

# Standard Form of Contract for Design-Build Owner Advisor Services

SAMPLE

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© Design-Build Institute of America  
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## Design-Build Institute of America - Contract Documents

### LICENSE AGREEMENT

**By using the DBIA Contract Documents, you agree to and are bound by the terms of this License Agreement.**

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- 3. Copies.** You may not use, copy, modify, or transfer DBIA Contract Documents, or any copy, modification or merged portion, in whole or in part, except as expressly provided for in this license. Reproduction of DBIA Contract Documents in printed or machine-readable format for resale or educational purposes is expressly prohibited. You will reproduce and include DBIA's copyright notice on any printed or machine-readable copy, modification, or portion merged into another document or program.
- 4. Transfers.** You may not transfer possession of any copy, modification or merged portion of DBIA Contract Documents to another party, except that a party with whom you are contracting may receive and use such transferred material solely for purposes of its contract with you. You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement, and any attempt to do so is void.
- 5. Term.** The license is effective for one year from the date of purchase. DBIA may elect to terminate it earlier, by written notice to you, if you fail to comply with any term or condition of this Agreement.
- 6. Limited Warranty.** DBIA warrants the electronic files or other media by which DBIA Contract Documents are furnished to be free from defects in materials and workmanship under normal use during the Term. There is no other warranty of any kind, expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state. DBIA does not warrant that the DBIA Contract Documents will meet your requirements or that the operation of DBIA Contract Documents will be uninterrupted or error free.
- 7. Limitations of Remedies.** DBIA's entire liability and your exclusive remedy shall be: the replacement of any document not meeting DBIA's "Limited Warranty" which is returned to DBIA with a copy of your receipt, or at DBIA's election, your money will be refunded. In no event will DBIA be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use DBIA Contract Documents even if DBIA has been advised of the possibility of such damages, or for any claim by any other party. Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.
- 8. Acknowledgment.** You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions and that it will be governed by the laws of the District of Columbia. You further agree that it is the complete and exclusive statement of your agreement with DBIA which supersedes any proposal or prior agreement, oral or written, and any other communications between the parties relating to the subject matter of this agreement.

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# STANDARD FORM OF CONTRACT FOR DESIGN-BUILD OWNER ADVISOR SERVICES

This **OWNER ADVISOR AGREEMENT** is made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year of 20\_\_\_\_\_, by and between the following parties, for services as specified herein (the "Services") in connection with the Project identified below.

**OWNER:**

*(Name and address)*

**OWNER ADVISOR:**

*(Name and address)*

**PROJECT:**

*(Include Project name and location)*

**PERIOD OF PERFORMANCE:**

*(Include start date for performance of Services, contract expiration date (if any) and anticipated schedule for each phase described in Article 1)*

Terms, words and phrases used in this Owner Advisor Agreement (including appendices), but not defined herein, shall be interpreted in accordance with DBIA Document No. 535, Standard Form of General Conditions of Contract between Owner and Design-Builder and the Agreement between Owner and Design-Builder. In consideration of the mutual covenants and obligations contained herein, Owner and Owner Advisor agree as set forth herein.

## **Article 1**

### **Owner Advisor's Base Services**

Owner Advisor shall perform services as described in Exhibit A hereto (the "Base Services") for the project delivery strategy phase, procurement phase, preconstruction phase and design and construction phase.

**1.1** Base Services for the Project Planning Phase will commence upon the execution of this Owner Advisor Agreement. Project delivery strategy phase Services will be considered complete when Owner accepts and approves the project delivery study and procurement approach report.

**1.2** Base Services for the Procurement Phase will commence upon delivery of a notice to proceed with such services from Owner and will be considered complete upon execution of the Agreement between Owner and Design-Builder or Owner's decision to terminate the procurement and completion of all tasks relating to such termination.

**1.3** ☐ *[Check this box for progressive design-build projects.]* Base Services for the preconstruction phase will commence upon the execution of the Agreement between Owner and Design-Builder and will continue until Design-Builder completes preconstruction services and Owner and Design-Builder have reached agreement regarding pricing for the design and construction phase and executed relevant documents for such phase, or Owner has determined not to proceed with the design and construction phase. Base Services for the design and construction phase will commence at the end of the preconstruction phase and will generally be considered complete when Owner has authorized final payment to Design-Builder.

☐ *[Check this box for non-progressive design-build projects.]* Base Services for the design and construction phase will commence upon the execution of the Agreement between Owner and Design-Builder and will generally be considered complete when Owner has authorized final payment to Design-Builder.

## **Article 2**

### **Owner Advisor's Additional Services**

#### **2.1 Additional Services**

Owner may at any time direct Owner Advisor to perform the services additional to the Base Services described in Exhibit A ("Additional Services").

#### **2.2 Owner Right to Modify Scope of Services**

**2.2.1** Owner may at any time request Owner Advisor to provide an estimate of costs and/or time associated with additional Services as described above or for other changes in the general scope of Base Services under this Owner Advisor Agreement. In such event, Owner Advisor shall promptly provide the requested estimate and negotiate terms and conditions of a mutually agreeable modification to this Owner Advisor Agreement.

**2.2.2** Owner may also, from time to time, order changes in the general scope of this Owner Advisor Agreement by written notice or order, without first requesting an estimate or prior to reaching agreement on the terms and conditions of a modification. In such event Owner Advisor shall proceed as directed. If any such Owner directive causes an increase or decrease in Owner Advisor's costs or in the time required for its performance, Owner Advisor shall promptly notify Owner in writing thereof and shall provide backup information regarding the change in costs and/or time. The parties shall enter into a modification adjusting the not-to-exceed Limit or lump sum compensation specified in Article 4 and/or adjusting the period of performance under this Owner

Advisor Agreement, as appropriate, to provide credit to Owner for any reduction in Services or to compensate Owner Advisor for the change.

**2.2.3** Notwithstanding the foregoing, any Additional Services that constitute a significant change in scope, extent or character, including changes that are a major and extensive deviation from the original Services such that Owner Advisor would be required to perform very different work than described in the original Owner Advisor Agreement, may warrant a modification to this Owner Advisor Agreement signed by Owner Advisor and Owner.

## **Article 3**

### **Owner's Responsibilities**

**3.1** In addition to other responsibilities of Owner as set forth in this Owner Advisor Agreement, Owner shall:

**3.1.1** Provide Owner Advisor with information as to Owner's requirements for the Project, including, but not limited to design objectives, constraints, space, capability and functional requirements, performance expectations, security needs, sustainability goals (if any), flexibility and forward compatibility, schedule and budgetary limitations.

**3.1.2** Furnish copies of design and construction standards that Owner will require to be included in RFP and/or the Basis of Design Documents (excluding any such standards that are publicly available such as codified requirements and standards published by authorities having jurisdiction).

**3.1.3** Furnish copies of Owner's standard contract forms, general, special and supplementary conditions and related documents for inclusion in the RFP and/or Basis of Design Documents, when applicable.

**3.1.4** Furnish Owner Advisor any other relevant available information pertinent to the Project, including any reports, feasibility studies, preliminary programming and data relative to previous design efforts or investigations at or adjacent to the Site.

**3.1.5** Upon Owner Advisor's request, furnish or otherwise make available such additional Project-related information and data as is available to Owner and reasonably required to enable Owner Advisor to complete its Services, which generally include the following:

**3.1.5.1** Property, boundary, easement, right-of-way and engineering surveys or data;

**3.1.5.2** Deed and, if applicable, any other document identifying land use restrictions for the Site;

**3.1.5.3** Data and drawings relating to surface and subsurface conditions and structures at the Site;

**3.1.5.4** Environmental assessments, audits, investigations and impact statements and other relevant environmental or cultural studies as to the Project and the Site;

**3.1.5.5** Data or consultations as required for the Project but not otherwise identified in the Owner Advisor Agreement; and

**3.1.5.6** Specific requirements of governmental authorities and/or regulatory agencies having jurisdiction over the Project, of which Owner has knowledge.

**3.1.6** Give prompt written notice to Owner Advisor whenever Owner observes or otherwise becomes aware of any circumstance that affects the scope or time of performance or furnishing of Owner Advisor's Services, or any defect or nonconformance in Owner Advisor's Services or in the

Work of Design-Builder.

**3.1.7** Examine all studies, reports, drawings, specifications, proposals and other documents presented by Owner Advisor and render timely decisions pertaining thereto.

**3.1.8** Undertake activities necessary to provide or obtain reviews, consents, approvals and permits from all governmental authorities and/or regulatory agencies having jurisdiction to approve any phase of the Project and such reviews, approvals and consents from others as may be necessary by completion of each phase of the Project, except to the extent that the Services require Owner Advisor to undertake such activities or Design-Builder is required to do so.

**3.1.9** Attend the pre-submittal meeting(s), pre-proposal meeting(s), opening of statements of qualifications ("SOQs"), opening of proposals, proposers' in-person presentations, initial conference after execution of the Agreement between Owner and Design-Builder, design and construction progress meetings, pre-occupancy and final inspections and other Project-related meetings.

**3.1.10** Provide the services of a testing laboratory to perform all inspections, tests and approvals of samples, materials and equipment required by the Contract Documents or the Basis of Design Documents, or to evaluate the performance of materials, equipment and facilities of Owner, prior to incorporation into the work, with appropriate professional interpretation thereof, except to the extent that the Services include a requirement for Owner Advisor to obtain testing services or the Contract Documents require Design-Builder to do so.

**3.1.11** Owner agrees that it will proceed with the Project continuously and in a reasonably and orderly manner.

## **Article 4**

### **Payments to Owner Advisor**

#### **4.1 Services**

**4.1.1 Compensation for Base Services** *[Choose one or a combination of the following options.]:*

☐ **Hourly Rate Option Subject to Not-To-Exceed Limit**

Owner shall pay Owner Advisor for the Base Services an amount equal to cumulative hours devoted by individual Owner Advisor and subconsultant personnel to the Project multiplied by standard hourly rates for each applicable billing category, applying a markup on the subconsultant services as specified herein, and shall reimburse Owner Advisor for other reimbursable direct costs for such Base Services as specified below, provided that in no event shall Owner Advisor be entitled to receive more than the not-to-exceed amount of \$\_\_\_\_\_ ("NTE Limit"). See Exhibit [ ] for the standard hourly rates schedule for Owner Advisor and subconsultant personnel attached to this Owner Advisor Agreement and estimated hours for each category of personnel.

***[In lieu of standard hourly rates, the Exhibit may specify compensation based on cost with a multiplier for audited overhead. The Exhibit may provide for rates to be escalated annually based on an index or other method.]***

☐ **Hourly Rate Option with Estimated Total Compensation**

Owner shall pay Owner Advisor for the Base Services an amount equal to cumulative hours

devoted by Owner Advisor and subconsultant personnel to the Project multiplied by standard hourly rates for each applicable billing category, applying a markup on the subconsultant services as specified herein, and shall reimburse Owner Advisor for other reimbursable direct costs for such Base Services as specified below. Total compensation for such Base Services, including reimbursable direct costs, is estimated to be \$\_\_\_\_\_. Owner Advisor shall promptly notify Owner if it becomes apparent that compensation will exceed the estimate and shall provide a new estimate. See Exhibit [ ] for the standard hourly rates schedule for Owner Advisor and subconsultant personnel attached to this Owner Advisor Agreement and estimated hours for each category of personnel.

***[In lieu of standard hourly rates, the Exhibit may specify compensation based on cost with a multiplier for audited overhead. The Exhibit may provide for rates to be escalated annually based on an index or other method.]***

☐ **Lump Sum Option**

The total compensation for the Base Services, inclusive of reimbursable direct costs for such Services as specified below, shall be a lump sum of \$\_\_\_\_\_ based on the following distribution of compensation:

**4.1.1.1** Project delivery strategy phase (\$\_\_\_\_\_);

**4.1.1.2** Procurement phase (\$\_\_\_\_\_);  
*[optional: allocate compensation to RFQ-related Services and RFP-related Services]*

**4.1.1.3** Preconstruction phase (\$\_\_\_\_\_), if applicable; and

**4.1.1.4** Design and construction phase (\$\_\_\_\_\_).

**4.2 Additional Services**

Unless otherwise specified in a modification to this Owner Advisor Agreement agreed to by both parties, compensation for Services provided under Article 2 – Owner Advisor Additional Services shall be an amount equal to cumulative hours devoted to the Project multiplied by standard hourly rates for each applicable billing category, applying a markup on the subconsultant services as specified herein, and shall reimburse Owner Advisor for other reimbursable direct costs for such Additional Services as specified below. The total amount payable shall not exceed the amount specified in the written authorization or modification, as applicable, unless Owner approves an increase in said amount. The schedule of standard hourly rates is attached to this Owner Advisor Agreement as Exhibit [XX].

***[In lieu of standard hourly rates, the Exhibit may specify compensation based on cost with a multiplier for audited overhead, or may provide for compensation on a lump sum basis.]***

**4.3 Reimbursable Costs and Subconsultant Charges**

**4.3.1** Owner shall pay Owner Advisor for its actual reasonable cost *[Select one:]* ☐ plus a \_\_\_\_\_ percent markup ☐ without markup for the following categories of reimbursable expenses:

**4.3.1.1** Transportation and subsistence;

**4.3.1.2** Providing and maintaining field office facilities, including furnishings, utilities; postage, courier or delivery services;



**4.3.1.3** Printing drawings and other documents beyond those copies necessary for Owner's review and records and Owner Advisor's own use;

**4.3.1.4** Provision of off-site facilities for RFQ and RFP evaluations and other reimbursable direct costs relating to evaluations, if any;

**4.3.1.5** Exhibition expenses, if any;

**4.3.1.6** Advertisements authorized by Owner; and

**4.3.1.7** Such other reimbursable costs as the parties may agree.

See Exhibit [ ] for the estimated amounts for each category of expense.

***[Owner may also include an Exhibit including requirements for reimbursement of other direct costs.]***

**4.3.2** Whenever compensation to Owner Advisor herein is stated to include charges of Owner Advisor's subconsultant(s), those charges to Owner for Services provided by subconsultants shall be the amounts billed to Owner Advisor plus a \_\_\_\_\_ percent markup.

#### **4.4 Invoices**

**4.4.1** Owner Advisor shall establish and maintain internal accounting methods and procedures acceptable to Owner for documenting and monitoring costs with respect to the performance and furnishing of Owner Advisor's Services under this Owner Advisor Agreement. Invoices will be prepared in a form mutually agreeable to Owner and Owner Advisor, submitted to Owner on a periodic frequency, milestone or other basis as agreed by Owner and Owner Advisor.

**4.4.2** Invoices for Services provided during the prior invoicing period shall be based upon:

**4.4.2.1** The cumulative hours devoted to the Project by each category of Owner Advisor and subconsultant personnel times the standard hourly rate for each such category, applying a markup on the subconsultant services as specified herein, plus reimbursable expenses as specified above; or

**4.4.2.2** The percentage of each phase of Owner Advisor's Services completed during that month multiplied by the lump sum value of that phase (if applicable) in Section 4.1.1 above.

**4.4.3** Invoices are due and payable within the earlier of (a) \_\_\_\_\_ days of receipt or (b) any shorter period for payment required by applicable law.

**4.4.4** In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

**4.4.5** In the event of any termination under this Owner Advisor Agreement for convenience, Owner Advisor will be entitled to invoice Owner for Services provided and reimbursable direct costs incurred, if applicable, on or before the effective date of termination. In the event of a termination for cause, each party shall be entitled to such remedies as may be allowed under this Owner Advisor Agreement and applicable law.

## **Article 5**

### **Changes in Schedule of Performance**

#### **5.1 Expectation of Continuous Progress**

The scope of Owner Advisor's Services and compensation payable to Owner Advisor under this Owner Advisor Agreement have been established in anticipation of the continuous progress of the Project through completion of Owner Advisor's Services in a reasonable and orderly manner. Unless specific periods of time or specific dates for providing Services are specified in this Owner Advisor Agreement, Owner Advisor's obligations to render Services hereunder will be for a period that may reasonably be required for the final completion of such Services.

#### **5.2 Force Majeure**

Either party shall be excused from performing its obligations under this Owner Advisor Agreement during the time and to the extent that it is prevented from performing by a Force Majeure Event.

#### **5.3 Additional Compensation for Suspension or Delay Beyond Owner Advisor's Control**

**5.3.1** If Owner issues a suspension order or fails to give Owner Advisor reasonably prompt written authorization to proceed with any phase of Base Services after completion of the immediately preceding phase, or if Owner Advisor's Services are otherwise re-sequenced, delayed or suspended through no fault of Owner Advisor, Owner Advisor shall be entitled to reasonable compensation for the cost of any Services required as a result of such re-sequence, delay or suspension. Owner Advisor shall also be entitled to an extension of the overall schedule of performance commensurate with the time of performance of the affected Services.

**5.3.2** Owner Advisor shall notify Owner of the effects of any such suspension or delay on its costs and the overall schedule once the effects are ascertainable and shall provide backup information as requested by Owner regarding the change in costs and/or time. Owner Advisor shall also provide interim information regarding the effects of the suspension or delay promptly following receipt of a request from Owner for such information. The parties shall enter into a modification adjusting the NTE Limit or lump sum compensation and/or adjusting the period of performance under this Owner Advisor Agreement as appropriate to compensate Owner Advisor for the change.

## **Article 6**

### **General Conditions**

#### **6.1 Work Product**

**6.1.1 Ownership of Work Product.** All drawings, specifications and other documents and electronic data furnished by Owner Advisor to Owner under this Owner Advisor Agreement ("Work Product") are deemed to be instruments of service and Owner Advisor shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 6.1.2 through 6.1.5 below.

**6.1.2 Owner's Limited License Upon Project Completion and Payment in Full to Owner Advisor.** Upon Owner's payment in full for all Services performed under this Owner Advisor Agreement, Owner Advisor shall grant Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project, conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Owner Advisor is at Owner's sole risk and without liability or legal exposure to Owner Advisor or anyone working by or through Owner Advisor, including subconsultants of any tier (collectively the "Indemnified Parties"), and on Owner's

obligation to provide the indemnity set forth in Section 6.1.5 below.

***[At the parties' option, the following may be used in lieu of Section 6.1.2.]***

☐ Upon Owner's payment in full for all Work performed under this Owner Advisor Agreement, Owner Advisor: (a) grants Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project; and (b) transfers all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in that portion of the Work Product that consists of architectural, engineering and other design elements and specifications that are unique to the Project. The parties shall specifically designate those portions of the Work Product for which ownership in the Work Product shall be transferred. Such grant and transfer are conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Owner Advisor is at Owner's sole risk and without liability or legal exposure to Owner Advisor or anyone working by or through Owner Advisor, including subconsultants of any tier (collectively the "Indemnified Parties"), and on Owner's obligation to provide the indemnity set forth in Section 6.1.5 below.

**6.1.3 Owner's Limited License upon Owner's Termination for Convenience or Owner Advisor's Election to Terminate for Cause.** If Owner terminates this Owner Advisor Agreement for its convenience as set forth in Section 6.5.2.1 hereof, or if Owner Advisor elects to terminate this Owner Advisor Agreement for cause in accordance with Section 6.5.1.2 hereof, Owner Advisor, upon Owner's payment in full of the amounts due Owner Advisor, 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 as set forth in Section 6.1.2 above, conditioned on the following:

**6.1.3.1** Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party and on Owner's obligation to provide the indemnity set forth in Section 6.1.5 below; and

**6.1.3.2** Owner agrees to pay Owner Advisor the additional sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) as compensation for the right to use the Work Product to complete the Project and subsequently use the work Product in accordance with Section 6.1.2 if Owner resumes the Project through its employees, agents, or third parties.

**6.1.4 Owner's Limited License upon Owner Advisor's Default.** If this Owner Advisor Agreement is terminated due to Owner Advisor's default pursuant to Section 6.5.1.1 hereof, then Owner Advisor 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 6.1.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Owner Advisor was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Owner Advisor shall be entitled to the rights and remedies set forth in Section 6.1.3 above.

**6.1.5 Owner's Indemnification for Use of Work Product.** If Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Section 6.1, Owner shall defend, indemnify and hold harmless such Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product.

**6.2 Owner Advisor's Estimate of Design and Construction Costs and Standard of Care**

**6.2.1** Owner Advisor's estimate of probable cost for design and construction provided hereunder will be made on the basis of Owner Advisor's experience and qualifications and shall represent Owner Advisor's best judgment as an experienced and qualified professional generally familiar with

the industry. However, Owner Advisor cannot and does not guarantee that proposals, bids or actual design and construction cost will not vary from the estimates of probable design and construction costs prepared by Owner Advisor.

**6.2.2** The standard of care for all Services performed by Owner Advisor and any subconsultants pursuant to this Owner Advisor Agreement shall be the care and skill ordinarily used by members of the applicable profession practicing under similar conditions at the same time and locality of the Project.

### **6.3 No Responsibility for Design-BUILDER's Actions**

Owner Advisor shall not be responsible for Design-BUILDER's construction means, methods, techniques, sequences or procedures, or for safety or security precautions or programs, nor shall Owner Advisor be responsible for any failure of Design-BUILDER to carry out its responsibilities under the Contract Documents with Owner. The foregoing shall not, however, excuse Owner Advisor from its responsibilities for performance of its obligations as specified in Exhibit A.

### **6.4 Owner Advisor's Insurance**

**6.4.1** Owner Advisor, at no additional expense to Owner, shall obtain and maintain a policy or policies of insurance for the following coverages from insurance companies authorized to do business in the state in which the Project is located:

**6.4.1.1** Workers' compensation as may be required by the state in which the Project is located, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease or as identified by statute, whichever is less;

**6.4.1.2** Commercial general liability ("CGL"), written on an occurrence basis, including the following coverages:

**6.4.1.2.1** Premises/Operations Liability

**6.4.1.2.2** Products/Completed Operations

**6.4.1.2.3** Personal/Advertising Injury

**6.4.1.2.4** Explosion, Collapse and Underground Property Damage

Said policy must provide the following minimum coverage: Bodily Injury and Property Damage: \$\_\_\_\_\_ per occurrence, and \$\_\_\_\_\_ annual aggregate. Any deductible or self-insured retention must be disclosed and is subject to Owner's approval.

**6.4.1.3** Commercial automobile liability, including coverage for owned, non-owned, leased or hired vehicles. Such policy must provide the following minimum coverage; Liability: \$\_\_\_\_\_ per accident.

**6.4.1.4** Professional liability (errors and omissions) insurance to include Owner Advisor and all professional subconsultants employed on the Project under this Owner Advisor Agreement. Such policy must provide a minimum coverage of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for each occurrence and in the aggregate.

If the professional liability policy is written on a claims made form, the retroactive date shall be prior to or coincident with the date of this Owner Advisor Agreement. The insurance must be maintained by Owner Advisor and its subconsultants for the duration of this Owner Advisor Agreement, plus an extended three-year reporting period.

**6.4.2** Prior to commencing any services hereunder, Owner Advisor shall provide Owner with certificates evidencing that (a) all insurance obligations required by this Owner Advisor Agreement are in full force and in effect and will remain in effect for the term of this Owner Advisor Agreement; and (b) no insurance coverage will be canceled, renewal refused or materially changed unless at least thirty (30) days' prior written notice is given to Owner.

**6.4.3** The insurance policies required herein, except for workers' compensation and professional liability, shall list Owner as an additional insured.

## **6.5 Termination**

### **6.5.1 For Cause**

**6.5.1.1** Owner may declare Owner Advisor in default and terminate Owner Advisor's right to proceed under this Owner Advisor Agreement upon occurrence of any of the following: (a) Owner Advisor makes a general assignment for the benefit of its creditors; (b) a petition in bankruptcy is filed by or against Owner Advisor; (c) a receiver is appointed on account of Owner Advisor's insolvency; (d) Owner Advisor fails to perform in accordance with the terms and conditions of this Owner Advisor Agreement; or (e) Owner Advisor violates any laws, ordinances, rules, regulations or orders of a governmental authority and/or regulatory agency having jurisdiction in performance of the Services and does not cure its default within 10 business days following receipt of written notice thereof from Owner or, in the event that the default is capable of cure but cannot reasonably be cured within 10 business days, if Owner Advisor fails to commence cure within said period and thereafter diligently prosecute cure to completion.

Upon declaration of default, Owner may, without prejudice to any other rights or remedies Owner may have, hold in abeyance further payments to Owner Advisor, or terminate this Owner Advisor Agreement by written notice to Owner Advisor specifying the date of termination, or both. In the event of such termination, Owner may take possession of all Work Product and finish the Services by whatever method Owner may deem expedient, including hiring a new owner advisor. A waiver by Owner of one default of Owner Advisor shall not be considered to be a waiver of any subsequent default.

**6.5.1.2** Owner Advisor may declare Owner in default and terminate Owner Advisor's obligation to proceed under this Owner Advisor Agreement upon occurrence of any of the following: (a) Owner makes a general assignment for the benefit of its creditors; (b) a petition in bankruptcy is filed by or against Owner; (c) a receiver is appointed on account of Owner's insolvency; (d) Owner fails to perform in accordance with the terms and conditions of this Owner Advisor Agreement; or (e) Owner violates any laws, ordinances, rules, regulations or orders of a governmental authority and/or regulatory agency having jurisdiction relating to the Project with a material adverse impact on performance of the Services and does not cure its default within 10 business days following receipt of written notice thereof from Owner Advisor or, in the event that the default is capable of cure but cannot reasonably be cured within 10 business days, if Owner fails to commence cure within said period and thereafter diligently prosecute cure to completion.

**6.5.1.3** In the event of a termination for default hereunder, liability of the parties shall be determined in accordance with applicable law.

### **6.5.2 For Convenience**

**6.5.2.1** Owner may terminate this Owner Advisor Agreement for convenience at any time by delivery of notice to such effect to Owner Advisor, effective as of the date specified in the notice, which shall be no earlier than the date of delivery of the notice.

**6.5.2.2** Owner Advisor may terminate this Owner Advisor Agreement for convenience by

delivery of notice of intent to terminate to Owner based on suspension of Owner Advisor's Services for the Project by Owner for more than [ ] days for reasons not relating to Owner Advisor's performance. Such termination shall be effective 5 business days after delivery, if Owner fails to lift the suspension during that period.

**6.5.2.3** In case of a termination for convenience, Owner Advisor shall be entitled to receive payment from Owner as provided in Article 4 and Section 6.1.

## **6.6 Controlling Law**

This Owner Advisor Agreement is governed by the laws of the state in which the Project is located.

## **6.7 Dispute Resolution**

**6.7.1** Owner and Owner Advisor agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their rights under other provisions of this Owner Advisor Agreement or under law.

**6.7.2** After conclusion of the 30-day negotiation period, all claims, disputes and other matters in question between the parties arising out of or relating to this Owner Advisor Agreement or breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, unless the parties mutually agree otherwise.

*[Note: Each party should consult with counsel regarding use of alternative dispute resolution methods.]*

## **6.8 Indemnification**

**6.8.1** Owner Advisor, to the fullest extent permitted by law, shall indemnify and hold harmless Owner and its officers, directors, employees and agents from and against claims, losses and damages, including attorneys' fees and expenses, for non-party bodily injury, sickness or death, and non-party property damage or destruction (other than to the Project itself) but only to the extent resulting from the negligent acts or omissions of Owner Advisor or anyone employed directly or indirectly by Owner Advisor or anyone for whose acts Owner Advisor may be liable.

**6.8.2** If an employee of Owner Advisor, anyone employed directly or indirectly by Owner Advisor or anyone for whose acts any of them may be liable has a claim against any party indemnified pursuant to Section 6.8.1 above, Owner Advisor's indemnity obligation set forth in Section 6.8.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Owner Advisor, or other entity under any employee benefit acts, including workers' compensation or disability acts.

**6.8.3** Owner, to the fullest extent permitted by law, shall indemnify and hold harmless Owner Advisor and its officers, directors, employees and agents from and against claims, losses and damages, including attorneys' fees and expenses, for non-party bodily injury, sickness or death and non-party property damage or destruction (other than to the Project itself) but only to the extent resulting from the negligent acts or omissions of Owner or anyone employed directly or indirectly by Owner or anyone for whose acts Owner may be liable.

**6.8.4** If an employee of Owner, anyone employed directly or indirectly by Owner or anyone for whose acts Owner may be liable has a claim against any party indemnified pursuant to Section 6.8.3 above, Owner's indemnity obligation set forth in Section 6.8.3 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Owner or other entity under any employee benefit acts, including workers' compensation or disability acts.

**6.8.5** None of the obligations set forth in this Owner Advisor Agreement (on behalf of any Party) constitute personal obligations of any natural persons who are the officers, shareholders, members,

partners, employees or agents of any Party unless the natural person is expressly identified as a contracting party. No Party to this Owner Advisor Agreement shall seek recourse against any natural person described herein. This provision, however, shall not protect such natural persons from liability for willful misconduct, illegal acts or intentional violation of any duty of corporate loyalty.

## 6.9 Consequential Damages

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NEITHER OWNER NOR OWNER ADVISOR 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.

*[Note: Each party should consult with counsel regarding the effect of limitation of liability clauses included in the Owner Advisor Agreement.]*

## 6.10 Representatives of the Parties

**6.10.1 Owner's Representative** Owner designates the individual listed below as its Owner's representative, which individual has the authority and responsibility set forth in this Owner Advisor Agreement: *(Identify individual's name, title, address and telephone numbers.)*

**6.10.2 Owner Advisor's Representative** Owner Advisor designates the individual listed below as its Owner Advisor's representative, which individual has the authority and responsibility set forth in this Owner Advisor Agreement: *(Identify individual's name, title, address and telephone numbers.)*

## 6.11 Conflict of Interest

☐ Owner Advisor agrees that it shall not participate on any Design-Build team to pursue or execute the Project without the advance written consent of Owner, and Owner Advisor shall require similar agreements from its affiliates and subconsultants.

☐ Not used.

## 6.12 Notices

Notices under this Owner Advisor Agreement shall be in writing and: (a) delivered personally; (b) sent by certified mail, with return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by email communication followed by a hard copy and with receipt confirmed by telephone. All notices shall be effective upon the date of receipt.

## 6.13 Survival and Severability

**6.13.1** All express representations, indemnifications or limitations of liability made in or given in this Owner Advisor Agreement will survive its completion or termination for any reason.

**6.13.2** Any provision or part of the Owner Advisor Agreement 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 Owner Advisor, who agree that the Owner Advisor Agreement 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.

## 6.14 Entire Agreement

This Owner Advisor Agreement constitutes the complete agreement between the parties respecting the within subject matter. All previous proposals, offers and other communications, written or oral, relative to this Owner Advisor Agreement, are superseded except to the extent that they have been incorporated into this Owner Advisor Agreement.

In executing this Owner Advisor Agreement, Owner and Owner Advisor each individually represents that it has the necessary financial resources to fulfill its obligations under this Owner Advisor Agreement, and each has the necessary corporate approvals to execute this Owner Advisor Agreement, and licenses, permits, certifications and qualifications to perform the Services described herein.

**OWNER:**

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

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

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

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

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

**OWNER ADVISOR:**

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

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

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

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

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

**Caution: You should sign an original DBIA document which has this caution printed in blue. An original assures that changes will not be obscured as may occur when documents are reproduced.**



## **EXHIBIT A**

### **Scope of Services**

*[Note: This Exhibit is provided as a sample scope of services for Owner Advisor and should be modified as the parties deem appropriate for the Project. Some tasks may not be required for a specific project, others may need to be added, or Owner may prefer to undertake some of these tasks in-house.]*

*[Additional note: This scope is most suitable for projects using design-build with a fixed contract price, and various changes may be needed for projects that use another compensation method or another delivery method.]*

## **1. BASE SERVICES**

### **1.1 General**

**1.1.1** Owner Advisor is generally responsible for furnishing personnel, materials, equipment, services and deliverables necessary to assist Owner in implementing the efficient, economical and timely completion of the Project in accordance with this Owner Advisor Agreement. This includes providing technical expertise and support in areas of project management, procurement management, technical design support and oversight, construction management, contract management, project controls and administrative support, as described in this Scope of Services.

**1.1.2** In participating in meetings regarding the Project, Owner Advisor will act as Owner's representative and will provide minutes of the meetings to Owner, unless Owner agrees otherwise.

**1.1.3** Owner Advisor shall notify Owner if at any time Owner Advisor believes Owner should retain additional consultants with specific expertise. Owner Advisor shall assist with selection of such consultants as requested by Owner.

**1.1.4** Owner Advisor shall assist Owner staff with scheduling, budgeting, cost control, change control, quality assurance and with day-to-day accounting and administrative support for the Project.

**1.1.5** Owner Advisor shall develop and maintain a document control system in accordance with procedures approved by Owner. All incoming and outgoing items shall be logged, filed and distributed. Other document control activities include the logging and storage of archival information, security of controlled documents and electronic file maintenance. Accurate records of correspondence, drawings, reports and other project related documents and deliverables shall be maintained. This shall include developing a Project document database, starting in the project delivery strategy phase, to include surveys, reports and other reference information relevant to Project development, and properly logging and storing submittals and other documents received from Design-Builder and others over the course of the Project.

**1.1.6** Owner Advisor shall consult and coordinate with Owner staff, consultants and legal counsel as appropriate during all phases of the Project.

### **1.2 Project Delivery Strategy Phase.**

**1.2.1** In this phase, Owner Advisor shall:

**1.2.1.1** Prepare a project delivery study defining and clarifying the Project requirements, including but not limited to identifying Legal Requirements affecting the contract and procurement and strategies for statutory compliance; identifying and obtaining available data regarding Owner's requirements and objectives; discussing any known unique aspects, drivers, constraints or risks for the Project; evaluating methods of selecting Design-Builder such as qualification-based selection, best value selection and sole source negotiations; assessing pros and cons of lump sum and cost plus (with or without a

guaranteed maximum price) pricing mechanisms; and analyzing progressive design-build and other collaborative delivery and contracting methods;

**1.2.1.2** Obtain information regarding federal, state and local laws relating to the Project and Owner's internal procurement policies. Identify and analyze requirements of governmental authorities and/or regulatory agencies having jurisdiction over the Project, and consult with such governmental authorities and/or regulatory agencies as appropriate;

**1.2.1.3** In conjunction with Owner, prepare a procurement approach report containing, as appropriate:

- (a) a summary description of the Project;
- (b) Owner's objectives for the Project;
- (c) a proposed schedule that is reasonable and realistic including a detailed schedule for the procurement process and a projected timeline for Project development;
- (d) a cost model and confirmation/validation or adjustment of Owner's Project budget;
- (e) a project risk register to include known Project design and construction risks (challenges and complexities) and incorporate risk considerations into the Project cost model and Owner's Project budget;
- (f) recommendations regarding design-build procurement procedures consistent with applicable law;
- (g) recommendations for conforming Owner policies to be consistent with the selected delivery method;
- (h) identification of investigations, studies, reports, conceptual/preliminary design work and third-party agreements required to be completed prior to the issuance of procurement documents;
- (i) a description of the proposal evaluation process including possible candidates for a selection panel, if any;
- (j) recommendations regarding document control procedures and development of a database of documents relevant to Project development; and
- (k) outlines of requirements (including evaluation criteria based on the Project scope of work, circumstances, risks, challenges and complexities, and suggested weightings) for one or both of the following, as applicable:
  - (i) Request for Qualifications ("RFQ"), if the design-build selection process will be based solely on the qualifications of prospective Design-Builders or contemplates shortlisting of the most highly qualified prospective Design-Builders; and
  - (ii) Request for Proposals ("RFP"), if the design-build selection process contemplates selection based on evaluation of proposals, potentially including: a process and schedule for alternative technical concepts; a process and schedule for confidential one-on-one meetings with proposers; a selection based on qualifications and proposal quality, best value determination, fixed

price/best proposal or other process for evaluating price and other factors; and potentially including negotiations with one or more proposers;

**1.2.1.4** Meet and confer with Owner following delivery of the project delivery study and procurement approach report to discuss their contents, and make reasonable revisions based on any additional input from Owner; and

**1.2.1.5** Commence work on investigations, studies, reports (including preliminary geotechnical investigation, if not provided), conceptual/preliminary design work and third-party agreements for inclusion in the Project procurement package.

**1.3 Procurement Phase.** In this phase, Owner Advisor shall: *[Note: The following description is based on a two-step procurement process and will need to be modified if a one-step process is used.]*

**1.3.1** Manage preparation of the following RFQ Documents:

**1.3.1.1** Notice and/or advertisement of the RFQ;

**1.3.1.2** Distribution list;

**1.3.1.3** RFQ, including a scope description, submittal requirements and evaluation criteria for Design-Builder selection or proposer shortlisting or pre-qualification, as applicable;

**1.3.1.4** Evaluation manual, forms and other information to assist Owner with the selection, shortlisting or prequalification process, as applicable;

**1.3.1.5** Any additional documentation requested by Owner consistent with the Scope of Services.

**1.3.2** Upon receipt of authorization from Owner:

**1.3.2.1** Publish the notice and/or advertisement of the RFQ;

**1.3.2.2** Manage distribution of the RFQ Documents in accordance with Owner's directions, including distribution to persons or entities responding to the RFQ notice and to Owner, Owner's staff and other persons or entities identified by Owner, and maintain a list of persons and entities who have received the RFQ Documents;

**1.3.2.3** Facilitate pre-submittal meeting(s) with interested parties, if appropriate;

**1.3.2.4** Coordinate communications with interested parties and draft responses to questions related to the RFQ;

**1.3.2.5** Provide Owner with draft responses to questions from interested parties, and, after review and approval by Owner, finalize answers for clarifications and/or addenda to RFQ;

**1.3.2.6** Prepare and publish clarifications or addenda to the RFQ, as needed; and

**1.3.2.7** Report progress to Owner, as necessary.

**1.3.3** Following receipt of statements of qualification ("SOQ"), and upon authorization by Owner to proceed:

**1.3.3.1** Assist Owner with the process of examining each SOQ for compliance with the minimum requirements of the RFQ and distribute copies of the SOQs to Owner;

**1.3.3.2** Assist Owner in evaluating the SOQs;

**1.3.3.3** Support post-SOQ interviews;

**1.3.3.4** Assist in documenting selection recommendations and presenting them to Owner; and

**1.3.3.5** Assist Owner in reviewing the recommendations and providing notification to respondents regarding the decisions for selection, shortlisting or pre-qualification, as applicable.

**1.3.4** Assist Owner with preparation of the RFP documents and assembly of the RFP package, including:

**1.3.4.1** Instructions to proposers, including updated Project description and scope of work, proposal submittal requirements (administrative, technical, financial, price) and forms, proposal evaluation criteria and selection method;

**1.3.4.2** Ancillary documents associated with the procurement process such as the form of proposal security, if any, rights of entry, etc.;

**1.3.4.3** Form of the Agreement and general and special conditions of the Agreement;

**1.3.4.4** Template for the Basis of Design Documents, including Owner's Project Criteria and Deviation List;

**1.3.4.5** Ancillary documents associated with the Agreement with Design-Builder, such as forms of performance and payment security, stipend agreement, dispute resolution agreement, etc.;

**1.3.4.6** Functional requirements; *[Note: Certain process related projects may require performance requirements to be included as a part of the Contract Documents.]*

**1.3.4.7** Schematic site plan, floor plans, elevations, relevant sections, renderings and 3D/BIM models, as appropriate;

**1.3.4.8** Space standards and environmental requirements;

**1.3.4.9** Technical provisions;

**1.3.4.10** Performance standards;

**1.3.4.11** Any clarifications or addenda to the RFP, as needed; and

**1.3.4.12** Any additional documentation requested by Owner consistent with the Scope of Services.

**1.3.5** Upon receipt of authorization by Owner to proceed:

**1.3.5.1** Manage distribution of the RFP package and associated documents to the proposers, Owner, Owner's staff and any other persons or entities requested by Owner, and maintain a list of people and entities who have received the RFP;

**1.3.5.2** Facilitate up to \_\_\_\_\_ pre-proposal meeting(s) with all proposers and up to \_\_\_\_\_ confidential one-on-one meeting(s) with proposers;

**1.3.5.3** Assist with reviews of and responses to alternative technical concepts and other pre-proposal submittals; *[Note: This task should be revised as appropriate to reflect the level of assistance required by Owner.]*

**1.3.5.4** Coordinate communications between proposers and Owner;

**1.3.5.5** Provide Owner with draft responses to questions and, after review and approval by Owner, finalize answers for clarifications and/or addenda to RFP;

**1.3.5.6** Publish clarifications or addenda to the RFP, as needed; and

**1.3.5.7** Report progress to Owner, as necessary.

**1.3.6** Following receipt by Owner of the proposals, and upon authorization by Owner to proceed:

**1.3.6.1** Manage the process of examining each proposal for compliance with the minimum requirements of the RFP and distribute copies of the proposals in accordance with the evaluation manual;

**1.3.6.2** Assist Owner in evaluating the proposals, including developing requests for clarification of proposal content and evaluating responses, as applicable;

**1.3.6.3** Assist Owner with providing notification to respondents regarding the decisions for selection, setting a competitive range or authorizing negotiations, as applicable;

**1.3.6.4** Develop the Basis of Design Documents, consisting of Owner's Project Criteria, Design-Builder's proposal (to the extent these are consistent with the requirements of the Contract Documents) and the list of deviations from the requirements of the Contract Documents, if any, contained in Design-Builder's proposal and approved by Owner; and

**1.3.6.5** Assist Owner in completing the procurement process and award of the Agreement to Design-Builder, potentially including discussions and requests for revised proposals, negotiations with the preferred proposer, development of a guaranteed maximum price, clarification and documentation of alternative technical concepts and proposal commitments, and finalization and execution of the Contract Documents.

**1.3.7** If requested by Owner, Owner Advisor shall provide an opinion of probable design-build cost and adjustments to the Project budget cost breakdown based upon available information, including information received from the proposers, and make adjustments to the RFP documents that may be required to maintain the total Project budget.

#### **1.4 Validation/Preliminary Design Phase (Progressive Design-Build)**

*[Note: If progressive design-build is used, the Project will include an initial phase that will require some Owner Advisor services similar to the design and construction phase in addition to services that are unique to the progressive design-build model. Certain services may need to be moved from the design and construction phase to this phase.]*

☐ In this phase, Owner Advisor shall:

**1.4.1** Assist Owner in the oversight and review of Design-Builder's development of the Project design in accordance with the milestones and requirements of the Contract Documents;

**1.4.2** Participate in the review of design-development submittals and attend design review meetings;

**1.4.3** Assist Owner in the review of Design-Builder's pricing development;

**1.4.4** Assist Owner in the review of Design-Builder's schedule development;

**1.4.5** Undertake independent cost estimating services;

**1.4.6** Assist Owner with price negotiations and the negotiation of any final design and construction phase proposal;

**1.4.7** Assist Owner with the creation of any contract amendments incorporating the agreed final design and construction phase proposal;

**1.4.8** Assist Owner with the administration of the Agreement in event a final agreement cannot be reached with Design-Builder on a final design and construction proposal.

☐ Not used.

## **1.5 Design and Construction Phase**

*[Note: The following description of Services during the design and construction phase presumes that Owner Advisor will be engaged to represent Owner during design and construction. If Owner does not wish to engage Owner Advisor during the design and construction (or wishes to defer making this decision), the following design and construction phase provisions should be designated as additional Services that may be included in this Owner Advisor Agreement pursuant to Article 2 – Owner Advisor's Additional Services.]*

**1.5.1** In the design and construction phase, Owner Advisor shall:

**1.5.1.1** Co-locate with Owner and Design-Builder;

**1.5.1.2** Set up procedures and infrastructure facilitating integration of Owner, Owner Advisor and Design-Build Teams using an online meeting platform;

**1.5.1.3** Assist Owner in Agreement kick-off including participating in kick-off meetings with Owner and Design-Builder, developing lists of Owner and Design-Builder deliverables and tasks to assure compliance with each party's responsibilities under the Contract Documents, and setting up arrangements with independent testing laboratories to review Design-Builder's compliance with the Contract Documents;

**1.5.1.4** Assist Owner with establishing and managing project control systems including those addressing the following elements: communications protocols, requests for information and associated logs, submittal review and scope control, project information dashboard and budget and cost controls;

**1.5.1.5** Review Design-Builder submittals including drawings, specifications, shop drawings and samples and other submittals required by the Contract Documents for acceptability and conformance with the Contract Documents including the Basis of Design Documents;

**1.5.1.6** Review Design-Builder's project schedule and schedule updates for conformance with the Contract Documents;

**1.5.1.7** Visit the Site during construction for general inspection and observation, for meetings with the parties, and to determine, in general, if the work is proceeding in accordance with the Contract Documents, provided that Owner Advisor shall not be required to make exhaustive or continuous inspections to check the quality or quantity of the Work;

**1.5.1.8** Assist Owner in issuing clarifications and interpretations of the Contract Documents;

**1.5.1.9** Recommend responses to change orders and change requests;

**1.5.1.10** Consider whether inspections are needed in addition to those already scheduled, and provide recommendations to Owner regarding any such inspections;

**1.5.1.11** Receive and review certifications of inspections, tests, etc.;

**1.5.1.12** Advise Owner regarding notices and claims submitted by Design-Builder, and assist with informal and formal dispute resolution;

**1.5.1.13** Review Design-Builder's requests for payment, require Design-Builder to make corrections as needed, and forward requests to Owner with signature indicating that Owner Advisor considers the request in acceptable format for payment;

**1.5.1.14** Review maintenance and operating instructions, schedules and guarantees, warranties, bonds, certificates or other evidence of insurance required by the Contract Documents; and

**1.5.1.15** Conduct pre-occupancy and/or final inspections of the completed work.

## **2. ADDITIONAL SERVICES** *[Note: Owner to consider whether to include any of these tasks in the Base Services.]*

### **2.1 Additional Services**

Additional Services ordered by Owner hereunder may include the following:

#### **General:**

**2.1.1** Undertake preliminary professional design services for the Project to be included in appropriate procurement documents as a part of Owner's Project Criteria;

**2.1.2** Update Owner's Project risk register throughout the course of the Project;

**2.1.3** Prepare applications for governmental approvals;

**2.1.4** Make measured drawings of or investigate existing conditions or facilities;

**2.1.5** Undertake the following investigations and studies in addition to those specified in the Base Services *[List additional investigations and studies.]*;

**2.1.6** Determine potential utility and other third-party impacts and develop utility and license agreements, as applicable;

**2.1.7** Determine right-of-way needs and perform right-of-way acquisition services, as applicable;

**2.1.8** Enter into subcontracts for Services as required by Owner;

**2.1.9** Serve as a consultant or witness for Owner in any litigation, arbitration or other dispute resolution process related to the Project.

#### **Project Delivery Strategy Phase:**

**2.1.10** At the appropriate time during the development of the procurement documents, undertake a market validation survey of potential proposers to solicit general interest in the Project, comments on the draft procurement documents including project budget, schedule and risk allocation.



**2.1.11** *[Note: In the case of large, public infrastructure projects, the following Services may be considered.]* Assist Owner in the development of a community outreach, communications and public relations strategy and plan. These Services may include public meetings, web-based public portal for Project progress and updates, news media releases, advertisements and regular announcements.

**Procurement Phase:**

**2.1.12** Develop evaluation manuals for the SOQs and proposals, and provide training to personnel conducting evaluations;

**2.1.13** Provide facilities for the evaluation of proposals;

**2.1.14** Assist Owner in connection with protests concerning the procurement process, re-bidding or renegotiating contracts for design, construction, equipment or services.

**Design and Construction Phase:**

**2.1.15** Undertake up to \_\_\_\_\_ independent cost estimate(s) in order to verify Design-Builder's cost and budget development, price proposals and final pricing. Assist Owner in the review of any GMP proposals, elements of cost-of-work and values of allowance items and contingencies. Advise Owner with respect to shared savings and incentives/disincentives, as appropriate.

**2.1.16** Provide environmental compliance oversight;

**2.1.17** Prepare for, coordinate with, participate in and respond to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering and constructability reviews requested by Owner; and

**2.1.18** Perform Services required as the result of delays, changes, or price increases occurring as a direct or indirect result of materials, equipment or energy shortages, or default by Design-Builder.

**2.1.19** *[Note: In the case of a process-related project, the following Services may be considered.]* Assist Owner with start-up and commissioning services including: establishing start-up protocol, support manufacturers with start-up of equipment, review operations manuals, assist with training of Owner's operations staff.

**2.1.20** Perform Project close-out services including: assembly of as-built drawings, assembly of equipment manuals and warranty information, prepare notices of completion, assist with change resolution and prepare lessons learned.

**Warranty Period:**

**2.1.21** Participate in periodic inspections of the Project during the warranty period, following each inspection produce a punch list identifying Work items that do not meet the standards of the Contract Documents, recommend actions to be taken to enforce warranties, coordinate with Owner and Design-Builder regarding warranty issues, review Design-Builder's plan for corrective measures, coordinate with Owner and Design-Builder regarding implementation of the corrective measures and conduct final inspections of completed warranty work.



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