



ORIGINAL

## 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.*

This **AGREEMENT** is made as of the Eighteenth (18<sup>th</sup>) day of February in  
the year of 2022, by and between the following parties, for services in connection with the Project identified below:

**OWNER:**

City of Republic  
204 North Main Avenue  
Republic, MO 65738

**DESIGN-BUILDER:**

Burns & McDonnell Engineering Company, Inc.  
9400 Ward Parkway  
Kansas City, MO 64114

**PROJECT:**

Wastewater Treatment Facility Expansion Project

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

## **Article 1**

### **General**

- 1.1 **Duty to Cooperate.** Owner and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith to permit each party to realize the benefits afforded under this Agreement.
- 1.2 **Definitions.** Terms, words and phrases used in this Agreement shall have the meanings given them in DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition) ("General Conditions of Contract").
- 1.3 **Design Services.** Design-Builder shall, consistent with applicable state licensing laws, provide design services, including architectural, engineering, and other design professional services required by this Agreement. Such design services shall be provided through qualified, licensed design professionals who are either (i) employed by Design-Builder, or (ii) procured by Design-Builder from independent sources. Nothing in this Agreement is intended to create any legal or contractual relationship between Owner and any independent design professional.

**Target Price.** The Parties have jointly established an estimated budget for the Work of the Project in the amount of seventy five million dollars (\$75,000,000.00) ("Target Price") to be used for planning purposes during Phase 1 of the Project under this Agreement.

The parties will endeavor to develop the Work scope during Phase 1 with the goal of the Phase 2 Contract Price being at or below the Target Price. The Design-Builder will provide updates to the Target Price after major elements of the design is completed and as project decisions are made by the Owner that may impact the Target Price.

## **Article 2**

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

- 2.1 **General Services.**
  - 2.1.1 Owner shall provide Design-Builder with Owner's project criteria and preferences during Phase 1 and as comments to design documents or other written means.
- 2.2 **Phased Services.**
  - 2.2.1 **Phase 1 Services.** Design-Builder shall perform the services of design, pricing, and other services for the Project based on Owner's project criteria and preferences, in accordance with Section 2.1 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 2.3 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 7.0 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).
  - 2.2.2 **Phase 2 Services.** Design-Builder's Phase 2 services shall 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 Phase 2 Contract Price Amendment. Upon receipt of Design-Builder's proposed Contract Price for Phase 2, Owner may proceed as set forth in Article 2.3.

2.3 Proposal. Upon completion of the Phase 1 Services and any other Basis of Design Documents upon which the parties may agree, 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, which will be a Lump Sum / Fixed Price.

2.3.1 The Proposal shall include the following unless the parties mutually agree otherwise:

2.3.1.1 The Contract Price.

2.3.1.2 The Basis of Design Documents, which are set forth in detail and are attached to the Proposal;

2.3.1.3 A list of the assumptions, clarifications, and exclusions 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;

2.3.1.4 The Scheduled Substantial Completion Date upon which the Proposal is based, to the extent said date has not already been established under Section 6.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based and a Project Schedule for the Work;

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

2.3.1.6 If applicable, a schedule of alternate prices;

2.3.1.7 If applicable, a schedule of unit prices;

2.3.1.8 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);

2.3.1.9 Not Used;

2.3.1.10 Not Used;

2.3.1.11 The time limit for acceptance of the Proposal; and

2.3.1.12 An permit and easement list, a list detailing the individual permits and governmental approvals that Owner and Design-Builder will each bear responsibility to obtain (Exhibit H).

2.3.2 Review and Adjustment to Proposal.

2.3.2.1 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.

**2.3.2.3 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 (Phase 2 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 Phase 2 Contract Price Amendment, as it may be revised.

**2.3.2.4 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 2.3.2.3 above;

ii. Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 7.1.2 hereof without a Contract Price, in which case all references in this Agreement to the Contract Price shall not be applicable; or

iii. Owner may terminate this Agreement for convenience in accordance with Article 9 hereof; provided, however, in this event, Design-Builder shall not be entitled to the payment provided for in Section 9.2 hereof.

If Owner fails to exercise any of the above options, Design-Builder shall have the right to (a) 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 9.2 hereof, or (b) may give written notice to Owner that it considers this Agreement completed. If Owner fails to exercise any of the options under Section 2.3.2.4 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 2.3.2.4(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 3**

### **Contract Documents**

**3.1** The Contract Documents are comprised of the following:

**3.1.1** All written modifications, amendments, minor changes, and Change Orders to this Agreement issued in accordance with the *General Conditions of Contract Agreement Between Owner and Design-Builder* (2010 Edition) ("General Conditions of Contract");

**3.1.2** The Phase 2 Contract Price Amendment referenced in Section 2.3.2.3 herein or the Proposal accepted by Owner in accordance with Section 2.3 herein.



3.1.3 This Agreement, including all exhibits set forth in Article 12; and

3.1.4 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract.

## **Article 4**

### **Interpretation and Intent**

4.1 Design-Builder and Owner, at the time of acceptance of the Proposal by Owner in accordance with Section 2.3 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.

4.2 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 3.1 hereof, except to the extent the Contract Documents contradict the "Special Provisions" set forth in § 12.3 herein, in which event the "Special Provisions" shall govern.

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

4.4 If Owner's provides design specifications for use by Design-Builder for the Project: (a) Design-Builder is entitled to reasonably rely on the accuracy of the information represented in the design specifications and their compatibility with other information provided by Owner, including any design performance specifications; and (b) Design-Builder shall be entitled 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 such inaccurate design specification.

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

4.6 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 5**

### **Ownership of Work Product**

5.1 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 5.2 through 5.5 below.

5.2 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 the Owner's obligation to provide the indemnity set forth in Section 5.5 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.

5.3 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 9 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 the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 5.2 above, conditioned on the following:

5.3.1 Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party, and on the Owner's obligation to provide the indemnity set forth in Section 5.5 herein, and

5.3.2 In the event Owner resumes the Project through its employees, agents, or third parties and in so doing uses the Work Product pursuant to its rights set forth above in Sections 5.2 and 5.3, Owner agrees to pay Design-Builder an additional sum equal to the reasonable value of the Work Product it uses in so doing.

5.4 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 5.2 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 5.3 above.

5.5 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 5, 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.

5.6 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.

5.7 The Owner shall not utilize the Documents, designs, or specifications furnished by Design-Builder to solicit bids or obtain negotiated prices from other contractors, unless agreed to in writing by Design-Builder and Owner during Phase 1.

5.8 This Article 5 shall survive any termination of this Agreement by either Party.

## **Article 6**

### **Contract Time**

6.1 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. Phase 1 services are anticipated to be completed 720 days from Notice to Proceed. 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 Phase 2 Contract Price Amendment is amended to this Agreement unless the parties mutually agree otherwise in writing. Unless extended by mutual amendment, this Agreement expires on December 31, 2025.

6.2 Substantial Completion and Final Completion.

6.2.1 Substantial Completion of the entire Work shall be achieved no later than (TBD) calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

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

6.2.2 Not used.

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

6.2.4 All of the dates set forth in this Article 6 ("Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

6.2.5 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, or by tenants, tenants' separate contractors or subcontractors employed by the tenant, 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.

6.2.6 Where the Design-Builder reasonably establishes that delays as set forth above or that are caused by shortage of labor, strikes, lockout, tornado, flood, pandemic, wind damage, fire, unusual delay in transportation, adverse weather conditions beyond the quantity of lost days anticipated in the Project Schedule per Exhibit "E" 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 may be entitled to recover all extra costs and an appropriate extension of the Contract Time, consistent with Article 9 of the General Conditions. 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.

6.2.7 For purposes of determining weather delays, the parties shall use Exhibit "E," Anticipated Lost Days to Inclement / Adverse Weather. The days shown on Exhibit "E" 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 two (2) 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. On a monthly basis, Design-Builder will report weather days encountered to Owner.

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

6.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date in Section 6.2.1 above, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by fourteen (14) days after the Scheduled Substantial Completion Date (the "LD Date"), Design-Builder shall pay Owner One thousand Dollars (\$ 1,000.00) as liquidated damages for each day that Substantial Completion extends beyond the LD Date.

6.5 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.

6.6 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 eighty thousand Dollars (\$180,000.00).

6.7 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 may 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.

## **Article 7**

### **Contract Price**

7.1 Contract Price.

7.1.1 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of seven million three hundred eighty nine thousand eight hundred Dollars (\$7,389,800) 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.

7.1.2 For Phase 2 Services, Owner shall pay Design-Builder in accordance with Article 7 of the General Conditions of Contract a contract price ("Contract Price") equal to the Lump Sum / Fixed Price amount set forth in the Phase 2 Contract Price Amendment, subject to adjustments made in accordance with the General Conditions of Contract.

7.2 Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

7.3 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:

7.3.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of ten percent (10.0%) 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 two percent (2.0%).

7.3.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include: An amount equal to the sum of: (a) ten percent (10.0%) applied to the direct costs of the net reduction.

7.4 Section Not Used.

7.5 Section Not Used.

7.6 Section Not Used.

7.7 Allowance Items and Allowance Values.

7.7.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the Phase 2 Contract Price Amendment or the Proposal.

7.7.2 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.

7.7.3 No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed 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.

7.7.4 The Allowance Value includes the direct cost of labor, materials, equipment, transportation, taxes, and insurance associated with the applicable Allowance Item, along with the Design-Builder's overhead and fee.

7.7.5 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 7.7.4. The amount of the Change Order shall reflect the difference between actual costs and Design-Builder's overhead and fee incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

## **Article 8**

### **Procedure for Payment**

- 8.1 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: Design-Builder will submit an Application for Payment to Owner each month based on work completed during the period since the last Application for Payment was submitted.
- 8.2 Contract Price Progress Payments.
- 8.2.1 Design-Builder shall submit to Owner on the Fifth (5<sup>th</sup>) 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.
- 8.2.2 Owner shall make payment within ten (10) 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.
- 8.3 Retainage on Progress Payments.
- 8.3.1 No retainage will be held for Phase 1. For Phase 2, Owner will retain five percent (5.0%) of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been completed by Design-Builder by cost, and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional retention amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.
- 8.3.2 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.
- 8.4 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 ten (10) days after Owner's receipt of the Final Application for Payment, provided that: (a) Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.
- 8.5 Interest. Payments due and unpaid by Owner to Design-Builder, which are withheld for reasons not constituting good faith, 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. In any legal action or arbitration by Design-Builder to recover amounts due and not paid, Design-Builder shall be permitted to recover its attorney's fees and costs from Owner.

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

## **Article 9**

### **Termination for Convenience**

9.1 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:

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

9.1.2 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

9.1.3 Overhead and profit in the amount of ten percent (10.0%) on the sum of items 9.1.1 and 9.1.2 above.

9.2 In addition to the amounts set forth in Section 9.1 above, Design-Builder shall be entitled to receive one of the following as applicable:

9.2.1 If Owner terminates this Agreement after accepting the Phase 2 Proposal and prior to commencement of construction, Design-Builder shall be paid in full for the Phase 1 services already rendered, plus three percent (3.0%) of the remaining balance of the Contract Price.

9.2.2 If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid five percent (5.0%) of the remaining balance of the Contract Price.

9.3 If Owner terminates this Agreement pursuant to Section 9.1 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 5.3 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 5.

## **Article 10**

### **Representatives of the Parties**

#### **10.1 Owner's Representatives.**

10.1.1 Owner designates the individual listed below as its Senior Representative ("Owner 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: David Cameron  
Title: City Administrator  
Address: 213 N. Main Ave  
Republic, MO 65738  
Telephone No.: 417-732-3112  
E-mail.: DCameron@republicmo.com

10.1.2 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: Andrew Nelson  
Title: Director, Public Works & Community Development  
Address: 213 N. Main Ave  
Republic, MO 65738  
Telephone No.: 417-732-3546  
E-mail.: anelson@republicmo.com

10.1.3 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.

#### **10.2 Design-Builder's Representatives.**

10.2.1 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: Zach Herrington  
Title: Project Director  
Address: 9400 Ward Parkway  
Kansas City, MO 64114  
Telephone No.: 303-594-3180  
E-mail.: zherrington@burnsmcd.com



10.2.2 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: Bryan Canzoneri  
Title: Design-Build Project Manager  
Address: 9400 Ward Parkway  
Kansas City, MO 64114  
Telephone No.: 419-463-1073  
E-mail.: bcanzoneri@burnsmcd.com

## **Article 11**

### **Bonds and Insurance**

11.1 Insurance. Design-Builder and Owner shall procure or provide the insurance coverages set forth below and in accordance with Article 5 of the General Conditions of Contract. Design-Builder shall include Owner as an additional insured on the Commercial General Liability, Automobile Liability, Umbrella/Excess Liability and Builder's Risk insurance policies. The Commercial General Liability, Automobile Liability, Umbrella/Excess Liability and Builder's Risk insurance policies shall include a waiver of subrogation in favor of Owner.

**TYPE:**

1. *Worker's Compensation Insurance*

**REQUIRED LIMITS:**

*Statutory Amount*

2. *Employer's Liability*

*\$500,000 by disease,  
\$500,000 each accident,  
\$500,000 each employee by  
disease*

3. *Commercial General Liability (CGL)*

<i>General Aggregate:</i>	<i>\$1,000,000</i>
<i>Completed Operations Aggregate:</i>	<i>\$1,000,000</i>
<i>Limit Per Occurrence:</i>	<i>\$1,000,000</i>

4. *Automobile Liability: (Hired, Owned and Non-owned Included)*

*Combined Single Limit per Accident*

*\$1,000,000*

5. *Builder's Risk*

*Contract/Completed Value of Project Work*

At the time of placement prior to mobilization to the site and/or construction start whichever is earlier, Design-Builder will provide an all-risk Builder's Risk insurance policy insuring the Work during construction at the Project site with a limit equal to the Contract/Completed Value of Project Work, until Substantial Completion of the Work. This policy will include the Owner, subcontractors of every tier as additional insureds and include the suppliers, vendors, manufacturers, architects, and engineers as additional insureds as their interest appears while on the Project site. This policy shall include a waiver of subrogation in favor of Owner.

6. *Umbrella/Excess Liability Policy*

*\$1,000,000 per occurrence and in the aggregate*

11.2 Bonds and Other Performance Security. Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security for Phase 2 services:

Performance Bond.

☒ Required ☐ Not Required

Payment Bond.

☒ Required ☐ Not Required

11.2.1 If bonds are provided, Change Order amounts will also need to include bond premium as an additional cost.

## **Article 12**

### **Other Provisions**

#### 12.1 General Exclusions

12.1.1 Owner acknowledges that if conditions at the site differ from those shown the survey and soils report, such costs shall be reimbursable outside of the Contract Price. Design-Builder's Contract Price is premised on the assumptions, clarifications & exclusions shown in Exhibit "C".

12.1.3 Exclusions from the scope of Work are set out in Exhibit "C". In addition, excluded is any storm water retention pond, chemical or environmental assessment or cleanup, or oil or fuel tank installation or preparation.

#### 12.2 Statutory Notices

##### NOTICE TO OWNER

FAILURE OF THIS CONTRACTOR TO PAY THOSE PERSONS SUPPLYING MATERIAL OR SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN THE FILING OF A MECHANIC'S LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO CHAPTER 429, RSMO. TO AVOID THIS RESULT YOU MAY ASK THIS CONTRACTOR FOR "LIEN WAIVERS" FROM ALL PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOUR PAYING FOR LABOR AND MATERIAL TWICE.

#### 12.3 Special Provisions

12.3.1. Design-Builder acknowledges that Owner's Representative is limited by applicable law to authorize increases in the Contract Price, to the maximum amount of project funding that has been approved by City Council.

12.3.2 Supplemental and Additional Services: Should the Owner desire or need any supplemental and/or additional services associated with the Project, Owner shall have the right to use their own employee or Owner's separate contractors, or enter into a mutually agreeable addendum/change order

with the Design-Builder for any supplemental or additional services. Such decisions on any supplemental or additional services shall be at the sole discretion of the City, however, Design-Builder shall not be required to perform any supplemental or additional services without agreement between the Parties on scope, schedule, and price.

12.3.3 Jurisdiction and Venue: This Agreement shall be governed by the laws of the State of Missouri and venue as to any disputes related to this Agreement shall be in the Circuit Court of Greene County, Missouri.

12.3.4 Arbitration: Nothing in the Agreement shall be construed to bind the parties to arbitration or waive the right to resolve disputes through litigation nor limit the jurisdiction of the State of Missouri.

12.3.5 Agency: Nothing in this agreement permits the Design-Builder to act as an agent for the Owner. Owner permits Design-Builder to coordinate and communicate with authorities having jurisdiction associated with the project for the purposes of obtaining permitting approvals.

12.3.6 Sunshine Law: Nothing in this agreement shall be construed to be in violation of Missouri law regarding public records.

12.3.7 Independent Contractor: The Parties to this Agreement are separate and independent from each other. This Agreement shall not be construed as creating any type of joint venture or partnership between the Parties. This Agreement shall not be construed as an agreement for the benefit of any third party, including, but not limited to, that this Agreement does not create any employment relationship of any kind, including any between any individual who provides services under this Agreement, and no such individual shall be entitled to wages or employment benefits or compensation of any kind, including any pursuant to any employment law liability theory, such as, but not limited to: the Fair Wage and Labor Standards Act of 1938, and as subsequently amended, all Missouri statutory laws, including Workers' Compensation, or common law.

12.3.8 City Benefits: Design-Builder and the individuals through whom it provides services contemplated by the Agreement are not employees of the City and will not be entitled to any of the benefits established for the employees of the City, including that no part of this Agreement will be construed to require coverage of such individuals by the City's workers' compensation plan or carrier.

12.3.9 Conflict of Interest: No salaried officer or employee of the City, and no elected official or member of the City Council, shall have a direct financial interest, in this Agreement, to the extent known by the Design-Builder.

12.3.10 E-Verify: Pursuant to Section 285.500, RSMo., et seq., including §285.530.2, RSMo., and as amended, and consistent with all applicable federal, state, and municipal laws, Design-Builder will provide sworn affidavit necessary to show enrollment in a federal work authorization program; in addition to an affidavit that the Design-Builder does not knowingly employ any person who is an unauthorized alien in connection with the performance of this Agreement.

12.3.11 Proof of Lawful Presence: Pursuant to Section 208.009 RSMo, and consistent with all applicable federal, state, and municipal laws, Design-Builder, upon written request will provide the necessary evidence to City to show that no alien unlawfully present shall receive any public benefit under this Agreement.

12.3.12 Certificates of Insurance: All insurance required under the Agreement shall be filed with the City within ten (10) days after the effective date of the Agreement and prior to the start of Work, by providing the City with a Certificate of Insurance, including evidence of the required endorsements hereunder or the policies. All insurance policies shall provide thirty (30) days written notice to be given by

the insurance company in question prior to cancellation of such insurance. Such notices shall be mailed, certified mail, return receipt requested, to:

City of Republic, 213 North Main, Republic, MO 65738

Design-Builder's Builder's Risk insurance is not required to be provided until a Phase 2 amendment for construction is fully executed.

**12.3.13 Occupational Licenses:** Unless exempted under State and Local laws, the Design-Builder shall be authorized to do business within the State of Missouri and shall obtain and maintain an occupational license with the City of Republic, Missouri. The cost for such licensing shall be borne by the Design-Builder.

**12.3.14 Discrimination:** The Parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of race, color, religion, gender, age, marital status, disability, political or religious beliefs, national or ethnic origin.

**12.3.15 Execution:** The Parties agree that signatures transmitted by facsimile or scanned and emailed shall have the legal effect of original signatures. In addition to facsimile or scanned and email signatures, this Agreement may be executed by the Parties in accordance with the applicable version of the Uniform Electronic Transactions Act ("UETA") and the Electronic Signatures in Global and National Commerce Act ("ESIGN"). The Parties hereto agree to conduct transactions by electronic means and hereby affirmatively consent to use electronic records to memorialize and execute this Agreement and any alterations thereto. At the request of any party, the Parties shall promptly exchange executed original counterparts of this Agreement or any amendment. Design-Builder expressly acknowledges that, regardless of the method of delivery of executed documents, the City can only execute such to the extent authorized by law, and regardless of any expressed opinion, representation, writing, or signature, by any individual or entity purporting to act on behalf of the City, execution of the Agreement and any addendum can only be done by the City to the extent authorized by Missouri law, including that the City can only approve such as authorized by its governing body, either directly or through its duly authorized agent of record.

**12.3.16 Headings:** The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning thereof.

**12.3.17 Public Entity and Officer Immunity and Defenses:** In no event shall the language or requirements of this Agreement constitute or be construed as a waiver or limitation of any rights or defenses with regard to applicable sovereign, governmental, official, or any individual immunities and any other protections or defenses as provided by applicable federal and state constitutions, statutes, and laws. The procurement and maintenance of insurance shall not be construed as waiving any such defense otherwise available.

**12.3.18 Listing of Exhibits and documents incorporated herein are shown below.** It is noted that any exhibit not attached may be incorporated as expressly agreed to in writing by the Parties.

Exhibit A – Not Used

Exhibit B – Scope of Services

Exhibit C – Assumptions, Clarifications & Exclusions – Not applicable to Phase 1

Exhibit D - Design-Builder's Rates – Not applicable to Phase 1

Exhibit E - Anticipated Lost Days to Inclement / Adverse Weather – Not applicable to Phase 1

Exhibit F - DBIA Document No. 535, Standard Form of General Conditions of Contract Between Owner and Design-Builder (2010 Edition) ("General Conditions of Contract")

Exhibit G - Design-Builder's Allowances – Not applicable to Phase 1

Exhibit H – Permit & Easement Matrix – Not applicable to Phase 1

Exhibit I - Geotechnical Soils Report – Not applicable to Phase 1

Exhibit J – Project Schedule – Not applicable to Phase 1

## Article 13

### **Limitation of Liability**

13.1 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 seventy-five percent (75.0%) of the Contract Price. The parties agree that specific consideration has been given by the Design-Builder for this limitation and that it is deemed adequate.

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

#### **OWNER:**

City of Republic

(Name of Owner)

(Signature)

Dan Cameron

(Printed Name)

City Administrator

(Title)

Date: 2/18/2022

#### **DESIGN-BUILDER:**

Burns & McDonnell Engineering Company, Inc.

(Name of Design-Builder)

(Signature)

Ron Coker, PE

(Printed Name)

Senior Vice President

(Title)

Date: 1/28/2022

Approved as to Form

City Attorney

2/18/2022



## **EXHIBIT B – PHASE 1 SCOPE OF SERVICES WASTEWATER TREATMENT FACILITY EXPANSION PROJECT**

The following is of the Scope of Services to be provided by Burns & McDonnell Engineering Company, Inc., (Design-Builder) for the City of Republic, Missouri (Owner) for the following:

Wastewater Treatment Facility Expansion based on the *Draft* 2022 WWTP Master Plan Update being completed by Burns & McDonnell under a separate contract. Phase 1 includes improvements to the following major ancillary systems and structures necessary for proper functioning of the improvements:

- Influent Pump Station
- Wet-weather Holding Basin
- Grit Removal
- Fine Screening
- Anaerobic/Anoxic/Aerobic Treatment Trains
- Membrane Bioreactor (MBR) Basin
- MBR Building
- RAS/IR Pump Station
- Aerobic Digestion
- Dewatering Building
- Chemical Feed Building
- Administration Building

The Phase 1 design services will be prepared consistent with a targeted Wastewater Treatment Plant nominal capacity of 6.7 million gallons per day (MGD) for average day conditions and targeted nominal capacity of 12 MGD for peak day conditions.

### **1.1 Project Management and Coordination**

- 1.1.1 Design-Builder will provide Administrative Assistance in the form of Project Management as follows:
  - 1.1.1.1 Project Kick-Off Meeting: Design-Builder will prepare agenda and minutes for scope of services within Wastewater Treatment Facility Expansion Phase 1 Project. Kick off meeting to coordinate project goals, preferred communications, and schedule with the project team. The project kick-off meeting will be attended by five (5) Design-Builder team members.
  - 1.1.1.2 Monthly Progress Meetings: Design-Builder will participate in monthly progress meetings with Owner to provide updates of work progress, budget and schedule status, current issues, variances in the potential scope of work, and review Action Items. Anticipated future activities and Owner action items will be discussed. Design-Builder will prepare and submit an agenda to Owner before each meeting and prepare/distribute meeting minutes within five working days after the meeting. Design-Builder's scope includes monthly progress meetings for the duration of the Phase 1 Project schedule.



- 1.1.1.3 Work Task Management: Design-Builder to provide general project management activities, including oversight of individual disciplines, change management, schedule management, quality control, and monthly invoice preparation for the duration of the project.
- 1.1.1.4 Design-Builder will develop and maintain a formal Request for Information (RFI), Decision and Action item Log that communicates data request between Owner and Design-Builder and documents decisions made during the Phase 1 project.

## 1.2 Site Investigation and Owner-provided Data Review

- 1.2.1 Design-Builder will review pertinent and available existing documents, including but not limited to schematics, existing site plans, scanned as-constructed drawings, hard copy as-constructed drawings, floodplain and floodway data, existing geotechnical reports, operations and maintenance manuals and other sources provided by the Owner.
- 1.2.2 Design-Builder will use Survey and Geotechnical evaluations prepared under a separate agreement with Burns & McDonnell for this scope of work.
- 1.2.3 Design-Builder will review current and historical plant performance data provided by Owner to establish design loadings. Owner will provide and Design-Builder will review up to five years of historical influent data, including but not limited to influent flow, biochemical oxygen demand (BOD), total suspended solids (TSS), ammonia nitrogen, and total phosphorus (TP). Design-Builder will provide a technical memorandum summarizing historical flow and loading analysis and summary of design flows and loadings for WWTF Expansion.
  - 1.2.3.1 Owner will provide Design-Builder with all necessary laboratory analyses required of the influent wastewater to support development of a biological model and to supplement historical plant performance data. The requested data will be for no less than a two (2) week period and will consist of the following parameters: (1) Influent and effluent flow, (2) Influent COD, (3) Influent and effluent BOD, (4) Influent soluble BOD, (5) Influent particulate BOD, (6) Influent and effluent TKN, (7) Influent and effluent ammonia, (8) Influent and effluent Nitrate/Nitrite, (9) Influent and effluent total phosphorus, (10) Influent and effluent orthophosphate, (11) Influent and effluent total suspended solids (TSS), (12) Influent volatile suspended solids (VSS), (13) influent and effluent pH, (14) Dissolved Oxygen (DO) of Aeration Basin, (15) Return and waste sludge flow rates, and (16) Influent alkalinity.
  - 1.2.3.2 Develop a biological model (BioWin) to establish basin sizing and required air supply for the process basins and MBR treatment system.
- 1.2.4 Design-Builder will review the condition of assets at Republic WWTF from the Wastewater Master Plan and perform a single-visit visual inspection of the treatment, power, structural, architectural, and HVAC assets at the site. Design-Builder will perform a visual inspection of the condition of electrical power feeds, switchgear, and MCCs. Design-Builder will provide an opinion regarding the available capacity of the existing power feed and any improvements needed to meet current code and Owner's preference for redundancy.

### 1.3 Wastewater Treatment Facility Expansion Conceptual Design

The following includes a summary level description of the planned conceptual design improvements for each unit process based on the *Draft 2022 WWTP Master Plan Update* being completed by Burns & McDonnell under a separate contract. Concept design includes the following major ancillary systems and structures necessary for proper functioning of the improvements:

- Influent Pump Station: New submersible pump station with variable-speed submersible pumps and cast-in-place valve vault and magnetic flow meter vault.
- Wet-weather Holding: Convert Aeration Complex 1 to a wet-weather holding basin with diffused aeration and positive displacement blowers. Blowers will be installed outdoors under a canopy.
- Grit Removal & Fine Screening: New stacked tray grit removal system with three fine screening channels downstream. Fine screens will be 2 mm perforated plate units with one conveyor and one washer/compactor for screenings dewatering. New grit dewatering building to house grit pump, grit washer, and grit dewatering unit.
- Process Basin: New process basin consisting of three trains, each partitioned into discrete anaerobic, anoxic, and aerated zones. Anaerobic and anoxic zones will be equipped with submersible mixers, and aerated zone will contain fine bubble diffusers. Blower associated with diffused aeration system will be positive displacement blowers, installed outdoors beneath a canopy.
- Membrane Bioreactor (MBR) Basin: New process basin consisting of MBR six trains and two wet wells (for return and internal recycle pumping). Basin will be outdoors with grating on top. It is assumed three return pumps and four internal recycle pumps will be required.
- MBR Building: New MBR building will be two stories and house permeate pumps, WAS pumps, air scour blowers, chemical feed skids for membrane cleaning, and electrical room.
- Aerobic Digestion: Surface aerators in three existing digesters will be replaced with diffused aeration. A fourth digester (82-ft diameter and 16-ft wall height) will be constructed. Positive displacement blowers associated with diffused aeration will be installed outdoors beneath a canopy. Digester cover design is not included in this scope of work.
- Dewatering Building: New dewatering building with centrifuge or screw press dewatering unit, polymer feed, dewatering feed pumps, and electrical room. Building will have adjacent truck loadout area beneath a canopy.
- Chemical Feed Building: A new chemical feed building will house alum and supplemental carbon. The building is assumed to be a pre-engineered metal building.
- Administration Building: New administration building will include control room, meeting/break room, restroom, shower, lockers, laundry, office, storage, and electrical room. Lab improvements in the existing administrative space is not included in this scope of work.



The conceptual design will be prepared consistent with a targeted Wastewater Treatment Plant nominal capacity of 6.7 million gallons per day (MGD) for average day conditions and targeted nominal capacity of 12 MGD for peak day conditions.

- 1.3.1 Design-Builder will organize and participate in one (1) wastewater treatment plant site visit to the Decatur, Arkansas WWTP to gather information on MBR equipment and discuss operations. Maximum hours for plant site visit will not exceed eight (8) hours. Plant site visit will be attended by five (5) Design-Builder team members.
- 1.3.2 A budgetary opinion of probable construction cost will be developed and reviewed with the Owner prior to the start of Conceptual Design based on the *Draft* 2022 WWTP Master Plan Update being completed by Burns & McDonnell under a separate contract.
- 1.3.3 Design-Builder will complete Conceptual Design Services as follows:
  - 1.3.3.1 Engineering for Conceptual Design Services will include a Basis of Design Report that documents basis of design for each unit process and a codes and standards review. During conceptual design, the Design-Builder will also establish a Contract Drawing and specification list for the Preliminary and Pre-Final design. The following engineering discipline specific deliverables will be included as part of the Concept Design:
    - 1.3.3.1.1 Civil Site: Establish general location of new facilities, identify laydown areas, preliminary grading plan, and basic stormwater elements.
    - 1.3.3.1.2 Structural: Identify structural design requirements for the facility and recommended materials of construction. Develop preliminary foundation plans, preliminary framing plans, and preliminary roof plans.
    - 1.3.3.1.3 Architectural: General arrangement and footprint of major structures, occupancy code, major materials of construction, elevation and section drawings. This scope of work includes up to three Architectural renderings for review purposes.
    - 1.3.3.1.4 Mechanical: Identify classification of key areas of the facility per NFPA 820.
    - 1.3.3.1.5 Process: Document capacity and process design criteria, develop process flow diagrams for liquid and solid stream process, include process-level process and instrumentation diagrams (showing equipment, lines/valves (material, type and size), and instruments), establish hydraulic profile, and develop general site layout and yard piping corridors. Identify required equipment procurement packages and develop early procurement documents as required for the MBR equipment.
    - 1.3.3.1.6 Electrical/Instrumentation: Coordinate site layout with electrical distribution, develop conceptual one-line diagrams, prepare preliminary load calculations, prepare preliminary control system architecture, develop preliminary process instrumentation diagram (PID) based on process flow diagram, and size major electrical equipment. This scope does not include any cost for the Utility

- provider. Additional cost may be required for the Utility to evaluate their existing service, as well as any new utility requirements.
- 1.3.4 An opinion of probable construction cost will be developed and reviewed with the Owner at the end of Conceptual Design. If the conceptual design exceeds the Owner's anticipated budget, a value engineering effort will be conducted to establish the final scope of preliminary design.
  - 1.3.5 Deliverables will include the following:
    - 1.3.5.1 Three (3) half-size printed and bound sets of conceptual design documents.
    - 1.3.5.2 PDF files of conceptual design documents and opinion of probable construction cost.
    - 1.3.5.3 Printed and electronic sets of conceptual design documents as required for submittal to MDNR. Fees for permit review are included.
  - 1.3.6 Design-Builder will lead an in-person meeting with the Owner to review conceptual design documents and review the Owner provided comments.
  - 1.3.7 Design-Builder will prepare bid packages and solicit pricing from equipment suppliers for the MBR equipment. Design-Builder will manage all correspondence, evaluate proposals, and provide a recommendation to the Owner regarding MBR equipment selection. Design-Builder and Owner will meet to review the MBR equipment proposals and DESIGN-BUILDER's recommendation. Selection of the MBR equipment supplier is subject to Owner's approval. Once selected, the Design-Builder will enter into a Purchase Agreement with the successful MBR equipment supplier. The MBR equipment supplier will be given a limited Notice to Proceed to provide shop drawings to facilitate the design process. Contract Price includes an allowance of \$100,000 for the MBR equipment supplier supply of shop drawings. If the MBR equipment supplier shop drawing cost deviates from the stated allowance amount, an adjustment will be made to the Contract Price accordingly.

#### **1.4 Wastewater Treatment Facility Expansion Preliminary Design**

- 1.4.1 Upon approval of the Wastewater Treatment Plant Basis of Design Report by the Owner, and Missouri Department of Natural Resources, Design-Builder will proceed with Preliminary Design Services as follows. It is assumed that review comments will be provided within 90 days of submission. Changes initiated by the Owner following approval of the Basis of Design Report may result in additional schedule and fee; all changes will be documented by DESIGN-BUILDER.
  - 1.4.1.1 Engineering for Preliminary Design Services will include design progression with respect to civil, structural, architectural, mechanical, process, and electrical work, erosion control, controls work, SCADA work, a narrative description of the work, major equipment lists, and sequences of operations. A preliminary 3D Model will be developed in Revit, Plant 3D or Civil 3D based on the discipline. The following design deliverables will be developed:
    - 1.4.1.1.1 Civil Site: Draft site plan with grading, yard piping, and preliminary profile of gravity sewers.
    - 1.4.1.1.2 Structural: Draft plan and section drawings of each structure, structure calculations, and draft specifications started.



- 1.4.1.1.3 Architectural: Draft plan drawings for new buildings, draft demolition requirements, and draft specifications started.
- 1.4.1.1.4 Mechanical: Develop U-value and heat load calculations, establish required ventilation rates for new buildings, size equipment, provide general arrangement of equipment, develop equipment schedule and sequence of operation. Draft specifications started. No riser diagrams will be developed.
- 1.4.1.1.5 Process: Draft plans and specifications will be started for all unit processes. Process flow diagram, hydraulic profile, major equipment list, and process and instrumentation diagrams will be finalized.
- 1.4.1.1.6 Electrical/Instrumentation: Develop draft instrumentation details, update instrumentation device schedule, develop rough draft I/O list, detailed control system block diagram, and finalize process and instrumentation drawings. Draft sequence of operations completed.
- 1.4.1.2 The physical attributes of the project 3D models will be developed to a Level of Development (LOD) 200, based on the 2019 BIMFORUM Level of Development Specification.
- 1.4.2 Design-Builder will prepare an updated opinion of probable construction costs based on the Preliminary Design plans and specifications developed and any comments received from the Owner during its review of the previous opinion of probable cost submitted.
- 1.4.3 Design-Builder will review the preliminary design documents, including drawings and models, in one (1) in-person meeting with Owner staff. Owner will provide Design-Builder with comments ahead of this meeting so that the Owner comments can be discussed.
- 1.4.4 Deliverables include the following:
  - 1.4.4.1 Three (3) half-size printed and bound sets of preliminary design plans.
  - 1.4.4.2 Three (3) printed and bound sets of major equipment technical specifications.
  - 1.4.4.3 PDF files of plans, specifications, and opinion of probable construction cost.

## 1.5 Wastewater Treatment Facility Expansion Pre-Final Design

- 1.5.1 Engineering for Pre-Final Design will include development of Contract Drawings, specifications, a narrative description of the work, major equipment lists, and sequence of operations in support of the Bid Documents.
- 1.5.2 The pre-final design will include discipline specific Contract Drawings completed to a level adequate to support a Design-Build form of project execution and development of a Phase 2 price offering:

Discipline	Budgeted Number of Drawings
Civil	39
Structural	140
Architectural	92
Mechanical	63
Process	75
Electrical/Instrumentation	65

- 1.5.3 The physical attributes of the project 3D models will be developed to a Level of Development (LOD) 300, based on the 2019 BIMFORUM Level of Development Specification.
- 1.5.4 Design-Builder will prepare an updated opinion of probable construction cost, as described in Paragraph 1.7.1.
- 1.5.5 Design-Builder will review the Pre-Final design documents, including drawings and models, in one (1) in-person meeting with Owner staff. Owner will provide Design-Builder with comments ahead of this meeting so that Owner comments can be discussed.
- 1.5.6 Deliverables will include the following:
  - 1.5.6.1 Three (3) half-size printed and bound sets of preliminary design plans.
  - 1.5.6.2 Three (3) printed and bound sets of major equipment technical specifications.
  - 1.5.6.3 PDF files of plans, specifications, and opinion of probable construction cost.

## 1.6 State Revolving Loan Fund (SRF) Fund and Permitting Support

- 1.6.1 Design-Builder will provide Grant and Loan Assistance as follows (all permit fees will be paid by Owner):
  - 1.6.1.1 Assist with completion of the Clean Water State Revolving Loan Fund (SRLF) Application Form (MO 780-1951).
    - 1.6.1.1.1 Assist with completion of Parts 1-12 with support from the Owner as required.
    - 1.6.1.1.2 Assist with provision of "Energy Conservation Plan" in part 13. The deliverable will be a technical memorandum addressing energy conservation aspects of the project.
    - 1.6.1.1.3 Assist with provision of "Fiscal Sustainability Plan" in Part 3 and further detailed in 9.2.2 of this scope of work.
    - 1.6.1.1.4 Assist with completion of the "Green Project Reserve (MO 780-2530)" form with support from the Owner as required. The deliverable will be a technical memorandum addressing green elements of the project.
- 1.6.2 Design-Builder will provide services associated with completion and submittal of the Facilities Plan Submittal Checklist parts 1 through 7 including the following:
  - 1.6.2.1 Part 5 - Department of Natural Resources' State Historic Preservation Office (National Historic Preservation Act, Section 106)
  - 1.6.2.2 Part 5 - Indian Tribes (National Historic Preservation Act, Section 106)
  - 1.6.2.3 Part 5 - Army Corps of Engineers



- 1.6.2.4 Part 5 - Department of Natural Resources, Historic Preservation Office
- 1.6.2.5 Part 5 - Department of Conservation
- 1.6.2.6 Part 5 - United States Fish and Wildlife
- 1.6.2.7 Part 5 - Department of Natural Resources' Missouri Geological Survey (lagoon collapse potential and receiving stream determination)
- 1.6.2.8 Part 5 - Federal Assistance Clearinghouse
- 1.6.2.9 Part 5 - Department of Natural Resources' Division of State Parks
- 1.6.2.10 Part 6 - Public Meetings for Environmental Information Document per 10 CSR 20-4.050 (4)(B)2
- 1.6.3 Complete the following forms with assistance as necessary from Owner associated with antidegradation review, treatment plant operating permit and construction permit (all permit fees will be paid by Owner):
  - 1.6.3.1 Submit Antidegradation Review / Summary Request Form (MO 780-2805). Following, submit Antidegradation Report and associated Antidegradation Summary Path A: Tier 2 – Non-Degradation Mass Balance Form (MO 780-2872) or Antidegradation Summary Path B: Tier 2 – Minimal Degradation Form (MO 780-2022).
  - 1.6.3.2 Form B2 – Application for Operating Permit for Facilities that Receive Primarily Domestic Waste and have a Design Flow More than 100,000 Gallons Per Day (MO 780-1805).
  - 1.6.3.3 Application for Construction Permit – Wastewater Treatment Facility (MO 780-1289).
  - 1.6.3.4 Statement of Work Completed (MO 780-2155).
- 1.6.4 Design-Builder will perform Environmental Permitting Desktop Evaluation that will include the following:
  - 1.6.4.1 Complete a field visit to evaluate the proposed project limits for the presence of wetlands and other waters according to the United States Army Corps of Engineers (USACE) requirements. Based on the wetland field delineation, prepare a draft and final wetland delineation report.
  - 1.6.4.2 Review relevant state and federal databases to identify recorded cultural resources within and adjacent to the proposed project. Perform a field review and prepare a draft and final Section 106 memo and letter report for State Historic Preservation Office (SHPO). Prepare an Unanticipated Discoveries Plan detailing the procedures to follow if construction activities result in the discovery of unrecorded archaeological sites or remains.
  - 1.6.4.3 Complete an online protected species habitat assessment of the proposed project limits. The habitat assessment field survey will be conducted at the same time as the wetland delineation field survey. Based on the assessments, prepare a draft and final protected species habitat assessment letter report that will provide the findings of the habitat assessment and provide recommendations to minimize and avoid impacts during constructions.
  - 1.6.4.4 Provide permitting specialist to coordinate with Greene County Environmental Division and if required, draft a construction within a floodplain development permit application. A hydraulic analysis and No-Rise Certification is anticipated.

- 1.6.4.5 Prepare a draft and final Stormwater Pollution Prevention Plan (SWPPP) and Missouri Department of Natural Resources (MDNR) land disturbance permit.
- 1.6.4.6 Coordinate the above listed Environmental Permitting work and prepare and update a Permitting Matrix for the project.
- 1.6.4.7 Assumption: Design-Builder will not have to file for any Owner permits for construction or occupying Owner Right of Way, project will qualify for a Nationwide Permit 58, the Project would only result in temporary impacts to WOTUS and would not cross any Section 10 Navigable Streams, project will be covered under 401 water quality certification, no Environmental Assessment required, and tree removal will occur between November 15 and April 1.

### **1.7 Phase 2 Pricing Development**

- 1.7.1 Design-Builder will provide a firm Phase 2 Price to Owner. Services and deliverables associated with the Phase 2 Price Development include:
  - 1.7.1.1 Generate a Phase 2 Price estimate based on the Pre-Final Design.
  - 1.7.1.2 Prequalification of potential construction installation bidders for work scopes not self-performed by Design-Builder. Design-Builder will provide the list of proposed prequalified bidders for Owner's review and comment.
  - 1.7.1.3 Generate and issue construction installation bid packages for the receipt of indicative pricing from potential construction installation subcontractors.
  - 1.7.1.4 Manage bidder correspondence and questions during construction installation indicative pricing process.
  - 1.7.1.5 Issue bid addenda for construction installation bid packages.
  - 1.7.1.6 Generate and issue for bid, equipment procurement packages.
  - 1.7.1.7 Manage bidder correspondence and questions during equipment supplier bidding.
  - 1.7.1.8 Issue bid addenda for equipment supplier bid packages.
  - 1.7.1.9 Qualify and evaluate subcontractor and equipment supplier bids / proposals.
  - 1.7.1.10 Design-Builder will develop a Phase 2 project schedule in critical path format that includes all final design and construction activities.
- 1.7.2 Design-Builder will host a Phase 2 Price review workshop with Owner to review the Phase 2 Price build-up/estimate, equipment bid tabs, proposed Phase 2 project schedule, clarifications, and proposed allowance items.

### **1.8 Responsibilities of the Owner:**

- 1.8.1 Owner shall, within reasonable time, so as not to delay the services of the DESIGN-BUILDER:
  - 1.8.1.1 Owner to provide data for influent and effluent water quality based on sampling plan provided by DESIGN-BUILDER.
  - 1.8.1.2 Assist Design-Builder by placing at DESIGN-BUILDER'S disposal all available information pertinent to assignment including previous reports and any other data relative thereto.

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- 1.8.1.3 Guarantee access to and make all provisions for Design-Builder to enter upon public and private property as required for Design-Builder to perform its services under this Agreement.
- 1.8.1.4 Examine all studies, reports, sketches, cost opinions, Drawings, proposals, and other documents presented by Design-Builder and render in writing decisions pertaining thereto.
- 1.8.1.5 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project, for the durations established for the project.



**Standard Form  
Conditions of**



**of General  
Contract Between**

**Owner and Design-Builder**

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

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# **Article 1**

## **General**

### **1.1 Mutual Obligations**

.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 *Agreement* refers to the executed contract between Owner and Design-Builder under DBIA Document No. 545, *Progressive Design Build Agreement For Water and Wastewater Projects* (2016 Edition), as modified by the parties.

.2 *Not Used.*

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

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

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

.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 the Design Consultant, but is retained by the Design Consultant or employed or retained by any one 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 Design Consultant may, in some instances, be self-performed by Design-Builder.

.7 *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.

.8 *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, terrorism, vandalism, floods, labor disputes, earthquakes, epidemics, pandemics, executive orders, tariffs, actions/inactions of government, adverse weather conditions not reasonably anticipated, and other acts of God.

.9 *General Conditions of Contract* refer to these General Conditions of Contract Between Owner and Design-Builder (2010 Edition), as modified by the parties.

.10 *Phase 2 Contract Price Amendment* means that exhibit attached to DBIA Document No. 545, *Progressive Design Build Agreement For Water and Wastewater Services* that is the amendment to the Agreement for Phase 2 services comprised of the accepted Proposal as developed by Design-Builder in accordance with Section 2.3 of the Agreement between Owner and Design-Builder.

.11 *Phase 2 Proposal* means that proposal developed by Design-Builder in accordance with Section 2.3 of the DBIA Document No. 545, Progressive Design Build Agreement For Water and Wastewater Services.

.12 *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.

.13 *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.

.14 *Owner's Project Criteria* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, design performance specifications, design specifications, and LEED® or other sustainable design criteria and other Project-specific technical materials and requirements.

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

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

.17 *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.

.18 *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.

.19 *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**

.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and 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 Design-Builder shall provide Owner with a monthly status report detailing the progress of

the Work, including whether (i) the Work is proceeding according to schedule, (ii) discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) health and safety issues exist in connection with the Work; and (iv) 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).

.3 Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). 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.

.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**

.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**

.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 design profession practicing under similar conditions at the same time and locality of the Project.

## **2.4 Design Development Services**

.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. 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 or, if applicable, previously submitted design submissions. Minutes of the meetings, including a full listing of all changes, will be maintained by 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 Design-Builder's schedule.

.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 meetings 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 one set of approved Construction Documents to Owner prior to commencement of construction.

.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.

.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.

.5 Upon completion of the Design Development Phase, 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**

.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 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**

.1 As identified for each party in Exhibit H – Permit & Easement Matrix, the Design-Builder and Owner shall respectively 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, for the respective permit and/or easement shown.

.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**

.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, 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 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.

.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.

.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.

.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 and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption. However, unless otherwise stated, Design-Builder is not responsible to schedule or coordinate Owner's separate contractors.

.6 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes 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**

.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 all safety precautions and programs related to 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 Project Manager.

.2 Design-Builder and Subcontractors shall comply 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 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.

.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**

.1 For a period of one year following Substantial Completion, Design-Builder warrants to Owner that the construction, including all materials and equipment furnished 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. 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 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 and process guarantees relating to performance of the equipment. 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. Design-Builder's sole obligation is to provide reasonable assistance to Owner in obtaining relief under such manufacturer's warranties.

## **2.10 Correction of Defective Work**

.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 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.

# **Article 3**

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

### **3.1 Duty to Cooperate**

.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.

.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 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**

.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:

.1 Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

.2 Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

.3 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;

.4 A legal description of the Site;

.5 To the extent available, record drawings of any existing structures at the Site; and

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

.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**

.1 At Design-Builder's 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.

.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 Any consent to assignment of this Agreement to Owner's lenders shall be conditioned upon Design-Builder being paid in full for all outstanding sums due at the time of the assignment, and upon the assignee being responsible for all of Owner's remaining obligations under this Agreement.

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

.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, as authorized by City Council in accordance with applicable law.

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

.1 Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in the Owner's Permit List attached as an exhibit to the Agreement.

.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**

.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.

.2 Owner shall require its separate contractors working on the Project Site to name Design-Builder as an additional insured on their general liability and automobile liability insurance and to waive rights of subrogation against Owner, Design-Builder and its Design Consultant, consistent with Section 5.3.5, below. Design-Builder will be indemnified by Owner's separate contractors in favor of Design-Builder.

## **Article 4**

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

#### **4.1 Hazardous Conditions**

.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.

.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.

.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 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.

.5 To the 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 attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.

.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced 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 introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

## **4.2 Differing Site Conditions**

.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.

.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**

.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 rating set forth in the Agreement.

.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.

.3 Prior to commencing any construction services hereunder, Design-Builder shall provide Owner with 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, renewal refused, or materially changed 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 are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Design-Builder with reasonable promptness according to the Design-Builder's information and belief.

.4 Design-Builder shall include Owner as an additional insured on the Commercial General Liability, Automobile Liability and Umbrella/Excess 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 or Workers Compensation policies, which normally do not permit additional insureds.

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

.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 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 Existing Property Insurance**

.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 the existing property at the Project and upon Substantial Completion, the Work, to the full insurable value of the property, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Owner 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, 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 and the Work (upon Substantial Completion), including materials and equipment in transit, at the Site. The Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.1

.2 Unless the Contract Documents provide otherwise, Owner shall procure and maintain boiler and machinery insurance that will include the interests of Owner, Design-Builder, Design Consultants, and Subcontractors of any tier. The Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.2.

.3 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 will remain in effect until Design-Builder has completed all of the Work and has received final payment from Owner 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.

.4 Any loss covered under Owner's property insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.

.5 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, if self-insured, including deductibles, and including 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. These 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**

.1 If Owner requires Design-Builder to obtain performance and labor and material payment bonds, or other forms of performance security, the amount, form and other conditions of such security shall be mutually agreed to by the parties.

.2 All bonds furnished by Design-Builder shall be in a form reasonably satisfactory to Owner. 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**

.1 Unless required by the Owner upon execution of this Agreement, within ten (10) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. 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.

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

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

.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.

.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.

.3 All discounts offered by Subcontractor, Sub-Subcontractors and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

.4 The Application for Payment shall constitute Design-Builder's representation that the Work described herein 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, whichever occurs earlier.

### **6.3 Withholding of Payments**

.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.

.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**

.1 If Owner fails to pay timely Design-Builder any 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**

.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. Provided Owner makes all payments to Design-Builder when due, 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**

.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 any 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 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.

.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.

.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.

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

## **6.7 Final Payment**

.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.

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

.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;

.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;

.3 consent of Design-Builder's surety, if any, to final payment;

.4 all operating manuals, warranties and other deliverables required by the Contract Documents; and

.5 certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

.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, (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion and (iii) the terms of any special warranties required by the Contract Documents.

.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**

.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.

.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.

.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 solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. 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.

.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**

.1 If, in accordance with Owner's direction, an exemption for all or part of the Work is erroneously 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**

.1 Providing 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 three (3) 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**

.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 defend Owner, its 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) to the extent resulting from 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.

.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 obligation set forth in Section 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**

.1 In addition to other specific indemnities elsewhere in this Agreement, Owner, to the extent permitted by law pursuant to Section 434.100 RSMo, 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) to the extent resulting from the negligent acts or omissions of Owner's separate contractors or anyone for whose acts any of them may be liable.

## **Article 8**

### **Time**

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

.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**

.1 If Design-Builder is delayed 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, and Force Majeure Events.

.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 may also be entitled to an appropriate adjustment of the Contract Price.

.3 For 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**

.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:

- .1 The scope of the change in the Work;
- .2 The amount of the adjustment to the Contract Price; and
- .3 The extent of the adjustment to the Contract Time(s).

.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.

.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**

.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).

.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**

.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**

.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:

.1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

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

.3 Costs, fees and any other markups set forth in the Agreement; and

.4 If an increase or decrease cannot be agreed to as set forth in items .1 through .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.

.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.

.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, 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, 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**

.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**

.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 twenty-one (21) 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**

.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.

.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 the Owner and Design-Builder mutually agree otherwise.

.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. 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.

.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 parties. 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 the 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.

.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 Republic, Missouri. In the event that it is necessary to file a lawsuit 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 Section Not Used**

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

.1 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 to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

#### **10.5 CONSEQUENTIAL DAMAGES**

.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, PROFITS, BUSINESS, REPUTATION OR FINANCING.

.2 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages as 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.

#### **10.6 COMMENCEMENT OF STATUTORY PERIOD**

.1 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion, or the date of issuance of final payment (for acts or failures to act occurring after Substantial Completion).

### **Article 11**

#### **Stop Work and Termination for Cause**

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

.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.

.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**

.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.

.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may 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 may 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.

.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 in 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. 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. 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.

.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 Article 8 of the Agreement.

.5 Design-Builder shall not be liable for either design services or construction Work (including, but not limited to, equipment installation) that is incomplete due to a termination by Owner for cause or for convenience under this Agreement, including any errors, omissions or defects in such designs or Work which Design-Builder is prevented from correcting and completing due to any termination.

.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.

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

.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:

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

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

.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. 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**

.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:

.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.

.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.

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

.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may 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 may 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**

.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:

.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

.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.

.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.

## **Article 12**

### **Electronic Data**

**12.1 Electronic Data.** 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**

.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.

.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.

.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**

.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.

.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.

.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.

.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**

.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, but may disclose the Confidential Information to the extent required by applicable law, regulation or a valid order by a court or other governmental body. It is understood that Owner is a public entity which acts through its subdivisions, public officers, employees, and agents, and that materials and information in the possession of or maintained by such, including any provided by disclosing party, may be subject to disclosure to the public in accordance with applicable law.

#### **13.2 Assignment**

.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**

.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**

.1 The Agreement and all Contract Documents shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

### **13.5 Severability**

.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**

.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**

.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**

.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) if transmitted via e-mail, by the time that it was sent in U.S Central Time.

### **13.9 Amendments**

.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.