

# Memorandum

## Department of Public Works



**TO:** Michael O. Geisel, P.E.  
City Administrator

**FROM:** James A. Eckrich, P.E. *JAE*  
Public Works Dir. / City Engineer

**DATE:** June 15, 2023

**RE:** Central Park Restroom Container

In 2021 the City of Chesterfield Department of Parks, Recreation, and Arts installed a concessions container at the entrance to the Chesterfield Amphitheater near the Veterans Honor Park. This is a rectangular container approximately 40 feet by 8 feet that provides concession service from the east side of the container. ARPA funding includes a second container to be installed immediately west of the existing container for additional restrooms. This container will be tied-in to the existing container, creating a “roof-top deck.” While the existing concession container is accessed from the east, the proposed restroom container will be accessed from the west. This will require concrete flatwork and a retaining wall to allow access to the proposed restrooms, as well as necessary sewer, water, and electric. A schematic drawing of the existing container and proposed container are shown below.



The Parks, Recreation, and Arts Department has been working for some time to logistically execute this project. As this project is somewhat unique, it does not fit well as a conventional architectural / engineering design services project or a civil construction project. Specifically, it requires some structural / civil design but not enough to economically justify a full-scale design services contract.

After reviewing this matter at length, it is my recommendation that we pursue this project as a “design-build” project. The benefit of design-build is that an owner does not have to create a full set of construction plans prior to bidding a project. Instead, it works with a design-build firm to define a project scope, create plans and specifications, and then use those plans and specs to construct a project within the allocated budget. I have spoken with two firms who provide design-build service. One of those firms indicated that they were not interested in the project. The second firm, Castle Contracting, is very interested in the project and has provided the attached design-build proposal for the project budget of \$450,000.


If this project were to be approved, Castle would immediately commence the design service portion of the project, at an estimated cost of \$42,200. During this phase Castle would design the project and work with the City on the details to ensure the project will meet the City’s scope needs at the lowest possible cost. Once a design is complete and accepted the City would then authorize construction at a cost not-to-exceed the amount contained within the contract.

While design-build is not the preferred course of action in all projects, it fits this project exceptionally well. **Accordingly, it is my recommendation that the City approve a design-build contract with Castle Contracting for a restroom container at the Chesterfield Amphitheater at a cost not-to-exceed \$450,000.** By proceeding in this manner we can avoid expensive (and unnecessary) full-scale design services and ensure that the project can be constructed within the timeline dictated by the ARPA funding.

**Action Recommended**

This matter should be forwarded to the Planning and Public Works Committee of City Council. Should PPW concur with the Staff recommendation it should forward the matter to the full City Council with a recommendation to authorize the City Administrator to execute a design-build contract with Castle Contracting in an amount not-to-exceed the budgeted \$450,000.

Great approach\solution to a non-traditional construction project. Please forward to PPW for further review and discussion, with the intent of obtaining a committee recommendation to the full council.

  
2023-6-16





# Civil Design-Build

because what you don't know will cost you.

*"Castle's design-build approach with the La Collina Subdivision component of The Hill project proved to be very beneficial to the City's permit approval process. A large-scale residential subdivision construction project hasn't been implemented for some time within City limits, and Castle's expertise and collaboration with multiple City Departments was helpful in delivering a well-designed project."*

-John Kohler, Planning & Programming Manager  
Board of Public Service, City of St. Louis

## WHY CIVIL DESIGN-BUILD?

Integrating design and construction under a single entity is not a new idea. MEP disciplines have benefited from this integration for decades, but the approach is uncommon in civil engineering and construction - until now. Castle Contracting has developed a Civil Design-Build approach integrating civil engineering and construction and bringing valuable knowledge to maintaining schedule and budget at the critical early stages of a project. This sets up the tasks that follow for success, plus the Castle team can provide detailed site information to enhance the maintenance, repair and expansion of the site for many decades to follow. Castle's success at Civil Design-Build hinges on the following six critical capabilities.

### START YOUR PROJECT SOONER

Projects delivered on a Civil Design-Build contract will break ground 30%-50% faster than a traditional Design-Bid-Build process. As a result, Castle can provide owners with valuable enhancements to their overall development schedules, helping vertical construction begin sooner.

### WE HAVE THE P#

Coordinating jurisdictional authorities (MSD, Ameren, City Water, City of St. Louis, etc.) can push back a project start date if not handled properly. Castle Contracting knows how to streamline the due diligence process allowing for faster permit acquisition, keeping your schedule on track.

### OUR DESIGN-BUILDERS BRING YOU OPTIONS

Castle's collaborative efforts among design and construction professionals enables creative solutions to the challenges of a complicated site. The strong relationship and collaboration between our in-house engineers and builders is key to solving these problems in a timely manner, with little to no cost impact.

### KEEP THE NEIGHBORS HAPPY

As the design is evolving, construction managers, supervisors and foremen are planning the site and efficient construction operation activities, such as neighborhood logistics, traffic control, stormwater protection and ultimately coordination with the prime building contractor.

### PAY FOR WHAT YOU PLAN

Castle brings a knowledgeable team of project managers and estimators working in unison with our in-house design professionals to deliver multi-level cost opinions to owners. From conceptual design through final construction documents, there's a collaborative effort to keep the project on budget.

### CASTLE ONE CALL

Owners will work with a single point of contact at Castle Contracting, allowing for the dedicated attention your project deserves. In addition, Castle self performs 80%-95% of the work ensuring project quality, budget and schedule. We can build what we design.

## SERVICES



Utility Mapping



Civil Design



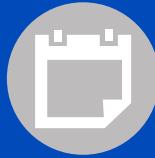
Site Analysis  
& Evaluation



Constructability Review  
& Cost Analysis



Logistics Planning



Schedule Creation



Self-Perform

## CLIENTS



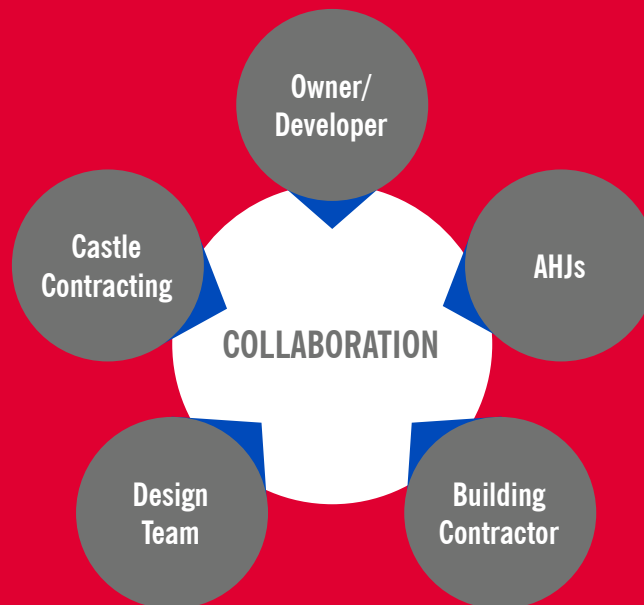
## PROJECT TYPES

Pad-Ready Development

Early Infrastructure  
Design & Installation

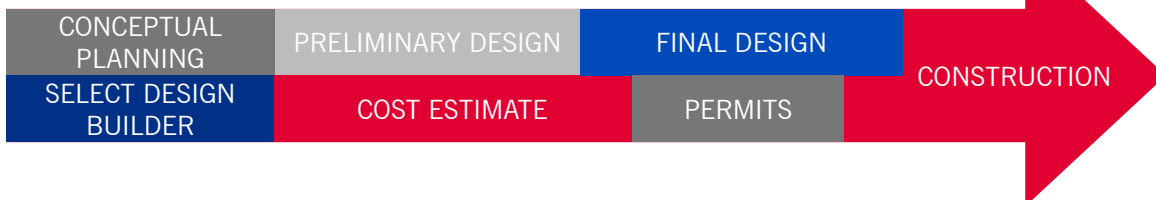
Major Utility Reroutes

## THE TEAM



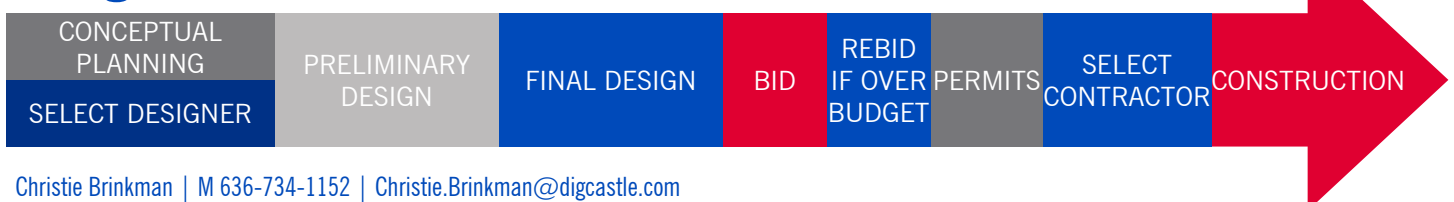
## DESIGN-BUILD PROCESS

### Design-Build Method



Break  
Ground  
30%-50%  
faster.

### Design-Bid-Build Method





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# **STANDARD FORM OF AGREEMENT BETWEEN OWNER AND DESIGN- BUILDER - LUMP SUM**

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## **Document No. 525**

Second Edition, 2010

© Design-Build Institute of America

Washington, DC



## 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.**

- 1. License.** The Design-Build Institute of America ("DBIA") provides DBIA Contract Documents and licenses their use worldwide. You acknowledge that DBIA Contract Documents are protected by the copyright laws of the United States. You have a limited nonexclusive license to: (a) Use DBIA Contract Documents on any number of machines owned, leased or rented by your company or organization; (b) Use DBIA Contract Documents in printed form for bona fide contract purposes; and (c) Copy DBIA Contract Documents into any machine-readable or printed form for backup or modification purposes in support of your permitted use.
- 2. User Responsibility.** You assume sole responsibility for the selection of specific documents or portions thereof to achieve your intended results, and for the installation, use, and results obtained from the DBIA Contract Documents. You acknowledge that you understand that the text of the DBIA Contract Documents has important legal consequences and that consultation with an attorney is recommended with respect to use or modification of the text. You will not represent that any of the contract documents you generate from DBIA Contract Documents are DBIA documents unless (a) the document text is used without alteration or (b) all additions and changes to, and deletions from, the text are clearly shown.
- 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. Acknowledgement.** 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 Agreement Between Owner and Design-Builder - Lump Sum

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

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This **AGREEMENT** is made as of the \_\_\_\_\_ 14th \_\_\_\_\_ day of June in the  
year of 2023, by and between the following parties, for services in connection with the Project  
identified below.

**OWNER:**

*(Name and address)*

City of Chesterfield, Missouri  
690 Chesterfield Pkwy W  
Chesterfield MO 63017

**DESIGN-BUILDER:**

*(Name and address)*

Castle Contracting LLC  
345 Marshall Ave., Suite 302  
Saint Louis, MO 63119

**PROJECT:**

*(Include Project name and location as it will appear in the Contract Documents)*

Veterans Honor Park (VHP) Restroom Container

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

## **Article 1**

### **Scope of Work**

**1.1** Scope includes the civil design and construction of a pad and utilities for a restroom container in the Veterans Honor Park in Chesterfield Missouri.

## **Article 2**

### **Contract Documents**

- 2.1** The Contract Documents are comprised of the following:
- 2.1.1** All written modifications, amendments, minor changes and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition), as modified (“General Conditions of Contract”);
  - 2.1.2** The Basis of Design Documents, including the Owner’s Project Criteria, Design-Builder’s Proposal and the Deviation List, if any, contained in the Design-Builder’s Proposal, which shall specifically identify any and all deviations from Owner’s Project Criteria;
  - 2.1.3** This Agreement, including all exhibits and attachments, executed by Owner and Design-Builder (List for example, performance standard requirements, performance incentive requirements, markup exhibits, allowances, or unit prices);
  - 2.1.4** The General Conditions of Contract; and
  - 2.1.5** Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract.
- 2.2** The Design Builder will provide the following:
- 2.2.1** Interim Design Submissions and Services as follows:
    - 2.2.4** Site Plans;
    - 2.2.5** Schematic Concept Drawing (Block Schematics);
    - 2.2.7** Advanced Schematic Drawings;
    - 2.2.10** Narrative Description;
    - 2.2.11** Outline Specifications;
    - 2.2.12** Design Development;
- 2.3** Preliminary Schedule and Lump Sum Proposal as follows:
- 2.3.2** Projected Design/Construction Schedule
  - 2.3.3** Lump Sum Price Proposal
- Design-Builder will submit a Lump Sum Price Proposal based upon the review of the above items with the Owner and which will include a list of Drawings, Specifications and Allowances, and will set forth a time period for acceptance by the Owner of the Lump Sum Price.

## **Article 3**

### **Interpretation and Intent**

**3.1** Design-Builder and Owner, prior to execution of the Agreement, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

**3.2** The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof. Conflicts existing within Section 2.1.2 shall be resolved by giving precedence first to the Deviation List, if any, then the Owner's Project Criteria, and then the Design-Builder's Proposal.

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

**3.4** If Owner's Project Criteria contain design specifications: (a) Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any performance specifications; and (b) Design-Builder shall be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design specification.

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

## Article 4

### **Ownership of Work Product**

**4.1 Work Product.** All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement (“Work Product”) are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.

**4.2 Owner’s Limited License Upon Project Completion and Payment in Full to Design-Builder.** Upon Owner’s payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner’s occupancy of the Project, conditioned on Owner’s express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner’s sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the “Indemnified Parties”), and on the Owner’s obligation to provide the indemnity set forth in Section 4.5 below.

Upon Owner’s payment in full for all Work performed under the Contract Documents

**4.3 Owner’s Limited License upon Owner’s Termination for Convenience or Design-Builder’s Election to Terminate.** If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner’s payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:

**4.3.1** Use of the Work Product is at Owner’s sole risk without liability or legal exposure to any Indemnified Party and on the Owner’s obligation to provide the indemnity set forth in Section 4.5 below; and

**4.3.2** Owner agrees to pay Design-Builder the additional sum of \_\_\_\_\_ N/A \_\_\_\_\_ Dollars (\$ \_\_\_\_\_ N/A \_\_\_\_\_) as compensation for the right to use the Work Product to complete the Project and subsequently use the work Product in accordance with Section 4.2 if Owner resumes the Project through its employees, agents, or third parties.

**4.4 Owner’s Limited License upon Design-Builder’s Default.** If this Agreement is terminated due to Design-Builder’s default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.

**4.5 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 Article 4, 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.



## Article 5

### Contract Time

**5.1 Date of Commencement.** The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

**5.2 Substantial Completion and Final Completion.**

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



**5.2.2** Interim milestones and/or Substantial Completion of identified portions of the Work ("Scheduled Interim Milestone Dates") shall be achieved as follows:  
TBD

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

**5.2.4** All of the dates set forth in this Article 5 (collectively the "Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

**5.3 Time is of the Essence.** Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

**5.4 Liquidated Damages.** Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by TBD (TBD) days after the Scheduled Substantial Completion Date (the "LD Date"), Designer-Builder shall pay Owner TBD Dollars (\$ TBD) as liquidated damages for each day that Substantial Completion extends beyond the LD Date.



**5.5** Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving the Contract Time(s).



Owner and Design-Builder agree that the maximum aggregate liability Design-Builder has for any liquidated damages that may be assessed under this Agreement for failure to achieve the Contract Time(s) shall be   % of the Contract Price.

**5.6 Early Completion Bonus.** If Substantial Completion is attained on or before N/A (N/A) days before the Scheduled Substantial Completion Date (the "Bonus Date"), Owner shall pay Design-Builder at the time of Final Payment under Section 7.3 hereof an early completion bonus of N/A Dollars (\$ N/A) for each day that Substantial Completion is attained earlier than the Bonus Date. *(If an early completion bonus is applicable to any dates set forth in Section 5.2.2 or 5.2.3 hereof, this Section 5.6 will need to be modified accordingly)*

Owner and Design-Builder agree that the maximum aggregate amount that Design-Builder shall receive as the early Completion Bonus is N/A Dollars (\$ N/A ).

## 5.7

In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 of the General Conditions of Contract, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price for those events set forth in Section 8.2.1 of the General Conditions of Contract, including Force Majeure Events.

## Article 6

### **Contract Price**

**6.1 Contract Price.** Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of Forty Two Thousand and Two Hundred Dollars (\$42,200.00) ("Contract Price"), for Design Phase Services work, subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

The Design-Builder shall submit a Lump Sum Contract Price Proposal to the Owner for construction services at an agreed to time in the design progression. The Design-Builder and Owner shall meet to discuss and review the Proposal. The Proposal shall include the Contract Price, a list of Drawings and Specifications, including Addenda used as the basis of the Proposal, a list of the Assumptions and Clarifications made by Design-Builder, the Scheduled Substantial Completion Date and the limit for acceptance of the Proposal. If the Owner accepts the Proposal, the Contract Price shall be set forth in an Amendment to this Agreement.

**6.1.1 Failure to Accept the Proposal.** If Owner rejects the Proposal, or fails to notify Design-Builder in writing on or before the date specified in the Proposal that it accepts the Proposal, the Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

- .1 Owner may suggest modifications to the Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the Proposal shall be deemed accepted and the parties shall proceed in accordance with section 6.1 above;
- .2 Owner may terminate this Agreement for convenience in accordance with Article 8 hereof.

If Owner fails to exercise any of the above options, Design-Builder shall have the right to suspend performance of Work in accordance with Section 11.3.1. of the General Conditions of Contract, provided, however, that in such event Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof.

**6.2 Markups for Changes.** If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Sections 9.4.1.3 or 9.4.1.4 of the General Conditions of Contract, the following markups shall be allowed on such changes:

**6.2.1** For additive Change Orders, it is agreed that Design-Builder shall receive a Fee of Fifteen percent (15 %) of the additional costs incurred for that Change Order on self-perform work, and Five percent ( 5 %) on subcontractor work, plus any other markups set forth at Exhibit D & E hereto

**6.2.2** For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

- No additional reduction to account for Design-Builder's Fee or any other markup.

### **6.3 Allowance Items and Allowance Values.**

**6.3.1** Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in an Exhibit hereto.

**6.3.2** Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

**6.3.3** No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed on an Allowance Item by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

**6.3.4** The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and fee, are deemed to be included in the original Contract Price, and are not subject to adjustment, regardless of the actual amount of the Allowance Item.

In the event the actual direct cost of labor, materials, equipment, transportation, taxes and insurance associated with an Allowance Item is Twenty-Five percent (25%) greater than or less than the Allowance Value for such Allowance Item, Design-Builder and Owner agree that Design-Builder's right to Fee and markup shall be adjusted in accordance with Section 6.2.

**6.3.5** Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.3.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

#### **6.4 Performance Incentives.**

**6.4.1** Owner and Design-Builder have agreed to the performance incentive arrangements set forth in Exhibit N/A.

*[The parties are encouraged to discuss and agree upon performance incentives that will influence project success. These incentives may consist of Award Fees, incentives for safety, personnel retention, client satisfaction and similar items.]*

## Article 7

### Procedure for Payment

#### 7.1 Progress Payments.

**7.1.1** Design-Builder shall submit to Owner on the Twenty Fifth ( 25<sup>th</sup> ) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

**7.1.2** Owner shall make payment within ten (10) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

#### 7.2 Retainage on Progress Payments.

##### 7.2.1

Owner will retain 5 percent (5%) from Design-Builder's Applications for Payment, exclusive of general conditions costs, and any amounts paid to Design-Builder's Design Consultant, from each Application for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.

**7.2.2** Within fifteen (15) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

**7.3 Final Payment.** Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within thirty (30) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

**7.4 Interest.** Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the rate of two percentage points above the current prime rate as established by US Bank.

**7.5 Record Keeping and Finance Controls.** With respect to changes in the Work performed on a cost basis by Design-Builder pursuant to the Contract Documents, Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to changes in the Work performed on a cost basis in accordance with the Contract Documents, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any lump sum amounts, rates, multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such lump sum amount, rate, multiplier or markup has been charged in accordance



with this Agreement, with the composition of such lump sum amount, rate, multiplier or markup not being subject to audit.

## **Article 8**

### **Termination for Convenience**

**8.1** Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

**8.1.1** All Work executed and for proven loss, cost or expense in connection with the Work;

**8.1.2** The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

**8.1.3**

The fair and reasonable sums for overhead and profit on the sum of items 8.1.1 and 8.1.2 above.

or

**8.2** In addition to the amounts set forth in Section 8.1 above, Design-Builder shall be entitled to receive one of the following as applicable:

**8.2.1** If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid For services rendered as outlined in Exhibit D(Design Phase Services Proposal).

**8.2.2** If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid For work completed according to Exhibit E(Construction Services).

**8.3** If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 hereof. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4.

## Article 9

### Representatives of the Parties

#### 9.1 Owner's Representatives.

**9.1.1** Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

James Eckrich, PE  
Director of Public Works/City Engineer  
City of Chesterfield, Missouri  
690 Chesterfield Pkwy W  
Chesterfield MO 63017

#### 9.2 Design-Builder's Representatives.

**9.2.1** Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Christie Brinkman, Director, Design-Build  
Castle Contracting, LLC  
345 Marshall Ave., Suite 302  
Saint Louis, MO 63119  
636-734-1152

**9.2.2** Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

James Parks, Sr. Design Manager,  
Castle Contracting LLC,  
345 Marshall Ave., Suite 302  
St. Louis MO 63119

## Article 10

### **Bonds and Insurance**

**10.1 Insurance.** Design-Builder and Owner shall procure and maintain the insurance coverages as agreed upon by both parties.

**10.2 Bonds and Other Performance Security.** Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

**Performance Bond.**

Required                       Not Required

**Payment Bond.**

Required                       Not Required

## **Article 11**

### **Other Provisions**

**11.1 Other provisions, if any, are as follows:** *(Insert any additional provisions)*

Notwithstanding Section 2.3.1 of the General Conditions of Contract, if the parties agree upon specific performance standards in the Basis of Design Documents, the design professional services shall be performed to achieve such standards.

Any claims, disputes, or controversies between the parties arising out of or related to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 of the General Conditions of Contract shall be resolved in a court of competent jurisdiction in the state in which the Project is located.



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

**OWNER:**

**DESIGN-BUILDER:**

Castle Contracting, LLC

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

\_\_\_\_\_  
*(Name of Design-Builder)*

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

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

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

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

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

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

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

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

EXHIBIT A

BASIS OF DESIGN DOCUMENTS

Site visit with Parks Superintendent of Arts & Entertainment, Jason Baucom. Emailed site overview from Jim Eckrich on 5/17/23. Total project budget not to exceed \$450,000.

EXHIBIT B  
DESIGN-BUILDER'S KEY PERSONNEL

Project Director  
Christie Brinkman

Civil Engineer  
James Parks, PE

EXHIBIT C

DESIGN-BUILDER'S PRELIMINARY DESIGN/CONSTRUCTION SCHEDULE

To be determined following design completion

EXHIBIT D

DESIGN PHASE SERVICES – LUMP SUM PROPOSAL



345 Marshall Avenue, Suite 302, Webster Groves, MO 63119  
P 314-421-0042 | F 314-231-9157  
digcastle.com

June 5, 2023

James Eckrich, PE  
Director of Public Works / City Engineer  
City of Chesterfield  
690 Chesterfield Pkwy W  
Chesterfield, MO 63017

RE: VHP Restroom Container, Chesterfield, MO – Design Phase Services Proposal – R1

Dear Mr. Eckrich,

Castle Contracting is pleased to present our Design Phase Services Proposal for the New Restroom Container for Veterans Honor Park in Chesterfield, Missouri. Generally, the scope of design services includes but is not necessarily limited to demolition plans for the existing improvements to be removed, and new utility infrastructure and site improvements to support the new facility. Please keep in mind this proposal is contingent on the execution of a design-build agreement between Castle Contracting and The City of Chesterfield, which includes tethering agreed upon civil construction services. Upon approval of the proposal provided below, Castle will deliver a standard DBIA contract for additional negotiations. Our proposal is based on the following:

## SITE SURVEY (BOUNDARY & TOPOGRAPHIC):

- A Property Boundary survey to recover or reset property corners associated with the boundary
- An improvement survey will show all the improvements on the property in the subject area
- A topographic survey will determine the surface elevation across the subject area
- Source a title report to depict easements and encumbrances

## CONCEPTUAL DESIGN:

- Assist client in defining overall civil program
- Coordinate and attend meetings with City of Chesterfield to determine site requirements
- Develop the concept site plan to support client's program through approvals
- Includes Basic Concept Review with MSD
- File applications and submittals with the Authorities Having Jurisdiction (AHJs) on behalf of client
  - MSD
  - Missouri American Water
  - Ameren
  - St. Louis County
- Prepare documents and attend meetings



## CONSTRUCTION DOCUMENT PHASE:

- Continue to meet and coordinate with AHJs
- Coordinate with project team
- Prepare plans and submit to AHJs for permitting
- Provide and track value added activities
- Refine plans to include construction details
- Includes necessary value engineering and constructability review
- Finalize lump sum civil construction cost, upon permit approval

## CONSTRUCTION ADMINISTRATION:

- Includes site visits as needed to ensure construction meets design intent
- Review submittals and RFIs
- Review and approve shop drawings
- Conduct final observation at substantial completion to determine final completion and acceptance of work

## SCHEDULE OF VALUES

SERVICE	COST
SITE SURVEY	\$ 9,900
CONCEPTUAL DESIGN & CITY APPROVAL PHASE	\$ 6,200
CONSTRUCTION DOCUMENT PHASE	\$ 19,500
CONSTRUCTION ADMINISTRATION SERVICES	\$ 1,600
REIMBURSABLE EXPENSE BUDGET	\$ 5,000
<b>TOTAL PROPOSAL</b>	<b>\$ 42,200</b>

## PROJECT SPECIFIC CLARIFICATIONS:

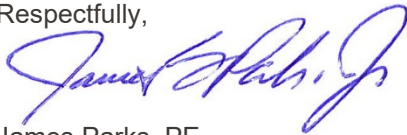
- A. Castle will provide a detailed schedule of design phase milestones upon execution of contract
- B. Assume channel protection and flood protection will NOT be required (water quantity/detention)
- C. Assume water quality/volume reduction measures will NOT be required
- D. No stormwater management design
- E. No landscape architecture
- F. No upgrades to offsite storm or sanitary sewer systems
- G. No pump station design
- H. No traffic engineering or studies have been included
- I. No environmental assessment
- J. No geotechnical investigation
- K. No retaining wall structural design is included
- L. No photometric plan
- M. Architectural renderings and elevations to be provided by others

## REIMBURSABLE EXPENSE BUDGET:

The Reimbursable Expense Budget listed above in the Schedule of Values is an approximation of cost to be incurred during design phase services. Castle may incur certain reimbursable expenses for the CLIENT in order to streamline the project approval process. These expenses may include, but are not limited to; plan reproduction, recording fees, review fees, submittal fees, permits, travel expense and courier fees. Expenses paid by Castle shall be billed to the CLIENT at direct cost. Castle reserves the right to request a CLIENT check for all of the aforementioned expenses/fees in lieu of process streamline attempt.

We are available to discuss anything regarding the contents of this proposal. Please do not hesitate to contact me with any questions or clarifications. We look forward to a favorable response.

Respectfully,

A handwritten signature in blue ink, appearing to read "James Parks, PE". The signature is fluid and cursive, with a large initial "J" and "P".

James Parks, PE  
Senior Design Manager





EXHIBIT E

CONSTRUCTION SERVICES – LUMP SUM PROPOSAL

To be finalized following design.