

DRAFT AIA® Document A105® – 2017

Standard Short Form of Agreement Between Owner and Contractor

AGREEMENT made as of the « » day of « » in the year 2025
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Kennett Board of Public Work
PO Box 40
Kennett, MO 63857
Telephone Number 573-888-5366

and the Contractor:
(Name, legal status, address and other information)

« »
« »
« »
« »

for the following Project:
(Name, location and detailed description)

Sanitation Truck Barn and Offices
500 Compress Rd
Kennett, MO 63857

The Architect:
(Name, legal status, address and other information)

No Architect on this Project

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

TABLE OF ARTICLES

| | |
|----|---|
| 1 | THE CONTRACT DOCUMENTS |
| 2 | DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION |
| 3 | CONTRACT SUM |
| 4 | PAYMENTS |
| 5 | INSURANCE |
| 6 | GENERAL PROVISIONS |
| 7 | OWNER |
| 8 | CONTRACTOR |
| 9 | CHANGES IN THE WORK |
| 10 | TIME |
| 11 | PAYMENTS AND COMPLETION |
| 12 | PROTECTION OF PERSONS AND PROPERTY |
| 13 | CORRECTION OF WORK |
| 14 | MISCELLANEOUS PROVISIONS |
| 15 | TERMINATION OF THE CONTRACT |
| 16 | OTHER TERMS AND CONDITIONS |

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contractor shall complete the Work described in the Contract Documents for the Project. The Contract Documents consist of

- .1 this Agreement signed by the Owner and Contractor;
- .2 the drawings and specifications prepared by the Owner, dated, and enumerated as follows:

Drawings:

| Sheet Title | Date |
|-------------------------|-----------|
| 01 Site Overview | 3/24/2025 |
| 02 OF Floor Plan | 3/24/2025 |
| 03 OF Footing/Slab | 3/24/2025 |
| 04 OF Framing | 3/24/2025 |
| 05 OF Doors and Windows | 3/24/2025 |
| 06 OF Fixture Locations | 3/24/2025 |
| 07 OF Ceiling Grid | 3/24/2025 |
| 08 TB Floor Plan | 3/24/2025 |
| 09 TB Framing | 3/24/2025 |
| 10 Wash Bay | 3/24/2025 |
| 11 SW Elevation | 3/24/2025 |
| 12 S Elevation | 3/24/2025 |

Scope of Work:

| Section | Title | Pages |
|---------------|---------------------|-------|
| Scope of Work | Invitation For Bids | 4-5 |

Prevailing Wage Determination and Report Forms:

| Section | Title | Pages |
|--|---------------------|-------|
| Prevailing Wage Determination and Report Forms | Invitation For Bids | 6-10 |

Affidavits:

| Section | Title | Pages |
|------------|---------------------|-------|
| Affidavits | Invitation For Bids | 13-14 |

Specifications:

| Section | Title | Pages |
|----------------|---------------------|-------|
| Specifications | Invitation For Bids | 15-18 |

.3 Addenda prepared by the Owner as follows:

| Number | Date | Pages |
|--------|------|-------|
| | | |

.4 written orders for changes in the Work, pursuant to Article 10, issued after execution of this Agreement; and

.5 other documents, if any, identified as follows:

<< >>

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The Contract Time is the number of calendar days available to the Contractor to substantially complete the Work.

§ 2.2 Date of Commencement:

Unless otherwise set forth below, the date of commencement shall be the date of this Agreement.

§ 2.3 Substantial Completion:

Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion, as defined in Section 11.5, of the entire Work:

(Check the appropriate box and complete the necessary information.)

[☐] Not later than () calendar days from the date of commencement.

[☒] By the following date: October 3rd, 2025

§ 2.4 Liquidated Damages:

If the Contractor shall neglect, fail or refuse to complete the Work within the time herein specified, or any proper extensions thereof granted by the terms of this Agreement then the Contractor does hereby agree, as part consideration for the awarding of this Contract, to pay the Owner the amount specified in the Contract, not as a penalty but as a liquidated damages for such breach of Contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the Work the sum of One Hundred Dollars (\$100.00) per calendar day. The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, the said amount is agreed to be the amount of damages which the

Owner would sustain and said amount shall be retained from the time to time by the Owner from current periodical estimates.

ARTICLE 3 CONTRACT SUM

§ 3.1 The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work. Subject to additions and deductions in accordance with Article 10, the Contract Sum is:

« » (\$ « »)

§ 3.2 For purposes of payment, the Contract Sum includes the following values related to portions of the Work:
(Itemize the Contract Sum among the major portions of the Work.)

| Portion of the Work | Value |
|---------------------------------|-------|
| General Requirements | \$ |
| Site Work | \$ |
| Concrete | \$ |
| Metals | \$ |
| Woods, Plastics and Composites | \$ |
| Thermal and Moisture Protection | \$ |
| Openings | \$ |
| Finishes | \$ |
| Plumbing | \$ |
| HVAC | \$ |

ARTICLE 4 PAYMENTS

§ 4.1 Based on Contractor's Applications for Payment certified by the Owner, the Owner shall pay the Contractor, in accordance with Article 11, as follows:

(Insert schedule for payments and provisions for withholding retainage, if any.)

« »

§ 4.2 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate below, or in the absence thereof, at the legal rate prevailing at the place of the Project.

ARTICLE 5 INSURANCE

§ 5.1 The Contractor shall maintain the following types and limits of insurance until the expiration of the period for correction of Work as set forth in Section 13.2, subject to the terms and conditions set forth in this Section 5.1:

§ 5.1.1 Commercial General Liability: ISO Form CG 00 01 covering CGL on an occurrence basis, including premises, contractual liability, products and completed operations, broad form property damage, independent contractors, bodily injury and personal & advertising injury, and explosion, collapse, and underground property coverage with limits no less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. The general aggregate limit shall apply separately to this project / location (ISO CG 25 03 or 25 04).

§ 5.1.2 Comprehensive Business Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by Contractor with a combined single limit of \$1,000,000 minimum.

§ 5.1.3 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 5.1.1 and 5.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 5.1.4 Workers Compensation insurance with statutorily limits required by any applicable Federal or state law and Employers Liability insurance with minimum limit of \$1,000,000 per accident.

§ 5.1.5 Employers' Liability with policy limits not less than (\$ **1,000,000**) each accident.

§ 5.1.6 Builders Risk "all risk" or equivalent policy form in the amount of the initial contract sum plus value of subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for the entire project at the site on a replacement cost basis without optional deductibles.

§ 5.1.7 Other Insurance Provided by the Contractor

Prior to activities commencing the Contractor shall furnish Kennett Utilities with certificates of insurance evidencing the required coverage, conditions, and limits required by this agreement, have Kennett Board of Public Works named as an additional insured **and provide the appropriate additional insured endorsements**. Each additional insured endorsement should include language that preserves sovereign immunity as a defense for the Kennett Board of Public Works. Each additional insured endorsement shall expressly afford coverage to the additional insureds not only arising out of the named insured's operations or work but also arising out the named insured's completed operations. Insurance certificates must be issued by a company or companies licensed to do business in the state of Missouri.

§ 5.2 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance and shall provide property insurance to cover the value of the Owner's property. The Contractor is entitled to receive an increase in the Contract Sum equal to the insurance proceeds related to a loss for damage to the Work covered by the Owner's property insurance.

§ 5.3 The Contractor shall obtain an endorsement to its Commercial General Liability insurance policy to provide coverage for the Contractor's obligations under Section 8.12.

§ 5.4 Claims-Made Policies

If any of the required policies provide coverage on a claims-made basis:

- The retroactive date must be shown and must be before the date of the contract or the beginning of contract work.
- Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
- If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

§ 5.5 Unless specifically precluded by the Owner's property insurance policy, the Owner and Contractor waive all rights against (1) each other and any of their subcontractors, suppliers, agents, and employees, each of the other; for damages caused by fire or other causes of loss to the extent those losses are covered by property insurance or other insurance applicable to the Project, except such rights as they have to the proceeds of such insurance.

§ 5.6 In case any or all of this work is sublet, the Contractor shall require and verify that all subcontractor(s) to procure and maintain all insurance required by Kennett Board of Public Works as listed above. Contractor shall ensure that Kennett Board of Public Works is an additional insured on the insurance required from subcontractors. Kennett Board of Public Works will be added to any hold harmless /indemnity agreements signed between the Contractor and any Subcontractor(s).

§ 5.7 All policies of insurance must be on a primary basis, non-contributory with any other insurance and/or self-insurance carried by Kennett Board of Public Works.

§ 5.8 No provision of this agreement shall constitute a waiver of Kennett Board of Public Works's right to assert a defense based on the doctrines of sovereign immunity, official immunity or any other immunity available under law.

§ 5.9 If the Contractor maintains higher limits than the minimums required, the member requires and shall be entitled to coverage for the higher limits maintained by the sponsor.

§ 5.10 Insurance required by this contract and supported by the additional insured endorsement shall be as broad as necessary to support the hold harmless requirement in said contract or as broad as the sponsors insurance coverage, whichever is broader.

§ 5.11 Per Missouri State Statute, Contractor will provide Kennett Board of Public Works with a payment bond in the full amount of the project prior to any work being performed. Personal property surety will not be accepted.

ARTICLE 6 GENERAL PROVISIONS

§ 6.1 The Contract

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written modification in accordance with Article 9.

§ 6.2 The Work

The term “Work” means the construction and services required by the Contract Documents, and includes all other labor, materials, equipment, and services provided, or to be provided, by the Contractor to fulfill the Contractor’s obligations.

§ 6.3 Intent

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

« »

ARTICLE 7 OWNER

§ 7.1 Information and Services Required of the Owner

§ 7.1.1 Except for permits and fees under Section 8.7.1 that are the responsibility of the Contractor, the Owner shall obtain and pay for other necessary approvals, easements, assessments, and charges.

7.1.2 Prior to commencement of the Work, at the written request of the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner’s obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence.

§ 7.2 Owner’s Right to Stop the Work

If the Contractor fails to correct Work which is not in accordance with the Contract Documents, the Owner may direct the Contractor in writing to stop the Work until the correction is made.

§ 7.3 Owner’s Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies, correct such deficiencies. In such case, the Owner may withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the cost of correction.

§ 7.4 Owner’s Right to Perform Construction and to Award Separate Contracts

§ 7.4.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner’s own forces, and to award separate contracts in connection with other portions of the Project.

§ 7.4.2 The Contractor shall coordinate and cooperate with the Owner’s own forces and separate contractors employed by the Owner.

§ 7.5 The Owner will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work.

§ 7.6 The Owner will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The Owner will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

§ 7.7 Based on the Owners' observations and evaluations of the Contractor's Applications for Payment, the Owner will review and certify the amounts due the Contractor.

§ 7.8 The Owner has authority to reject Work that does not conform to the Contract Documents.

§ 7.9 The Owner will promptly review and approve or take appropriate action upon Contractor's submittals, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 7.10 On written request from the Contractor, the Owner will promptly interpret and decide matters concerning performance under, and requirements of, the Contract Documents.

§ 7.11 Interpretations and decisions of the Owner will be consistent with the intent of, and reasonably inferable from the Contract Documents, and will be in writing or in the form of drawings.

§ 7.12 The Owners duties, responsibilities, and limits of authority as described in the Contract Documents shall not be changed without written consent of the Owner, and Contractor. Consent shall not be unreasonably withheld.

ARTICLE 8 CONTRACTOR

§ 8.1 Review of Contract Documents and Field Conditions by Contractor

§ 8.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 8.1.2 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner. Before commencing activities, the Contractor shall (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies, or omissions discovered to the Owner.

§ 8.2 Contractor's Construction Schedule

The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's information a Contractor's construction schedule for the Work.

§ 8.3 Supervision and Construction Procedures

§ 8.3.1 The Contractor shall supervise and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work.

§ 8.3.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner, the names of subcontractors or suppliers for each portion of the Work. The Contractor shall not contract with any subcontractor or supplier to whom the Owner has made a timely and reasonable objection.

§ 8.4 Labor and Materials

§ 8.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

§ 8.4.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ 8.5 Warranty

The Contractor warrants to the Owner that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents. Any material or equipment warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 12.5.

§ 8.6 Taxes

The Contractor shall pay sales, consumer, use, and similar taxes that are legally required when the Contract is executed.

§ 8.7 Permits, Fees and Notices

§ 8.7.1 The Contractor shall obtain and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work.

§ 8.7.2 The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs. The Contractor shall promptly notify the Owner in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules, and regulations.

§ 8.8 Submittals

The Contractor shall promptly review, approve in writing, and submit to the Owner shop drawings, product data, samples, and similar submittals required by the Contract Documents. Shop drawings, product data, samples, and similar submittals are not Contract Documents.

§ 8.9 Use of Site

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents, and the Owner.

§ 8.10 Cutting and Patching

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

§ 8.11 Cleaning Up

The Contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work. At the completion of the Work, the Contractor shall remove its tools, construction equipment, machinery, and surplus material; and shall properly dispose of waste materials.

§ 8.12 Indemnification

To the fullest extent permitted by law, Contractor agrees to indemnify, defend and hold harmless the Kennett Board of Public Works, its officers, agents, volunteers, leasees, invitees, and employees from and against all suits, claims, damages, losses, and expenses, including but not limited to attorneys' fees, court costs, or alternative dispute resolution costs arising out of or related to any such suit, claim, damage, loss or expense involving an injury to a person or persons, whether bodily injury or other personal injury (including death), or involving an injury or damage to property (including loss of use or diminution in value), but only to the extent that such suits, claims, damages, losses or expenses were caused by the negligence or other wrongdoing of Contractor, or of any supplier or subcontractor, or their agents or employees, directly or indirectly, regardless of whether caused in part by the negligence or wrongdoing of the Kennett Board of Public Works or any of its agents or employees. This Hold Harmless and Indemnification Clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Contract.

§ 8.13 Prevailing Wage Determination and Report Forms

§ 8.13.1 The Prevailing Wage Determination issued by the State of Missouri effective at the time of this work will be made part of the contract documents.

§ 8.13.2 It is the responsibility of all General Contract bidders and all subcontractors to comply with the minimum wage rates as set forth in the Prevailing Wage Determination, including any subsequent Prevailing Wage Determinations that are issued when the current Prevailing Wage Determination expires.

- a. Not less than the prevailing hourly rate of wages, as set out in the wage order attached to and made part of the specification for work under the contract, shall be paid to all workers performing work under the contract (Section 290.250 and 290.325, RSMo).
- b. The contractor will forfeit a penalty to the contracting public body of \$100 per day (or portion of a day) for each worker that is paid less than the prevailing wage rate for any work done under the contract by the contractor or by any subcontractor (Section 290.250, RSMo).
- c. The contractor and all subcontractors to the contract must require all on-site employees to complete the ten-hour construction safety training program required under Section 292.675, RSMo, unless they have previously completed the program and have documentation of having done so.
- d. The contractor will forfeit a penalty to the contracting public body of \$2,500 plus an additional \$100 for each employee employed by the contractor or subcontractor, for each calendar day, or portion of thereof, such employee is employed without required training (Section 292.675 RSMo).

§ 8.13.3 The Contractor and each of his subcontractors shall keep an accurate record showing the names and occupation of all laborers, workers, and mechanics employed by them, in connection with the Construction of the project, and showing also the actual hourly wages paid to each person. This record shall be open at all reasonable hours for inspection by the Owner, its officers and agents, and to the Director of Labor and his deputies and agents. These records of Employees and Wages Paid are required by the Prevailing Wage Determination. The Architect will require that an affidavit be submitted stating compliance with the Prevailing Wage with each application for payment. In addition, weekly Certified Payroll submittal is required. Payment will not be made unless all certified payrolls are provided for the time covered in the pay application. Additional information and forms can be found on the Missouri Department of Labor website, <http://www.labor.mo.gov/DLS/>.

ARTICLE 9 CHANGES IN THE WORK

§ 9.1 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract, consisting of additions, deletions or other revisions, and the Contract Sum and Contract Time shall be adjusted accordingly, in writing. If the Owner and Contractor cannot agree to a change in the Contract Sum, the Owner shall pay the Contractor its actual cost plus reasonable overhead and profit.

§ 9.2 The Owner may authorize or order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such authorization or order shall be in writing and shall be binding on the Owner and Contractor. The Contractor shall proceed with such minor changes promptly.

§ 9.3 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment.

ARTICLE 10 TIME

§ 10.1 Time limits stated in the Contract Documents are of the essence of the Contract.

§ 10.2 If the Contractor is delayed at any time in progress of the Work by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, or other causes beyond the Contractor's control, the Contract Time shall be subject to equitable adjustment.

§ 10.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the responsible party.

ARTICLE 11 PAYMENTS AND COMPLETION

§ 11.1 Contract Sum

The Contract Sum stated in this Agreement, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 11.2 Applications for Payment

§ 11.2.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Owner an itemized Application for Payment for Work completed in accordance with the values stated in this Agreement. The Application shall be supported by data substantiating the Contractor's right to payment as the Owner may reasonably require, such as evidence of payments made to, and waivers of liens from, subcontractors and suppliers. Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 11.2.2 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or other encumbrances adverse to the Owner's interests.

§ 11.3 Certificates for Payment

Within seven days after receipt of the Contractor's Application for Payment, either (1) the Owner accepts the Certificate for Payment in the full amount of the Application for Payment; (2) adjust the Certificate of Payment for such amount as the Owner determines is properly due, and notify the Contractor in writing of the Owner's reasons for withholding certification in part; or (3) withhold certification of the entire Application for Payment, and notify the Contractor of the Owner's reason for withholding certification in whole. If certification or notification is not made within such a seven-day period, the Contractor may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time and the Contract Sum shall be equitably adjusted due to the delay.

§ 11.4 Progress Payments

§ 11.4.1 After the Contractor has issued a Certificate for Payment, the Owner shall make payment in the manner provided in the Contract Documents.

§ 11.4.2 The Contractor shall promptly pay each subcontractor and supplier, upon receipt of payment from the Owner, an amount determined in accordance with the terms of the applicable subcontracts and purchase orders.

§ 11.4.3 Owner shall not have responsibility for payments to a subcontractor or supplier.

§ 11.4.4 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the requirements of the Contract Documents.

§ 11.5 Substantial Completion

§ 11.5.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

§ 11.5.2 When the Contractor believes that the Work or designated portion thereof is substantially complete, it will notify the Owner, and the Owner will make an inspection to determine whether the Work is substantially complete. When the Owner determines that the Work is substantially complete, the Owner shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, establish the responsibilities of the Owner and Contractor, and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 11.6 Final Completion and Final Payment

§ 11.6.1 Upon receipt of a final Application for Payment, the Owner will inspect the Work. When the Owner finds the Work acceptable and the Contract fully performed, the Contractor will promptly issue a final Certificate for Payment.

§ 11.6.2 Final payment shall not become due until the Contractor submits to the Owner releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests, or encumbrances arising out of the Contract.

§ 11.6.3 Acceptance of final payment by the Contractor, a subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 12 PROTECTION OF PERSONS AND PROPERTY

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The Contractor shall take reasonable precautions to prevent damage, injury, or loss to employees on the Work and other persons who may be affected thereby, the Work and materials and equipment to be incorporated therein, and other property at the site or adjacent thereto. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable.

ARTICLE 13 CORRECTION OF WORK

§ 13.1 The Contractor shall promptly correct Work rejected by the Owner as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected Work, including the costs of uncovering, replacement, and additional testing.

§ 13.2 In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents.

§ 13.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 7.3.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Assignment of Contract

Neither party to the Contract shall assign the Contract as a whole without written consent of the other.

§ 14.2 Tests and Inspections

§ 14.2.1 At the appropriate times, the Contractor shall arrange and bear cost of tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 14.2.2 If the Owner requires additional testing, the Contractor shall perform those tests.

§ 14.2.3 The Owner shall bear cost of tests, inspections, or approvals that do not become requirements until after the Contract is executed. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 14.3 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.

§ 14.4 Hazardous Materials, if any, shall be disposed of in a properly licensed facility in accordance with all Applicable Environmental Laws or other Legal Requirements. Contractor shall provide Owner with a list of all disposal facilities for approval prior to disposing of any Hazardous Materials. The contractor shall promptly provide all original waste manifests and other evidence of proper disposal following removal of any Hazardous Materials from the Site.

ARTICLE 15 TERMINATION OF THE CONTRACT

§ 15.1 Termination by the Contractor

If the Work is stopped under Section 11.3 for a period of 14 days through no fault of the Contractor, the Contractor may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed including reasonable overhead and profit, and costs incurred by reason of such termination.

§ 15.2 Termination by the Owner for Cause

§ 15.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials.
- .2 fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors.
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 is otherwise guilty of substantial breach of a provision of the Contract Documents.

§ 15.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may

- .1 take possession of the site and of all materials thereon owned by the Contractor, and
- .2 finish the Work by whatever reasonable method the Owner may deem expedient.

§ 15.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 15.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 15.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

§ 15.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 16 OTHER TERMS AND CONDITIONS

§ 16.1 Per Missouri State Statute, Contractor will provide Kennett Board of Public Works with an affidavit showing registry with the Federal E-Verify program and an affidavit confirming that the Contractor shall not knowingly employ illegal workers.

§ 16.2 Per Missouri State Statute, Contractor will provide Kennett Board of Public Works with proof of OSHA training for all employees working on the project, within 60 days of work beginning.

« »

This Agreement entered into as of the day and year first written above.

(If required by law, insert cancellation period, disclosures or other warning statements above the signatures.)

« »

OWNER *(Signature)*

« »« »

(Printed name and title)

CONTRACTOR *(Signature)*

« »« »

(Printed name and title)

LICENSE NO.:

JURISDICTION:

