

# Construction Agreement

This Construction Agreement (“Agreement”) is entered into as of \_\_\_\_\_, 20\_\_, by and between:

**EBM Construction, Inc.**, a Nebraska corporation, with its principal office at 1014 Sherwood Road, Norfolk, NE 68701 (“Contractor”), and

\_\_\_\_\_, a  
\_\_\_\_\_, with its principal office at  
\_\_\_\_\_ (“Owner”).

Contractor and Owner are each a “Party” and collectively the “Parties.”

## Article 1. Definitions

**1.1 Project** The engineering, design, procurement, fabrication, construction, startup, and commissioning of the facility located at:

**1.2 Specifications** Contractor’s plans, drawings, technical documents, and written descriptions of the Project, including revisions approved through Change Orders.

**1.3 Project Price** The total lump-sum amount payable to Contractor under Article 6.

**1.4 Substantial Completion** The date when the Project is operational for its intended use, except for minor punch-list items that do not materially impair operation.

**1.5 Final Completion** Completion of all punch-list items, delivery of closeout documents, and satisfaction of all payment conditions.

## Article 2. Scope of Work

**2.1 Contractor’s Services** Contractor shall perform all engineering, design, procurement, fabrication, construction, and commissioning services necessary to complete the Project in accordance with the Specifications.

As stated in the original agreement:

“Contractor shall perform such detailed engineering as is necessary to prepare designs and specifications for the procurement of all equipment and material...”

**2.2 Means and Methods** Contractor retains full discretion over construction means, methods, sequencing, staffing, and coordination.

**2.3 Subcontracting** Contractor may subcontract any portion of the work. Contractor remains responsible for its subcontractors.

**2.4 Standard of Performance** Contractor shall perform the work in a professional manner consistent with industry standards.

## **Article 3. Owner Responsibilities**

**3.1 Required Information** Within \_\_\_ days of execution, Owner shall provide all geotechnical studies, surveys, environmental reports, civil engineering, and other information necessary for Contractor to complete design.

**3.2 Permits** Owner shall obtain and pay for all permits required to construct and operate the Project, except Contractor's business licenses.

**3.3 Site Access and Utilities** Owner shall provide continuous, unrestricted access to the site, including utilities, staging areas, laydown areas, temporary power, water, heat, and sanitary facilities.

**3.4 Site Security** Owner is responsible for all site security. Contractor is not liable for theft, vandalism, or damage to materials stored onsite.

**3.5 Financial Assurance** Owner shall provide written evidence of its ability to pay the full Project Price:

- Before Contractor orders materials or begins work
- At any time upon Contractor's request
- Immediately if Owner is late on any payment

Failure to provide financial assurance entitles Contractor to suspend work.

**3.6 Owner-Caused Delays** If Owner delays the work—including failure to provide access, approvals, information, or timely decisions—Contractor is entitled to:

- A day-for-day schedule extension
- Reimbursement of all additional costs, including labor, equipment, overhead, and demobilization/remobilization

**3.7 Owner Interference** Owner and its consultants shall not interfere with Contractor's means, methods, or sequencing. Any interference entitles Contractor to a Change Order.

## **Article 4. Changes**

**4.1 Change Orders Required** No change is valid unless documented in a written Change Order signed by both Parties.

**4.2 Contractor's Right to Decline** Contractor may decline any change that materially impacts its schedule, commitments, or resources.

**4.3 Pricing of Changes** Changes shall include:

- Direct costs
- Indirect costs
- Overhead
- Profit
- Escalation
- Extended general conditions

## Article 5. Schedule

**5.1 Progress Schedule** Within 30 days of execution, Contractor shall provide an estimated progress schedule. The schedule is not guaranteed and may be adjusted for weather, supply-chain issues, Owner delays, Change Orders, or other causes beyond Contractor's control.

**5.2 Delays Beyond Contractor's Control** Contractor is entitled to time and cost adjustments for:

- Weather
- Labor shortages
- Supply-chain disruptions
- Government actions
- Utility conflicts
- Differing site conditions
- Owner delays
- Force majeure events

## Article 6. Contract Price & Payment Terms

**6.1 Project Price** Owner shall pay Contractor a lump-sum amount of \$ \_\_\_\_\_ ("Project Price").

**6.2 Initial Payment** Owner shall pay \_\_\_% of the Project Price within \_\_\_ business days of execution.

**6.3 Progress Payments**

- Bi-weekly progress payments are due within **5 business days** of Contractor's invoice.
- Payments include labor, services, fabricated materials, and materials ordered for the Project that cannot be cancelled.
- Retainage shall not exceed \_\_\_% of each invoice.

**6.4 Pay-If-Paid / Pay-When-Paid** Contractor's obligation to pay subcontractors is expressly conditioned on Owner's payment to Contractor. If pay-if-paid is unenforceable, pay-when-paid applies, extending Contractor's payment deadline until Owner pays.

**6.5 Immediate Suspension for Nonpayment** If Owner fails to pay any amount when due, Contractor may suspend work immediately without notice. Owner shall reimburse all suspension costs.

**6.6 Final Payment** Due within 10 days after:

- Substantial Completion
- Contractor's final invoice
- Punch-list items not exceeding 5% of the Project Price

**6.7 Release of Retainage** Owner shall release retainage within 5 business days after punch-list completion and receipt of lien waivers.

**6.8 Prompt Pay Act** All payments shall comply with the Nebraska Construction Prompt Pay Act. Unpaid balances accrue interest at the statutory maximum.

**6.9 Price Escalation** If the cost of steel, concrete, lumber, electrical components, fuel, or other major materials increases after execution, Contractor is entitled to a price adjustment equal to the increase.

**6.10 Supply-Chain Disruption** If materials become unavailable or delayed due to market conditions, Contractor may substitute equivalent materials (approval not unreasonably withheld) and receive a schedule and price adjustment.

## **Article 7. Contractor's Use of Payments**

Contractor shall use payments to pay for labor and materials as required by Nebraska law.

## **Article 8. Insurance**

**8.1 Contractor Insurance** Contractor shall maintain:

- Workers' Compensation
- Commercial General Liability (\$1M per occurrence)
- Automobile Liability (\$1M)
- Builder's Risk for Contractor-owned tools and equipment

**8.2 Owner Insurance** Owner shall maintain broad-form builder's risk insurance covering the full replacement value of the Project, including:

- Flood

- Wind
- Collapse
- Theft
- Equipment breakdown
- Testing and startup

Contractor shall be named as an additional insured.

## **Article 9. Risk of Loss & Safety**

**9.1 Protection of Work** Contractor shall protect its work until Substantial Completion, except for losses covered by Owner's builder's risk insurance.

**9.2 Owner Access** Owner may not enter the site without Contractor's approval and must comply with Contractor's safety rules.

**9.3 Unsafe Owner Personnel** Contractor may remove Owner's personnel or consultants who violate safety rules.

## **Article 10. Suspension & Termination**

**10.1 Suspension by Contractor,** Contractor may suspend work immediately if:

- Owner fails to pay any amount when due
- Owner fails to provide financial assurance
- Owner interferes with the work
- Unsafe or unsuitable conditions exist

Owner shall reimburse all suspension costs.

**10.2 Termination by Contractor,** Contractor may terminate this Agreement if:

- Suspension continues for more than 30 days
- Owner becomes insolvent
- Owner materially breaches the Agreement

Upon termination, Contractor shall be paid for:

- All completed work
- All materials on hand
- All materials on order
- Profit and overhead on unperformed work

## **Article 11. Warranties**

**11.1 Contractor Warranty** Contractor warrants the Project will be free from defects in workmanship and materials for **12 months after startup**, excluding:

- Normal wear
- Owner misuse
- Improper operation
- Third-party damage
- Items covered by manufacturer warranties

**11.2 Contractor's Option** Contractor may repair or replace defective items at its discretion.

## **Article 12. Indemnification**

Owner shall indemnify Contractor for:

- Design errors
- Site conditions
- Third-party claims
- Environmental issues
- Utility conflicts
- Owner negligence
- Owner interference

Contractor shall indemnify Owner only to the extent required by Nebraska law and only for Contractor's proven negligence.

## **Article 13. Liens**

(Aligned with Nebraska Construction Lien Act.)

## **Article 14. Dispute Resolution**

(Executive negotiation → mediation → litigation in Madison County, NE.)

## **Article 15. Force Majeure**

Contractor is not liable for delays or failure to perform caused by events beyond its control. Contractor receives time and cost relief.

## **Article 16. No Damages for Delay**

Owner waives all claims for delay damages except for Contractor's willful misconduct.

## **Article 17. Owner-Delay Liquidated Damages**

Owner shall pay Contractor \$\_\_\_\_\_ per day for Owner-caused delays.

## **Article 18. Concealed or Unknown Conditions**

Contractor receives time and cost adjustments for concealed utilities, rock, groundwater, hazardous materials, or differing site conditions.

## **Article 19. Hazardous Materials**

Contractor is not responsible for identifying, handling, or remediating hazardous materials.

## **Article 20. Intellectual Property**

All engineering, drawings, and technical documents remain Contractor's property.

## **Article 21. Cybersecurity & Data Protection**

Owner shall protect all digital communications and data provided by Contractor.

## **Article 22. Electronic Communications**

Electronic communications are valid and enforceable.

## **Article 23. Digital Signatures**

Electronic signatures are valid under Nebraska's Uniform Electronic Transactions Act.

## **Article 24. Limitation of Liability**

Contractor's total liability is limited to the Project Price actually paid, excluding fraud or willful misconduct. Contractor is not liable for consequential, incidental, or punitive damages.

## **Article 25. Right to Accelerate**

Owner must pay all costs associated with acceleration.

## **Article 26. Recordkeeping & Audit Limits**

Owner may audit only change-order cost records, with 10 days' notice.

## **Article 27. Anti-Assignment**

Owner may not assign this Agreement without Contractor's written consent.

## **Article 28. Attorneys' Fees**

The prevailing party is entitled to recover attorneys' fees and costs.

## **Article 29. Notices**

Notices must be sent by email and one of the following: certified mail, overnight courier, or hand delivery.

## **Article 30. Entire Agreement**

This Agreement constitutes the entire understanding between the Parties.

# Signatures

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

**OWNER:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**CONTRACTOR: EBM Construction, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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