Design-Builder on all Design Submissions, the Project Schedule and any updates thereto within 14 days of receipt by Owner.

## **Article 6**

### **Contract Price**

6.1 Contract Price.

6.1.1 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the lump sum of One Hundred and Twelve Thousand Dollars (\$112,000.00) for the Phase 1 Services, subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Phase 1 Services compensation is



deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.1.2 For Phase 2 Services, Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price ("Contract Price") equal to the Lump Sum amount set forth in the Contract Price Amendment and any adjustments made in accordance with the General Conditions of Contract.

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 Fifteen percent (15%) of the additional costs incurred for that Change Order. In addition to mark-up for Fee, Design-Builder shall be entitled to mark-up for insurance and bond (if bonded Project) in an amount of Four percent (4%). Neither Design-Builder's Fee nor insurance and bond shall be reduced due to deductive Change Orders issued by Owner.

6.2.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

☐ No additional reduction to account for Design-Builder's Fee, design services cost, or any other markup.

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 the Contract Price Amendment or the Proposal.

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. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

6.3.3 No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advance authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed 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) and Contract Price.

6.3.4 The Allowance Value includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees for the initial concept described in the Allowance Item, 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 notwithstanding the actual amount of the Allowance Item.

6.3.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.3.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

6.3.6 Whenever an Allowance Item causes a delay to the Contract Time, Design-Builder is entitled to an adjustment of the Contract Time(s) and Contract Price by Change Order relating to such delay.

## **Article 7**

### **Procedure for Payment**

7.1 Payment for Preliminary Services. Design-Builder and Owner agree upon the following method for partial and final payment to Design-Builder for the services hereunder: *(Insert terms.)*

7.2 Contract Price Progress Payments.

7.2.1 Design-Builder shall submit to Owner on the tenth (10) 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.

7.2.2 Owner shall make payment within thirty (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.

7.2.3 If Design-Builder's Fee under Section 6.4 hereof is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

7.3 Retainage on Progress Payments.

7.3.1 Owner will retain ten percent (10 %) of the cost of Work, exclusive of General Conditions costs, and any amounts paid to Design-Builder's Design Consultant, from each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Work completed early in the Project.

7.3.2 Within fifteen (15) 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.

7.4 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 (less any amount the parties may have agreed to set aside for warranty work) within thirty (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.

7.5 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the rate of One and One-half percent (1.5%) per month until paid.

## **Article 8**

### **Termination for Convenience**

8.1 Upon Ten (10) days' written notice to Design-Builder, Owner may for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following :

8.1.1 All services performed and Work executed and for loss, cost, or expense in connection with the services and Work;

8.1.2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors, Suppliers and Design Consultants; and

8.1.3 The fair and reasonable sums for overhead and profit on the sum of 8.1.1 and 8.1.2 above.

8.2 If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents, separate contractors, or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 hereof. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4.

## **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:

Name: Randy Frazer\_\_\_\_\_

Title: City Manager\_\_\_\_\_

Address: 118 W Central Ave, Arkansas City, KS 67005\_\_\_\_\_

Telephone No.: 620-441-4414\_\_\_\_\_

Email: rfrazier@arkansascityks.gov\_\_\_\_\_

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:

Name: Kyle Blubaugh\_\_\_\_\_

Title: Environmental Services Superintendent\_\_\_\_\_

Address: 118 W Central Ave, Arkansas City, KS 67005\_\_\_\_\_

Telephone No.: 620-441-4484\_\_\_\_\_

Email: kBlubaugh@arkansascityks.gov\_\_\_\_\_

9.1.3 The Owner represents and warrants to Design-Builder that owner, if not the true owner of the real property upon which the Project is to be built, is the agent of the true owner, with express legal authority to enter into this Agreement for the purpose of improving that real property. The property cannot be used for the purpose intended by this Agreement without the making of the improvements described herein.

## 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:

Name: Darin Brickman, P.E.

Title: Authorized Representative\_\_\_\_\_

Address: 9400 Ward Parkway, Kansas City, MO 64114

Telephone No.: 816-822-3344

Email: rcoker@burnsmcd.com

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:

Name: Travis Stryker, P.E.\_\_\_\_\_

Title: Authorized Representative\_\_\_\_\_

Address: 3500 SW Fairlawn Road, Suite 200 Topeka, KS 66614

Telephone No.: 785-270-1142

Email: travis.stryker@casconstructors.com

## **Article 10**

### **Bonds and Insurance**

10.1 Insurance. Design-Builder and Owner shall procure the insurance coverages set forth here and in accordance with Article 5 of the General Conditions of Contract.

#### TYPE:

#### REQUIRED LIMITS:

- |   |  |
|---|--|
| 1. <i>Worker's Compensation Insurance:</i>    | <i>Statutory Amount</i>  |
| 2. <i>Employer's Liability:</i>               | <i>\$500,000 policy limit by disease,<br/>\$500,000 each accident<br/>\$500,000 each employee by disease</i> |
| 3. <i>Commercial General Liability (CGL):</i> |  |
| <i>General Aggregate:</i>                     | <i>\$2,000,000</i>   |
| <i>Completed Operations Aggregate:</i>        | <i>\$2,000,000</i>   |

Limit Per Occurrence: \$1,000,000

4. *Automobile Liability: (Hired, Owned & Non-Owned Included)*  
Combined Single Limit Per Accident: \$1,000,000

5. *All Builder's Risk: limits equal to the Completed Value of Project Work. This policy shall be in place during construction of the Work until Substantial Completion of the Work. Owner, subcontractors of every tier, including suppliers, vendors, and manufacturers, architects and engineers shall be included as an additional insured but only to the extent of their interests while on site. Owner is responsible for any deductibles under the Builder's Risk Insurance.*

6. *Professional Liability:*  
Per Claim: \$1,000,000  
Aggregate: \$1,000,000

10.2 Bonds. Design-Builder shall provide the following performance bond and labor and material payment bond.

Performance Bond.

☒ Required ☐ Not Required

Payment Bond and Kansas Statutory Bond.

☒ Required ☐ Not Required

## **Article 11**

### **Other Provisions**

11.1 Other provisions, if any, are as follows:

11.2 Listing of Exhibits and documents incorporated herein:

Exhibit A – DBIA 535 General Conditions  
Exhibit B – Phase 1 Scope of Services  
Exhibit C – KDHE SRF Provisions for Consultant Contracts

## **Article 12**

### **Limitation of Liability**

12.1 Limitation. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Design-Builder, its Design Consultants, and Subcontractors, surety (if any) and their respective officers, directors, employees and agents, and any of them, to Owner and anyone claiming by, through or under Owner, for any and all claims, losses, liabilities, costs or damages whatsoever arising out of, resulting from or in any way related to the Project or this Agreement from any cause, including but not limited to the negligence, indemnity, professional errors or

omissions, strict liability, breach of contract or warranty (express or implied), shall not exceed the lesser of fifty percent (50%) of the Contract Price or (2) if Owner terminates the Project prior to Substantial Completion, the total compensation received by Design-Builder under the Agreement as of the date of termination. The parties agree that specific consideration has been given by Design-Builder for this limitation and that it is deemed adequate.

In executing this Agreement, Owner and Design-Build 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:**

\_\_\_\_\_  
(Name of Owner)

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

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

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

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

**DESIGN-BUILDER:**

Burns & McDonnell / CAS Arkansas City WTP Joint Venture

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

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

Travis Stryker

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

\_\_\_\_\_  
Authorized Representative  
(Title)

Date: 9/30/2025  
\_\_\_\_\_

# Standard Form of General Conditions of Contract Between Owner and Design-Builder

As Modified by the Parties

**Document No. 535**

Third Edition, 2022

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Washington, D.C.





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# **Article 1**

## **General**

### **1.1 Mutual Obligations.**

**1.1.1** *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 the Contract Documents.

### **1.2 Basic Definitions.**

**1.2.1** *Agreement* refers to the executed contract between Owner and Design-Builder under DBIA Document No. 545, *Standard Form of Progressive Design-Build Agreement for Water and Wastewater Projects* (2022 Edition), as modified by the parties.

**1.2.2** *Basis of Design Documents* are as follows: Design-Builder's Proposal, Basis of Design Report, and Work Description.

**1.2.3** *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared, furnished, or assembled by Design-Builder consistent with the Agreement.

**1.2.4** *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

**1.2.5** *Design-Build Team* is comprised of Design-Builder, Design Consultant, and key Subcontractors identified by Design-Builder.

**1.2.6** *Design Consultant* is a qualified, licensed design professional who may be an employee of Design-Builder, or who is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of Design Consultant but is retained by Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents. Owner recognizes that Design-Builder is an integrated company with in-house design capabilities and that the function of the Design Consultant may, in some instances, be self-performed by the Design-Builder.

**1.2.7** *Design Submission* means any and all documents, shop drawings, electronic information, including computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models, and other information developed, prepared, furnished, delivered or required to be delivered by, or for, Design-Builder.

**1.2.8** *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.6.1 and the submission of all documents set forth in Section 6.7.2.

**1.2.9** *Force Majeure Events* are those events that are beyond the reasonable control of Design-Builder or Owner, including without limitation the events of war, riots, insurrection, terrorism, vandalism, tornado, floods, labor disputes, earthquakes, fires, epidemics, pandemics, executive orders, tariffs, government actions and inactions, transportation delays and accidents, supply chain disruptions, named storms, adverse weather conditions not reasonably anticipated, and other acts of God.

**1.2.10** *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2022 Edition), as modified by

the parties.

**1.2.11** *Contract Price Amendment* means the Amendment to the Agreement for Phase 2 services comprised of the Proposal as developed by Design-Builder and accepted by the Owner in accordance with Section 2.3 of this Agreement.

**1.2.12** *Contract Price Proposal or Proposal* means that proposal developed by Design-Builder and agreed to by Owner as further described in 2.3 of the Agreement.

**1.2.13** *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

**1.2.14** *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work and enacted and enforceable as of the date of execution of the Agreement.

**1.2.15** *Owner's Project Criteria* are collaboratively developed by the Owner, its representatives, and Design-Builder and will outline the requirements and objectives for the Project, and may include use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work.

**1.2.16** *Site* is the land or premises on which the Project is located.

**1.2.17** *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall not include the Design Consultants retained by the Design-Builder.

**1.2.18** *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

**1.2.19** *Substantial Completion or Substantially Complete* means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes and shall include demonstration of operation of all controls.

**1.2.20** *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

## **Article 2**

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

#### **2.1 General Services.**

**2.1.1** Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder, which shall not be unreasonably withheld by the Owner. It is understood and accepted that Design-Builder does not plan to have a full-time, on-site Superintendent or Project Manager until amount of Work on site warrants that level of presence on site.

**2.1.2** Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule; (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution; (iii) whether health and safety issues exist in connection with the Work; (iv) status of Allowances to the extent provided for in the Agreement; and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

**2.1.3** Within seven (7) days of the execution of the Contract Price Amendment, Design-Builder will provide a schedule to Owner. The schedule shall include start and completion of the various stages of Work, including the critical path. The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

**2.1.4** The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

## **2.2 Design Professional Services.**

**2.2.1** Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

## **2.3 Standard of Care for Design Professional Services.**

**2.3.1** The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the applicable profession practicing under similar conditions at the same time and locality of the Project. If Design-Builder fails to meet the foregoing standard, Design-Builder will perform at its own cost, and without reimbursement from Owner, the professional engineering services necessary to correct errors and omissions which are caused by Design-Builder's failure to comply with above standard, and which are reported to Design-Builder within one year from the completion of Design-Builder's design professional services for the Project. The obligations and representations contained in this paragraph 2.3.1 are pled including, without limitation, all types of negligence. Owner's failure to properly operate and maintain the Project shall relieve Design-Builder of its liability for any damage caused in whole or in part by improper operation or maintenance. No warranty, express or implied, is included in this Agreement or regarding any drawing, specification, or other work product or instrument of service or oral or written representation by Design-Builder or its employees or Design Consultants.

## **2.4 Design Development Services.**

**2.4.1** Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim Design Submissions that Owner may wish to review, which interim Design Submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements.

**2.4.1.1** Interim design submissions shall be consistent with the Basis of Design

Documents, as the Basis of Design Documents may be changed or supplemented through the design process set forth in this Section 2.4.1. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or if applicable, previously submitted design submissions. Minutes of the design review meetings will be maintained by the Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in the Design-Builder's schedule.

**2.4.1.2** If incorporation of Owner's comments results in a design that is inconsistent with or otherwise gives rise to a change in Owner's Project Criteria, the Basis of Design Documents, the Contract Price and/or the Contract Time, Design-Builder shall provide notice thereof in accordance with Articles 9 and 10 of the General Conditions. Changes to the Basis of Design Documents, the Contract Price and/or the Contract Time, including those that are deemed minor changes, shall be processed in accordance with Article 9 of the General Conditions.

**2.4.2** Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim Design Submissions, as such submissions may have been modified in a design review meeting and recorded in the meeting minutes. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit approved Construction Documents to Owner prior to commencement of construction.

**2.4.3** Owner's review and approval of interim Design Submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim Design Submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner or its agents.

**2.4.4** To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim Design Submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

**2.4.5** Upon completion of design development services, the Design-Builder shall provide the Owner with drawings, outline specifications and other documents for written acceptance by the Owner. Owner shall provide written approval and / or comments within ten (10) working days of the receipt of the same.

## **2.5 Legal Requirements.**

**2.5.1** Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

**2.5.2** The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

## **2.6 Government Approvals and Permits.**

**2.6.1** Except as identified in Permit List Exhibit as Design-Builder's Responsibility, Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

**2.6.2** Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

## **2.7 Design-Builder's Construction Phase Services.**

**2.7.1** Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

**2.7.2** Design-Builder shall perform all construction activities efficiently and with the requisite experience, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

**2.7.3** Design-Builder shall employ only Subcontractors who are duly licensed (where applicable) and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance.

**2.7.4** Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any negligent acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

**2.7.5** Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate with such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption. However, Design-Builder is not responsible to schedule or coordinate Owner's separate contractors.

**2.7.6** Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes created by Design-Builder to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

## **2.8 Design-Builder's Responsibility for Project Safety.**

**2.8.1** Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting; (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site; and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative

with the necessary qualifications and experience to supervise the implementation and monitoring of the safety precautions and programs for the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable. The Safety Representative may be the Design-Builder's superintendent or construction manager.

**2.8.2** Design-Builder and Subcontractors shall comply in the performance of the Work with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the performance of the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

**2.8.3** Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters; and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work. Design-Builder is not responsible for any safety violations, acts, or omissions of the Owner or its separate contractors, consultants, and their subcontractors.

## **2.9 Design-Builder's Warranty.**

**2.9.1** For a period of one (1) year following Substantial Completion, Design-Builder warrants to Owner that the construction, including the materials furnished and/or installed by Design-Builder as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner once warranty period commences. Nothing in this warranty is intended to duplicate or limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

**2.9.2** The Design-Builder agrees to assign to the Owner at the time of Final Completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work. Owner agrees to look solely to such manufacturer(s) for remedies for defects in equipment and material, and not to Design-Builder to the extent covered by an express or implied warranty. During the one-year warranty period as defined in 2.9.1, Design-Builder's sole obligation is to provide reasonable assistance to Owner in obtaining relief under such manufacturer's warranties.

**2.9.3** The warranties and remedies provided in this Section 2.9 are in lieu of all other warranties, express or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose. CORRECTION OF A WARRANTY DEFECT AND COMPLIANCE BY DESIGN-BUILDER WITH ITS RELATED OBLIGATIONS IN RESPECT TO SUCH DEFECT IN THE MANNER AND WITHIN THE PERIOD OF TIME PROVIDED HEREIN SHALL CONSTITUTE COMPLETE FULFILLMENT OF ALL OF THE LIABILITIES OF DESIGN-BUILDER TO OWNER AND SHALL BE OWNER'S SOLE AND EXCLUSIVE REMEDY IN RESPECT TO SUCH DEFECTIVE SERVICE, DEFECTIVE EQUIPMENT OR DEFECTIVE WORK. All Design-Builder liability shall end upon expiration of the one-year warranty period, provided that Owner may continue to enforce any claim for which it has given notice prior to that date.

## **2.10 Correction of Defective Work.**

**2.10.1** To the extent not covered by a manufacturer's warranty under Section 2.9.2, Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

**2.10.2** Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

**2.10.3** The one-year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

## **Article 3**

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

#### **3.1 Duty to Cooperate.**

**3.1.1** Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

**3.1.2** Owner shall provide timely reviews and approvals of interim Design Submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

**3.1.3** Owner shall give Design-Builder timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents.

#### **3.2 Furnishing of Services and Information.**

**3.2.1** Unless expressly stated to the contrary in the Contract Documents, 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 the Work:

**3.2.1.1** 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 and enable Design-Builder to perform the Work;

**3.2.1.2** A legal description of the Site;

**3.2.1.3** To the extent available, record drawings of any existing structures at the Site; and



**3.2.1.4** To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

**3.2.2** Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

### **3.3 Financial Information.**

**3.3.1** At Design-Builder's written request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

**3.3.2** Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

### **3.4 Owner's Representative.**

**3.4.1** Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

### **3.5 Government Approvals and Permits.**

**3.5.1** Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees outside of those that are Design-Builder's responsibility as set forth in the Permit List Exhibit.

**3.5.2** Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

### **3.6 Owner's Separate Contractors.**

**3.6.1** Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with and coordinate their activities so as not to interfere with Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

**3.6.2** For any work occurring within the Project Site before Substantial Completion of the Work by Owner's separate contractors, Owner shall require its separate contractors to name Design-Builder as an additional insured for damage or liability covered by any of Owner's contractor's policies of insurance and to waive rights of subrogation against Owner, Design-Builder, and its Design Consultants.

**3.6.3** Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely affected and materially impacted by Owner's separate contractors.

## **Article 4**

### **Hazardous Conditions and Differing Site Conditions**

#### **4.1 Hazardous Conditions.**

**4.1.1** Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

**4.1.2** Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts and contractors to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless, (iii) remove, abate and remediate such Hazardous Conditions, Design-Builder is entitled to rely on the information and work of Owner's separate experts and contractors as being complete and accurate.

**4.1.3** Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless; and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

**4.1.4** Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

**4.1.5** To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.

**4.1.6** Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions brought to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions brought to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

#### **4.2 Differing Site Conditions.**

**4.2.1** Concealed or latent physical conditions or subsurface conditions at the Site that (i)

materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work, are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will 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 are adversely impacted by the Differing Site Condition.

**4.2.2** Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

## **Article 5**

### **Insurance and Bonds**

#### **5.1 Design-Builder's Insurance Requirements.**

**5.1.1** Design-Builder is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in the Agreement. Coverage shall be secured from insurance companies authorized to do business in the state in which the Project is located, and with a minimum AM Best rating set forth in the Agreement.

**5.1.2** Design-Builder's insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

**5.1.3** Prior to commencing any construction services hereunder, Design-Builder shall provide Owner with Acord certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents; and (ii) no insurance coverage will be canceled or renewal refused unless at least thirty (30) days' prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment is reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment.

**5.1.4** Design-Builder shall include Owner as an additional insured on the required Commercial General Liability and Automobile Liability policies. Nothing in this Agreement shall require the Design-Builder or its Design Consultants to name the Owner or others as additional insureds on any Professional Liability, Employer's Liability, or Workers Compensation policies.

#### **5.2 Owner's Liability Insurance.**

**5.2.1** Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance as set forth in Article 10 of the Agreement to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

#### **5.3 Owner's Property Insurance.**

**5.3.1** Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located property insurance for all existing property at the Project site and for the Work upon Substantial Completion, to the full insurable value of the property or Work, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Owner shall be the broadest

coverage commercially available, and shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants and Subcontractors of any tier. Such insurance shall include but not be limited to the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, windstorm, debris removal and other perils or causes of loss as called for in the Contract Documents. The property insurance shall include physical loss or damage to the existing property at the Project Site and the Work upon Substantial Completion, including materials and equipment at the Site. The Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.1.

**5.3.2** Prior to Design-Builder commencing any Work, Owner shall provide Design-Builder with certificates evidencing that (i) all Owner's insurance obligations required by the Contract Documents are in full force and in effect and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days' prior written notice is given to Design-Builder. Owner's property insurance shall not lapse or be canceled if Owner occupies a portion of the Work pursuant to Section 6.6.3 hereof. Owner shall provide Design-Builder with the necessary endorsements from the insurance company prior to occupying a portion of the Work.

**5.3.3** Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein or that could be covered by property insurance, including deductibles and self-insurance, and rights of subrogation, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts and Design-Builder shall be added as an additional insured on those policies of insurance, in the same manner, and to the same extent as Owner. The waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.

## **5.4 Bonds and Other Performance Security.**

**5.4.1** Owner requires Design-Builder to obtain performance and labor and material payment bonds to be in place prior to commencement of construction for Phase 2 Work at the Project Site.

**5.4.2** All bonds furnished by Design-Builder shall be on the Design-Builder's form. The surety shall be a company qualified and registered to conduct business in the state in which the Project is located.

# **Article 6**

## **Payment**

### **6.1 Schedule of Values.**

**6.1.1** Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work within twenty (20) days of execution of the Amendment. The Schedule of Values will (i) subdivide the Work into its respective parts; (ii) include values for all items comprising the Work; and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

**6.1.2** Owner will timely review and approve the schedule of values so as not to delay the submission of Design-Builder's first application for payment. Owner and Design-Builder shall timely resolve any differences so as not to delay Design-Builder's submission of its first application for payment.

### **6.2 Monthly Progress Payments.**

**6.2.1** On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.

**6.2.2** The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location; (ii) the equipment and materials are protected by suitable insurance; and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

**6.2.3** The Application for Payment shall constitute Design-Builder's representation that the Work described therein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon Design-Builder's receipt of payment.

### **6.3 Withholding of Payments.**

**6.3.1** On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

**6.3.2** Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

### **6.4 Right to Stop Work and Interest.**

**6.4.1** If Owner fails to pay timely Design-Builder any undisputed amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

### **6.5 Design-Builder's Payment Obligations.**

**6.5.1** Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

### **6.6 Substantial Completion.**

**6.6.1** Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract

Documents. The Owner and Design-Builder shall prepare a written list (Punch List) of all incomplete items of Work existing at the time, including deficiencies noted. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof; (ii) the remaining items of Work that have to be completed before final payment; (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities, risk of loss, and insurance pending final payment; and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

**6.6.2** Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, 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 the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

**6.6.3** Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above; (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project; and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

**6.6.4** If Owner occupies or attempts to use any portion of the Work prior to Substantial Completion, it agrees to do so at its own risk and shall sign any reasonable release and indemnity agreement required by Design-Builder as a condition of such use or occupancy.

## **6.7 Final Payment.**

**6.7.1** After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has achieved Final Completion.

**6.7.2** At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

**6.7.2.1** An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests, or that any existing liens have been bonded by Design-Builder;

**6.7.2.2** A general release executed by Design-Builder waiving, upon receipt and bank clearance of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;

**6.7.2.3** Consent of Design-Builder's surety, if any, to final payment;

**6.7.2.4** All operating manuals, warranties and other deliverables required by the Contract Documents; and

**6.7.2.5** Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

**6.7.3** Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests; and (ii) Design-Builder's failure to complete the Work consistent with the

Contract Documents, including defects appearing during the warranty period set forth in Paragraph 2.9.1.; and (iii) the terms of any special warranties required by the Contract Documents.

**6.7.4** Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the punch list if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.9 and 2.10 herein and shall not be a reason to withhold final payment from Design-Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

## **Article 7**

### **Indemnification**

#### **7.1 Patent and Copyright Infringement.**

**7.1.1** Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

**7.1.2** If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright; or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

**7.1.3** Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim, or proceeding based on infringement or violation of a patent or copyright (i) relating to a particular process or product of a particular manufacturer specified by Owner; (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work; (iii) arising out of information or data provided to Design-Builder by Owner; or (iv) relating to existing materials, equipment, or processes at the Project Site. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

**7.1.4** The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement of violation of any patent or copyright.

#### **7.2 Tax Claim Indemnification.**

**7.2.1** If, in accordance with Owner's direction, an exemption for all or part of the Work is claimed for taxes, Owner shall indemnify, defend and hold harmless Design-Builder from and against any liability, penalty, interest, fine, tax assessment, attorneys' fees or other expenses or costs incurred by Design-Builder as a result of any action taken by Design-Builder in accordance with Owner's directive. Owner shall furnish Design-Builder with any applicable tax exemption certificates necessary to obtain such exemption, upon which Design-Builder may rely.

### **7.3 Payment Claim Indemnification.**

**7.3.1** Provided that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within ten (10) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond or Owner's indemnity bond. If Design-Builder fails to do so within ten (10) days after receipt of written notice from Owner to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees. However, in the event that a lien is a result of disputed sums, the Owner shall give the Design-Builder reasonable time and opportunity to negotiate settlement with its Subcontractor prior to the Owner taking steps to discharge the lien directly.

### **7.4 Design-Builder's General Indemnification.**

**7.4.1** Subject to Section 10.5 and any limitations in the Agreement, Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and Owner, its officers, directors, and employees from and against losses, damages, and expenses, including reasonable attorneys' fees and expenses, for third-party bodily injury, sickness or death and third-party property damage or destruction (other than to the Work itself) but only to the extent caused by the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

**7.4.2** If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligations set forth in Sections 7.4.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

### **7.5 Owner's General Indemnification.**

**7.5.1** Owner, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Design-Builder and any of Design-Builder's officers, directors, and employees, from and against losses, damages, and expenses, including reasonable attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) but only to the extent caused by the negligent acts or omissions of Owner, Owner's separate contractors, anyone employed directly or indirectly by any of them, or anyone for whose acts any of them may be liable.

**7.5.2** If an employee of Owner or its separate contractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Design-Builder, its officers, directors, employees, or agents, Owner's indemnity obligation set forth in Section 7.5.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Owner, Owner's separate contractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

### **7.6 Limited Recourse.**

**7.6.1** None of the obligations set forth in this Agreement (on behalf of any party) constitute personal obligations of any natural persons who are the officers, shareholders, members, partners, employees, or agents of any party unless the natural person is expressly identified as a contracting party. All Parties to this Agreement shall not seek recourse against any natural person described



herein. This provision, however, shall not protect such natural persons from liability for willful misconduct, illegal acts or intentional violation of any duty of corporate loyalty.

## **Article 8**

### **Time**

#### **8.1 Obligation to Achieve the Contract Times.**

**8.1.1** Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement.

#### **8.2 Delays to the Work.**

**8.2.1** If Design-Builder is delayed on the critical path in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, Legal Requirements and Force Majeure Events.

**8.2.2** In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for Force Majeure Events unless otherwise provided in the Agreement.

**8.2.3** For the purposes of this Article 8, Force Majeure Events include not only adverse weather conditions, but the resulting impact on the Project after such weather condition ceases, such as mud, standing water, frozen soil or weather damage due to hail, high wind or other weather event.

## **Article 9**

### **Changes to the Contract Price and Time**

#### **9.1 Change Orders.**

**9.1.1** A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

**9.1.1.1** The scope of the change in the Work;

**9.1.1.2** The amount of the adjustment to the Contract Price; and

**9.1.1.3** The extent of the adjustment to the Contract Time(s).

**9.1.2** All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

**9.1.3** If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

## **9.2 Work Change Directives.**

**9.2.1** A Work Change Directive is a written order prepared and signed by Owner directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

**9.2.2** Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

## **9.3 Minor Changes in the Work.**

**9.3.1** Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

## **9.4 Contract Price Adjustments.**

**9.4.1** The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

**9.4.1.1** Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

**9.4.1.2** A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;

**9.4.1.3** Costs, fees and any other markups set forth in the Agreement; or

**9.4.1.4** If an increase or decrease cannot be agreed to as set forth in items 9.4.1.1 through 9.4.1.3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement.

**9.4.2** If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

**9.4.3** If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, including any Work Change Directives, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, or directs Design-Builder to proceed using a Work Change Directive, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed; and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform

the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services; and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

## **9.5 Emergencies.**

**9.5.1** In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

# **Article 10**

## **Contract Adjustments and Disputes**

### **10.1 Requests for Contract Adjustments and Relief.**

**10.1.1** If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed fourteen (14) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

### **10.2 Dispute Avoidance and Resolution.**

**10.2.1** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

**10.2.2** Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless Owner and Design-Builder mutually agree otherwise.

**10.2.3** If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, 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 dispute or disagreement, unless the Owner and Design-Builder mutually agree otherwise. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

**10.2.4** If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement 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. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation. Representatives of the parties with authority to resolve the dispute shall be present at any mediation.

**10.2.5** In the event that a dispute arises between the parties is submitted to mediation under this Section, the parties agree to split the mediator's and any filing fees equally. The mediation shall be held in Wichita, Kansas. In the event that it is necessary to file a lawsuit or demand arbitration in order to meet the requirements of a statute of limitations which is about to expire, the parties agree, nonetheless, to submit the dispute to mediation within thirty (30) days after the filing of such lawsuit or demand. Any agreements reached in mediation shall be enforceable as a settlement agreement.

### **10.3 Arbitration.**

**10.3.1** Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 above, shall be decided by arbitration. The number of arbitrators shall be one (1) and the place of the arbitration shall be Wichita, Kansas, unless the parties agree otherwise in writing.

**10.3.2** 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.

**10.3.3** Design-Builder and Owner expressly agree that any arbitration pursuant to this Section 10.3 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 Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.

**10.3.4** 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. A "prevailing party" is one who wins more than 75% of what it claimed was owed, or one who defends more than 75% of the opposing party's claim.

### **10.4 Duty to Continue Performance.**

**10.4.1** Subject to 11.3 and 11.4, and unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations for undisputed amounts to Design-Builder as well as any further amounts pursuant to Section 9.4.3, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

### **10.5 CONSEQUENTIAL DAMAGES.**

**10.5.1** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.5.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, ANTICIPATED

PROFITS, PRODUCTION LOSSES, BUSINESS, REPUTATION OR FINANCING, RETURN ON INVESTMENT, CUSTOMER COSTS, OR INCREASED COSTS OF OPERATION.

**10.5.2** The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages or lost early completion bonus, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner or reward Design-Builder for some damages that might otherwise be deemed to be consequential.

## **Article 11**

### **Stop Work and Termination**

#### **11.1 Owner's Right to Stop Work.**

**11.1.1** Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

**11.1.2** Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of the Work by Owner.

#### **11.2 Owner's Right to Perform and Terminate for Cause.**

**11.2.1** If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

**11.2.2** Upon the occurrence of an event set forth in Section 11.2.1 above, Owner shall provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner shall give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

**11.2.3** Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, and planned to be turned-over as part of the Work or planned for consumption of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, Design-Builder will be entitled to be paid for Work performed and any materials and equipment delivered to the site prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner subject to Section 12.1

of the Agreement. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

**11.2.4** If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Section 11.6 hereof.

**11.2.5** Design-Builder shall not be liable for the Work (including, but not limited to equipment installation) that is incomplete due to any termination under this Agreement, including without limitation, any errors, omissions or defects in such designs or Work which Design-Builder is prevented from correcting and completing due to any termination.

**11.2.6** Owner shall pay Design-Builder as a Cost of the Work to make reasonably safe any incomplete Work or Site conditions left open due to any termination under this Agreement. Thereafter, Owner assumes full risk and control of the Site.

**11.2.7** Any costs incurred by Design-Builder related to materials and equipment manufactured for the Work that is not delivered to the Site prior to termination, and where the Design-Builder is unable to cancel the manufacture and delivery of such materials and equipment, shall be the responsibility of Owner. Any cancellation and/or restocking costs for materials and equipment shall also be the responsibility of the Owner.

### **11.3 Design-Builder's Right to Stop Work.**

**11.3.1** Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

**11.3.1.1** Owner's failure to provide financial assurances as required under Section 3.3 hereof; or

**11.3.1.2** Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

**11.3.2** Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. Design-Builder shall not stop work unless it provides such written notice and Owner has failed to cure the reason for default within the seven (7) day cure period. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

### **11.4 Design-Builder's Right to Terminate for Cause.**

**11.4.1** Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

**11.4.1.1** The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

**11.4.1.2** Owner's failure to provide Design-Builder with any information, permits or

approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

**11.4.1.3** Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

**11.4.2** Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder shall provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder shall give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

## **11.5 Bankruptcy of Owner or Design-Builder.**

**11.5.1** If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

**11.5.1.1** The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

**11.5.1.2** The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

**11.5.2** The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

## **11.6 Termination for Convenience.**

**11.6.1** Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

**11.6.1.1** All Work executed and for proven loss, cost or expense in connection with the Work;

**11.6.1.2** The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with

Subcontractors and Design Consultants; and

**11.6.1.3** The amount set forth in Article 8 of the Agreement.

**11.6.2** If Owner terminates this Agreement pursuant to Section 11.6.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 of the Agreement. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4 of the Agreement.

## **Article 12**

### **Electronic Data**

#### **12.1 Electronic Data.**

**12.1.1** The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

#### **12.2 Transmission of Electronic Data.**

**12.2.1** Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

**12.2.2** Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

**12.2.3** By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

#### **12.3 Electronic Data Protocol.**

**12.3.1** The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

**12.3.2** Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.



**12.3.3** The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

**12.3.4** The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

## **Article 13**

### **Miscellaneous**

#### **13.1 Confidential Information.**

**13.1.1** 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.

#### **13.2 Assignment.**

**13.2.1** Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

#### **13.3 Successorship.**

**13.3.1** Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

#### **13.4 Governing Law.**

**13.4.1** The Agreement and all Contract Documents shall be governed by the laws of the location of the Project, without giving effect to its conflict of law principles. Arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C sec 1, et seq.

#### **13.5 Severability.**

**13.5.1** 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, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision 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.

### **13.6 No Waiver.**

**13.6.1** The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

### **13.7 Headings.**

**13.7.1** The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

### **13.8 Notice.**

**13.8.1** 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; (iii) if transmitted by facsimile, by the time stated in a machine-generated confirmation that notice was received at the facsimile number of the intended recipient; or (iv) by electronic mail, by the time frame stated in the email-generated confirmation that notice was received by the email of the intended recipient.

### **13.9 Amendments.**

**13.9.1** 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.

### **13.10 No Third-Party Beneficiary.**

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# Arkansas City Water Treatment Facility Greensand Improvements Project

## Exhibit B – Phase 1 Scope of Work:

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### General Scope Summary

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The City of Arkansas City, Kansas (Owner) intends to make improvements to its existing water treatment plant (WTP) with the addition of a new Greensand filter and associated piping, valves and controls using a progressive design-build (PDB) approach consisting of two phases. Phase 1 consists of project planning, preliminary design, preconstruction services, and development of a Phase 2 proposal for the final design and construction of the improvements as defined in Phase 1. This Scope of Services includes Phase 1 activities only.

### Overall Project Scope Summary

The scope of work may be modified based upon new information or design considerations developed in workshops identified in Section 1.2 of this document. Changes to the scope may result in changes to project schedule and/or price. The scope of work includes the following components:

#### Phase 1 – Project Planning, Preliminary Design, Pricing Development, and Preconstruction Services

- Greensand Filter Control System Evaluation
- Preliminary Design
  - Drawings and Specifications
- Preconstruction Services
  - Lump Sum Pricing Development
  - Permit Development

#### Phase 2 – Detailed Design and Construction

- Scope of work for Phase 2 activities will be developed as part of Phase 1
- Detailed Design
- Procurement
- Construction

- Startup & Commissioning

## 1.0 Summary of Phase 1 Services Provided by Design-Builder

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### 1.1 Project Management

General activities and deliverables from this task include:

- 1.1.1** Project management of Design-Builder's staff, preparation and submission of monthly project status reports, and monthly invoicing.
- 1.1.2** Lead a Project Kick-Off Meeting with the Owner and Owner's Representative to review project objectives, work completed by others, communication approach, decision-making processes, and the schedule for project completion.
- 1.1.3** Development of a Project Management Plan, including aligning project communication and reporting with Owner standards and needs.
- 1.1.4** Project will utilize Teams and Procore as the document management and collaboration platform.
- 1.1.5** Weekly project calls (virtual meeting) and monthly in-person meetings with the Owner for the duration of this phase as described in Section 3.0. This number may increase/decrease dependent upon the Phase 1 status as needed.
- 1.1.6** Regulatory Coordination, including communication with KDHE regarding project progress and conformance to KDHE and SRF Program requirements.
- 1.1.7** Establishment and implementation of a quality assurance/quality control plan for Phase 1 activities.
- 1.1.9** Attend Owner Council meetings to support Owner staff with project updates as requested by the Owner.

### 1.2 Design Workshops

The Design-Builder will lead a series of two planning workshops and develop a consensus on the basis of design. These workshops are tentatively organized as:

### **1.2.1 Workshop 1 – Project Definition/Conceptual Design Review**

### **1.2.2 Workshop 2 – Preliminary Design Review**

Based on the results of the workshops, issued for bid drawings and specifications will be drafted to obtain proposals from greensand filter suppliers.

## **1.3 Preliminary Design**

### **1.3.1 Greensand Filter Control System Evaluation**

1.3.1.1 Identify applicable Greensand filter suppliers, request preliminary information, and evaluate viability of integration with existing controls system.

1.3.1.2 Evaluate impacts of a new Greensand filter control system on the existing Greensand filters.

### **1.3.2 Preliminary Design**

1.3.2.1 Develop preliminary design drawings for the following:

1.3.2.1.1 Process Flow Diagram

1.3.2.1.2 Hydraulic Profile

1.3.2.1.3 Greensand Filter P&ID

1.3.2.1.4 General arrangement of all process, electrical, and structural improvements for the Project

1.3.2.1.5 Network drawing

1.3.2.2 Develop preliminary design line-item specifications (CSI format).

### **1.3.3 Preconstruction Services**

1.3.3.1 Implementation Schedule

1.3.3.1.1 Design-Builder to develop a final project implementation schedule.

1.3.3.2 Construction Input

1.3.3.2.1 Construction input will be incorporated into the preliminary design

Deliverables to promote safety, cost-effectiveness, and scheduling efficiency as the design is developed from concept to implementation.

1.3.3.2.2 Design-Builder will provide estimating support to inform design and value-based decision making.

1.3.3.3 Lump Sum Pricing Development. Design-Builder to develop a stipulated price for the Project described to be used in the Design-Build Agreement for approval by the City. Based on the preliminary design and Owner's input and concurrence with design elements, Design-Builder will solicit competitive proposals for Owner's review and approval prior to incorporating into the stipulated price, for the following:

1.3.3.3.1 Major Subcontractors:

- A. Electrical power and distribution
- B. Instrumentation and controls

1.3.3.3.2 Major Process Equipment

- A. Greensand filter

1.3.3.3.3 Development of a stipulated price for the Project described to be included in the Phase 2 Design-Build Agreement upon approval of Owner.

1.3.3.4 Permit Development

1.3.3.4.1 Assess the Project permitting requirements and develop applications as required.

## **1.4 Deliverables at Phase 1 Milestone**

**1.4.1** Preliminary Design Drawings and Specifications

**1.4.2** Phase 2 Cost Proposal

## 2.0 Professional Services

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### 2.1 Phase 1 Services

**2.1.1** For Phase 1 services in Section 1.0 as described herein, a total lump sum of one hundred and twelve thousand dollars (\$112,000.00).

**2.1.2** Additional professional services will be provided at an agreed-to cost negotiated by Design-Builder and the Owner.

## 3.0 Schedule

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To support the Owner towards their capital project delivery goals, the Design-Builder will complete the Phase 1 scope of work described herein on or before 112 calendar days (16 weeks) following a Notice to Proceed.



## 4.0 Owner Responsibilities

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4.1 Provide requested flow and water quality data for the Project to the Design-Builder within two weeks of a Notice to Proceed.

4.2 Provide prompt review and response to RFIs issued by the Design-Builder.

4.3 Make available to the Design-Builder appropriate Owner staff to answer questions, attend meetings, and provide opinions and preferences as needed for design.

4.4 Design-Builder will be entitled to rely on the following information provided by the Owner without independent verification:

4.4.1 Drawings and records of existing facilities.

4.4.2 Relevant pre-existing studies, reports, and information prepared by or for the Owner.

4.5 Where new Work will interface with existing Owner facilities, Owner will review the condition of such interface locations to assure remaining Owner infrastructure is in adequate capacity and/or condition to support project performance. Where deficiencies are located by Owner, Owner will notify Design-Builder and be responsible for remedying the deficiencies. Owner may choose to request Design-Builder to aid in the remedy.



## **EXHIBIT C**

# **KDHE SRF CONTRACT PROVISIONS FOR CONSULTANT CONTRACTS**

STATE OF KANSAS  
ACT AGAINST DISCRIMINATION  
CONTRACT PROVISION CERTIFICATION FORM

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, or ancestry;
- (2) In all solicitations or advertisements for employees, the contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Commission;
- (3) If the contractor fails to comply with the manner in which the contractor reports to the Commission in accordance with the provisions of K.S.A.44-1031 and amendments thereto, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated, or suspended, in whole or in part, by the contracting agency;
- (4) If the contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole, or in part, by the contracting agency;
- (5) The contractor shall include the provisions of (1) through (4) in every applicable subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

PROJECT/CONTRACT NAME AND NO.

MUNICIPALITY Valley Center

CONTRACTOR'S  
SIGNATURE

TITLE Authorized Representative

SRF PROJECT NO. 3202

DATE 9/30/25

3202  
KDHE PROJECT #

## **CERTIFICATION REGARDING LOBBYING**

### **CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Travis Stryker, Authorized Representative  
\_\_\_\_\_  
Typed Name & Title of Authorized Representative

 9/30/2025  
\_\_\_\_\_  
Signature and Date of Authorized Representative

## **Contract Provisions for Equal Opportunity**

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
2. The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States." [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

### **Contract Provisions for the Kansas Act Against Discrimination**

(a) Except as provided by subsection (c), every contractor for or on behalf of the State and any county or municipality or other political subdivision of the State, or any agency of or authority created by any of the foregoing, for the construction, alteration, or repair of any public building or public work or for the acquisition of materials, equipment, supplies, or services shall contain provisions by which the contractor agrees that:

- (1) The contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, or ancestry;
- (2) In all solicitations or advertisements for employees, the contractor shall include the phrase “equal opportunity employer” or a similar phrase to be approved by the Commission;
- (3) If the contractor fails to comply with the manner in which the contractor reports to the Commission in accordance with the provisions of K.S.A.44-1031 and amendments thereto, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated, or suspended, in whole or in part, by the contracting agency;
- (4) If the contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole, or in part, by the contracting agency;
- (5) The contractor shall include the provisions of subsections (a)(1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

(b) The Kansas Human Rights Commission shall not be prevented hereby from requiring reports of contractors found to be not in compliance with the Kansas Act Against Discrimination.

(c) The provisions of this section shall not apply to a contract entered into by a contractor:

- (1) Who employs fewer than four employees during the term of such contract; or
- (2) Whose contracts with the governmental entity letting such contract cumulatively total \$5,000 or less during the fiscal year of such governmental entity.

### **Contract Provisions for Restrictions on Lobbying**

The Contractor agrees to comply with Title 40 CRF Part 34, New Restrictions on Lobbying. **A Certification form must be submitted with the bid documents.**

### **Contract Provisions for the Trafficking Victims Protection Act of 2000**

The Contractor, its employees, sub-contractors, and sub-contractors employees under any SRF Loan Agreement, may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or sub-awards under the award.

### **Contract Provisions for Suspension and Debarment**

The Contractor certifies that it is not suspended or debarred from participating in federal assistance and benefit programs and further agrees to fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled “Responsibilities of Participants Regarding Transactions.” The Contractor must ensure that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled “Covered Transactions,” includes a term or condition requiring compliance with Subpart C. The Contractor agrees that failing to disclose the required information in 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

### **Contract Provisions for Non Discrimination**

The contractor must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and a variety of program-specific statutes with nondiscrimination requirements.

Other civil rights laws may impose additional requirements on the contractor. These laws include, but are not limited to, Title VII of the Civil Rights Act of 1964 (prohibiting race, color, national origin, religion, and sex discrimination in employment), the Americans with Disabilities Act (prohibiting disability discrimination in employment and in services provided by State and local governments, businesses, and non-profit agencies), and the Fair Housing Act (prohibiting race, color, national origin, age, family status, and disability discrimination in housing), as well as any other applicable civil rights laws.

### **Contract Provisions for Non Segregated Facilities**

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensuring that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. This obligation extends to all contracts containing the equal opportunity clause regardless of the amount of the contract. The term “facilities,” as used in this section, means waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees; *Provided*, That separate or single-user restrooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.