

**SECTION I-1
AGREEMENT
BETWEEN OWNER AND DESIGN-BUILDER
ON THE BASIS OF A STIPULATED PRICE**

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THIS AGREEMENT is by and between City of Kimball, NE (“Owner”), and [] (“Design-Builder”).

PROJECT INFORMATION

Project: Generation Implementation Design-Build Project (Project)

Design-Build Contract: Generation Implementation Design-Build Project (“Contract”)

Owner’s Consultant: Exponential Engineering Company

Engineer: Design-Builder has retained [] (“Engineer”) for the performance of professional engineering services under this Contract.

Authorized Representatives: Owner and Design-Builder each hereby designates a specific individual authorized to act as representative with respect to the performance of responsibilities under this Contract. Such an individual shall have authority to transmit instructions, receive formal notices, receive information, and render decisions relative to this Contract on behalf of the respective party that the individual represents.

1. Owner’s Authorized Representative: [] **[include mailing and delivery addresses, e-mail address, telephone numbers]**
2. Design-Builder’s Authorized Representative: [] **[include mailing and delivery addresses, e-mail address, telephone numbers]**

Owner and Design-Builder further agree as follows:

ARTICLE 1 – THE WORK

1.01 *General Description of Work*

- A. Design-Builder shall complete all Work as specified or indicated in the Contract. The Work is generally described as the design and construction per the bid documents.

ARTICLE 2 – CONTRACT TIMES

2.01 *Time is of the Essence*

- A. All time limits for Design-Builder’s attainment of Milestones, if any, Substantial Completion, and completion and readiness for final payment, as stated in the Contract, are of the essence of the Contract.

2.02 *Contract Times: Dates*

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- A. Design-Builder will substantially complete the Work within 180 days after the Effective Date.
- B. Design-Builder will have the Work completed and ready for final payment, in accordance with Paragraph 14.06 of the General Conditions, within 210 days after the Effective Date.

ARTICLE 3 – CONTRACT PRICE

3.01 *Stipulated Sums*

- A. Owner shall pay Design-Builder for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:
 - 1. For all Work, at the prices stated in Design-Builder’s Proposal, attached hereto as an exhibit.

3.02 *Changes in Contract Price Based on Cost of the Work*

- A. If the value of Work covered by a Change Order or an adjustment in the Contract Price is determined on the basis of Cost of the Work, and involves Work performed under Construction Subcontracts or Design Agreements, the allowable mark-ups on lower tier invoices shall be limited as stated in Paragraph 11.05.D.2.c and d of the General Conditions.

ARTICLE 4 – PAYMENT PROCEDURES

4.01 *Submittal and Processing of Payments*

- A. Design-Builder shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Owner will process Applications for Payment as provided in the General Conditions.

4.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Design-Builder’s Applications for Payment on or about the 15th day of each month during performance of the Work as provided in Paragraph 4.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
 - a. 90% percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Owner, and if the character and progress of the Work have been satisfactory to Owner, then as long as the character and progress of the Work remain satisfactory to Owner, there will be no additional retainage; and
 - b. 90% percent of cost of materials and equipment not incorporated in the Work but delivered, suitably stored, and accompanied by documentation satisfactory to Owner as provided in Paragraph 14.01.B of the General Conditions (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Design-Builder to 95 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 14.01.G of the General Conditions, and less 100 percent of

Owner's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

- C. Notwithstanding the provisions above, no retainage shall be withheld with respect to the portion of a payment application pertaining to engineering, design, and other professional services.

4.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.06 of the General Conditions, Owner shall pay the remainder of the Contract Price.

ARTICLE 5 – INTEREST

5.01 *Interest Rate*

- A. All amounts not paid when due shall bear interest at the rate of 8 percent per annum, or if applicable at the rate stated in a governing prompt payment statute.

ARTICLE 6 – DESIGN-BUILDER'S REPRESENTATIONS

6.01 *Representations*

- A. Design-Builder makes the following representations for Owner's reliance:
 1. Design-Builder has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 2. Design-Builder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 3. Design-Builder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
 4. Design-Builder has carefully studied all: (a) reports of explorations and tests of subsurface conditions at or adjacent to the Site, and all drawings of physical conditions relating to existing surface or subsurface structures at the Site, if any, that Owner has identified or made available to Design-Builder, especially with respect to Technical Data in such reports and drawings, and (b) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site, that Owner has identified or made available to Design-Builder, especially with respect to Technical Data in such reports and drawings.
 5. Design-Builder has considered the information known to Design-Builder itself, and to Construction Subcontractors and Project Design Professionals that Design-Builder has selected as of the Effective Date; information commonly known to design professionals, design-builders, and contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings (if any) identified in the Contract Documents or otherwise made available to Design-Builder, with respect to the effect of such information, observations, and documents on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Design-Builder; and (c) Design-Builder's safety precautions and programs.

6. Based on the information and observations referred to in the preceding paragraph, Design-Builder agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary prior to entry into the Contract at the Contract Price, subject to the Contract Times.
7. Design-Builder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
8. Design-Builder has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Design-Builder has discovered in the Contract Documents, and the written response from Owner is acceptable to Design-Builder.
9. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
10. Design-Builder's entry into this Contract constitutes an incontrovertible representation by Design-Builder that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 7 – CONTRACT DOCUMENTS

7.01 Contents

- A. The Contract Documents consist of the following:
 1. This Agreement (pages 1 to [], inclusive).
 2. Performance bond (pages [] to [], inclusive).
 3. Payment bond (pages [] to [], inclusive).
 4. General Conditions (pages [] to [], inclusive).
 5. Conceptual Documents listed in Section A-1.
 6. Addenda (numbers [] to [], inclusive).
 7. Design-Builder's Proposal.
 8. Proposal Amendment.
 9. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Work Change Directives.
 - b. Change Orders.
 - c. Record Drawings and Record Specifications
- B. The documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 8 – MISCELLANEOUS

8.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and Supplementary Conditions.

8.02 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on the other party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

8.03 *Successors and Assigns*

- A. Owner and Design-Builder each binds itself, its successors, assigns, and legal representatives to the other party hereto, and its successors, assigns, and legal representatives, in respect to all covenants, agreements, and obligations contained in the Contract.

8.04 *Severability*

- A. Any provision or part of the Contract held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Design-Builder, who agree that the Contract shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

8.05 *Design-Builder's Certifications*

- A. Design-Builder certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.05:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

IN WITNESS WHEREOF, Owner and Design-Builder have signed this Agreement.

This Agreement will be effective on [] (which is the Effective Date of the Contract).

OWNER:

DESIGN-BUILDER:

By: _____

By: _____

Title: _____

Title: _____

[If Design-Builder is a corporation, partnership, LLC, or a joint venture, attach evidence of authority to sign. In the case of a joint venture, expand the signature section to accommodate execution of the Agreement by an authorized representative of each joint venturer.]

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

License No.: _____
(where applicable)

[If Owner is a corporation, partnership, or LLC, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.]