

GOLF COURSE DESIGN SERVICES AGREEMENT

THIS AGREEMENT is made in Johnson County, Kansas, by and between the City of Overland Park, Kansas, hereinafter “City,” and CE Golf Designs, a Division of Clark Enterprises DKC LLC, (hereinafter referred to as Golf Course Designer), whose principal address is 3250 Brinkerhoff Road, Kansas City, Kansas 66115, in which the City intends to construct an improvement project at St. Andrews Golf Course (hereinafter called the Project) in Overland Park, Kansas, and

WHEREAS, The Golf Course Designer has sub-contracted with Phelps Engineering, Inc. (hereinafter referred to as Engineer) as the civil engineer for the project, whose principal address is 1270 N. Winchester, Olathe, Kansas 66061, and will be solely responsible for the payments of all charges and fees of said Engineer, and,

WHEREAS, The Golf Course Designer has sub-contracted with Nevius / Serig / Palmer Architecture (hereinafter referred to as Architect) as the building architect for the project, whose principal address is 11011 Cody Street, Suite 175, Overland Park, Kansas 66210, and will be solely responsible for the payments of all charges and fees of said Architect, on the terms and conditions described as follows:

Provide Golf Course Design, Engineering and Architecture services to include planning, permitting, drawings, bidding oversight, and construction observation for the re-modeling of the St. Andrews Golf Course. The project includes design, engineering, architecture, construction documents, technical specifications and construction observation for the construction of six new golf holes, two (2) restroom/shelters, entrance drive and all necessary features to complete the golf course remodel. Method of construction and design of greens and tees shall match existing golf holes. The project shall be designed in such a way as to not impact the existing holes while the remodel is under construction. The Golf Course Designer shall consult with Carol Mann on the location and

design of forward tee boxes on the new holes. Irrigation, cart paths and miscellaneous improvements will be designed by City staff and the Golf Course Designer, Engineer and Architect shall incorporate into the overall improvement plans. Time is of the essence and all reasonable efforts shall be made to meet or exceed the attached schedule.

City hereby contracts with Golf Course Designer for the furnishing of professional golf course design services in connection with the Project, for the furnishing of such engineering and architectural services more particularly described herein in consideration of these premises and of the mutual covenants herein set forth. By executing this Agreement, the Golf Course Designer represents to City that Golf Course Designer is professionally qualified to do this Project and has met the qualification requirements issued by the City.

SECTION I - DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed herein unless otherwise stated or reasonably required by the Agreement, and other forms of any defined words shall have a meaning parallel thereto.

“City” means the City of Overland Park, Kansas.

“Golf Course Designer” means the company or individual identified on page 1.

“Engineer” means the company or individual identified on page 1.

“Architect” means the company or individual identified on page 1.

“Consultants” means the combined consulting services of Golf Course Designer, Engineer and Architect.

“Construction Cost” means and includes the cost of the entire construction of the Project, including all supervision, materials, supplies, labor, tools, equipment, transportation and/or other facilities furnished, used or consumed, without deduction on account of penalties, liquidated damages or other amounts withheld from payment to the contractor or contractors, but such cost shall not include the Golf Course Designer’s fee, or other payments to the Golf Course Designer and shall not include cost of land or rights-of-way and easement acquisition.

“Contract Documents” means those documents so identified in the Agreement for Construction for this Project, including all Golf Course Designer, Engineering and Architect documents. All terms defined in the General Conditions shall have the same meaning when used in this Agreement unless otherwise specifically stated or in the case of a conflict in which case the definition used in this Agreement shall prevail in the interpretation of this Agreement.

“Golf Course Design Documents” means all documents required or reasonably implied by the nature of the Project, including, but not limited to, plans, specifications, drawings, tracings, designs, calculations, sketches, and reports.

“Golf Course Design Services” means the professional services, and other acts, duties, and services required of Golf Course Designer, Engineer and Architect under this Agreement together with such other services as City may require pursuant to the terms of this Agreement.

“Project” is as above described.

“Project Manager” means the person employed by City and designated to act as the City’s representative for the Project.

“Right-of-Way” and “Easements” means and includes street, highway, or road right-of-way and any other land dedicated to or otherwise subject to public use.

“Subsurface Borings and Testing” means borings, probing and subsurface explorations, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all the foregoing.

SECTION II - COMPENSATION

1. Total Fee: City agrees to pay Golf Course Designer a fixed amount of Three Hundred Fifty Four Thousand (\$354,000.00) dollars, plus approved reimbursables. The fixed fee is based on the performance of the scope of services outlined in this Agreement, required to be completed as noted on the phases below based upon a Notice to Proceed of January 9, 2007. Payment to Golf Course Designer shall not exceed the following lump sum amounts in each phase of the Project without prior written consent of City:

	<u>Phase</u>	<u>Contract Amount</u>	<u>Completion Date</u>
A.	Design Development and Engineering	\$75,000.00	February 16, 2007
B.	Submit Documents for Permitting	\$50,000.00	February 23, 2007
C.	City Submittal	\$35,000.00	March 7, 2007
D.	Construction Documents	\$119,000.00	March 30, 2007
E.	Construction Document Revisions	\$10,000.00	April 6, 2007
F.	Planning Commission Approval	\$5,000.00	April 9, 2007
G.	Contractor Bidding	\$5,000.00	April 26, 2007
H.	City Council Approval of Construction Bids	\$5,000.00	May 7, 2007

I.	Construction Observation	\$50,000.00	April 30, 2008
	Grand Total	\$354,000.00	

2. Reimbursable Expenses:

- a. All permit application fees associated with the project.
- b. Corps of Engineers – Prepare and submit for U.S. Corps of Engineers Individual 404 Permit.
If the City and Engineer determine that the project requires an individual permit, the Lump Sum Fee for this permit will be thirty-five thousand (\$35,000.00) dollars. This is in addition to the lump sum contract amount.

3. Additional Services: Golf Course Designer shall provide, with City’s concurrence, services in addition to those listed in Section III when such services are requested or authorized in writing by City. Prior to commencing any additional services, Golf Course Designer must submit a proposal outlining the additional services to be provided, estimation of total hours, completion date, and a maximum fee based upon the hourly rate schedule attached hereto as Exhibit A. Such services may include, but are not limited to, making computations and determinations of special assessments, making special trips requested by City other than those required by Section III, preparing changes in plans ordered by City or made necessary by causes beyond the control of Golf Course Designer, providing services necessitated in the event the Golf Course Design Services shall be suspended or abandoned, if such suspension or abandonment is not the result of a breach of this Agreement by the Golf Course Designer, and providing any other special services not otherwise covered by this Agreement which may be requested by City. Payment to Golf Course Designer, as compensation for these services, shall be in accordance with the hourly rate schedule attached as Exhibit A. Reimbursable expenses incurred in conjunction with additional services shall be paid separately and those reimbursable expenses shall be paid at actual cost. Records of reimbursable expenses and

expenses pertaining to additional services shall be made available to City, if so requested.

4. Special Services: Golf Course Designer, Engineer and Architect may be called on to serve as a consultant or witness in any litigation, arbitration, legal or administrative proceeding arising out of this Project and will be compensated in accordance with the hourly rate schedule attached as Exhibit A. Golf Course Designer shall not be paid extra by City if its appearance is to defend its professional Golf Course Design Services. Golf Course Designer shall be paid extra by City to appear at eminent domain or appraiser's hearings necessary to acquire easements and right-of-way for the Project. If Golf Course Designer is requested, in writing, by City, to appear as a general witness, it will be paid its hourly fee as reflected on the hourly rate schedule attached hereto as Exhibit A.
5. Billing: Golf Course Designer shall bill City monthly for all completed services and reimbursable expenses. The bill submitted by Golf Course Designer shall itemize the services and reimbursable expenses for which payment is requested. City agrees to pay Golf Course Designer within thirty (30) days of approval by the Governing Body.
6. City's Right to Withhold Payment: In the event City becomes credibly informed that any representations of Golf Course Designer provided in its monthly billing, are wholly or partially inaccurate, City may withhold payment of sums then or in the future otherwise due to Golf Course Designer until the inaccuracy and the cause thereof, is corrected to City's reasonable satisfaction. In the event City questions some element of an invoice, that fact shall be made known to Golf Course Designer immediately. Consulting Engineer/Architect will help effect resolution and transmit a revised invoice, if necessary. Amounts not questioned by City shall be paid to Golf Course Designer in accordance with the contract payment procedures.

7. Progress Reports: A progress report must be submitted with each monthly pay request indicating the percentage of design tasks completed to date. This report will serve as support for payment to Golf Course Designer.

8. Change in Scope: For substantial modifications in authorized Project scope, and/or substantial modifications of drawings and/or specifications previously accepted by City, when requested by City and through no fault of the Consultants, the Consultants shall be compensated for time and expense required to incorporate such modifications at the Consultant's standard hourly rates per Exhibit A; provided, however, that any increase in Contract Price or Contract Time must be approved through a written Change Order. The Consultants shall correct or revise any errors or deficiencies in its designs, drawings or specifications without additional compensation when due to the Consultant's negligence or other actionable fault.

9. Change Orders: This Agreement may be amended to provide for additions, deletions and revisions in the Golf Course Design Services or to modify the terms and conditions thereof by either written amendment or by Change Order. The Contract Price and Contract Time may only be changed by a written Change Order approved by City, unless it is the result of an emergency situation in which case the Project Manager may give written approval to be followed by a written and approved Change Order. If notice of any change affecting the general scope of the Golf Course Design Services or provisions of this Agreement, including but not limited to, Contract Price or Contract Time, is a requirement of any insurance policy held by the Consultants as a requirement of this Agreement, the giving of such notice shall be the Golf Course Designer's responsibility.

SECTION III - RESPONSIBILITIES OF THE CONSULTANTS

Golf Course Designer, Engineer and Architect shall furnish and perform the various professional duties and services in all phases of the Project to which this Agreement applies as herein provided and which are required for the construction of the Project which services shall include:

A. DESIGN DEVELOPMENT & ENGINEERING - \$75,000.00

1. Final Routing Plan: Golf Course Designer will revise the conceptual routing plan dated December 11, 2006 based on the Owners input and field review of the golf holes. Golf course design considerations that will impact the final routing are playability, safety, aesthetics and maintainability of the new golf holes.
2. Preliminary Design Concepts: Preliminary design concepts for each golf hole will be developed and presented for Owners approval. Each golf hole will be designed to complement the existing golf course while utilizing the existing topography and woodland vegetation. The design concepts will show the shape, size and location of greens, tees, sand bunkers, cart paths, etc.
3. Preliminary Construction Studies: Preliminary Clearing Plan, Grading Plan and Drainage Plan will be developed to determine the entire construction scope of the project. This information will be used for the initial engineering studies.
4. Preliminary Cost Estimate: Preliminary Cost and Quantity Estimate will be prepared, based on the preliminary construction studies that quantify those costs directly related to proposed golf course construction activities.
5. Presentations: Golf Course Designer will be available for public presentations at the golf course or

City meetings. Three (3) official meetings are anticipated as part of the design development phase.

6. Restroom/Shelter Design: The Architect shall prepare preliminary design concepts and cost estimates for two (2) restroom/shelters located on the golf course. The City will approve the preliminary design concepts prior to proceeding with construction documents.
7. Entrance Road: The Engineer shall prepare preliminary design concepts and cost estimates for an entrance drive from Nieman Road. The City will approve the preliminary design concepts prior to proceeding with construction documents.
8. Sanitary Sewer Extensions: The Engineer shall prepare preliminary design concepts, submittals and cost estimates for the necessary sanitary sewer extensions for the project. The City will approve the preliminary design concepts prior to proceeding with construction documents.
9. Utility Coordination: The Engineer shall coordinate the electrical and water service connections for the project.

B. SUBMIT DOCUMENTS FOR PERMITTING - \$50,000.00

1. Corps of Engineers: Prepare and submit for U.S. Corps of Engineers Nationwide 404 Permit. This includes determination of wetland and stream types to minimize disturbance of jurisdictional waters and allow for the utilization of the Corps Nationwide 404 permit. The City and the Engineer shall determine if this permit is necessary.
2. KDHE: Prepare and submit for Kansas Department of Health and Environment (KDHE) and Notice of Intent (NOI) permit.
3. DWR: Prepare and submit for Kansas Division of Water Resources District (DWR) for stream and

floodplain impacts.

4. FEMA: Prepare and submit for Federal Emergency Management Agency (FEMA) permit for survey of floodplain before and after construction.
6. Surveying: Provide preliminary staking of the golf course control points for review. Prior to construction, the engineer will survey the final golf course control points, bridge control, cross-sections, existing topography and water surface profile for the project.
7. Cart Bridge / Low Water Crossing: Structural engineering of abutments for a pre-manufactured bridge and design of low water crossing. Engineer will survey bridge locations and abutments as necessary for construction.
8. Stream Corridor Analysis: Engineer will review City's stream setback ordinance, establish boundary for stream setback, identify variances and coordination modifications for compliance.

C. CITY SUBMITTAL - \$35,000.00

1. City Submittal: Prepare and submit to the City for preliminary and final development plans, flood study / storm water management report, floodplain report and land disturbance permit.
2. Preliminary and Final Plat: Engineer will prepare boundary survey, plat all existing easements, dedicate new easements, preliminary and final plats, title work and set boundary corners in concrete for the project.

D. CONSTRUCTION DOCUMENTS - \$119,000.00

1. Construction Drawings: Golf Course Designer and Engineer shall begin preparing Working Drawings for the golf course that will consist of Site Preparation Plan, Erosion Control Plan,

Grading Plan, Green Details, Drainage Plan, Irrigation Plan, Grassing Plan, Golf Cart Path Plan, Bridge Details and Construction Details.

2. Technical Specifications: Golf Course Designer will prepare Technical Specifications outlining the requirements for the construction of the golf course improvements, including duties and responsibilities of the Designer, Owner, and Contractor.
3. Final Cost Estimate: Revisions will be made to the Cost and Quantity Estimate based upon the work delineated in the Construction Drawings and Technical Specifications.
4. Irrigation System: Golf Course Designer will assist the Owner and the local irrigation distributor with the project as it relates to design, bidding, and construction of the golf course irrigation system. The Designer assumes no liability related to the irrigation system.
5. Restroom/Shelter Bid Documents: The Architect shall prepare the necessary bid documents for construction and obtaining necessary building permits as part of the Contract Documents for the project.
6. Entrance Road Bid Documents: The Engineer shall prepare the necessary bid documents for construction and obtaining necessary building permits as part of the Contract Documents for the project.

E. CONSTRUCTION DOCUMENT REVISIONS - \$10,000.00

1. Submittal: The Consultants shall submit to the City a complete set of construction drawings and specifications for review. The City shall make necessary comments and return to the Consultants within five (5) business days.

2. Revised Submittal: The Consultants shall make the necessary changes to plans and specifications within four (4) business days following the review period. The City shall have one (1) business day to review changes made to the plans and specifications.

F. PLANNING COMMISSION APPROVAL - \$5,000.00

1. Submittals: The Consultants shall submit and present the project to the City for planning commission approval. If the plan is not approved the consultants will revise their documents and submit for the next scheduled meeting.

G. CONTRACTOR BIDDING - \$5,000.00

1. Pre-Bid Meeting: The Consultants shall assist the Owner in conducting a Pre-Bid Meeting that will include Notice to Bidders, Pre-Bid Meeting and Site Tour and Explanation of Project Requirements to Contractors.
2. Bidding: The Consultants will issue any necessary addenda prior to the due date for bids.
3. Bid Analysis: Once bids are received by the City, the Consultants will evaluate bids for completeness and accuracy, and prepare a Bid Analysis worksheet for use in comparing bid prices and selecting a Golf Course Contractor.
3. Bids Exceeding Cost Estimate: If all bids exceed Final Cost Estimate, Golf Course Designer, Engineer and Architect, at the request of City and for no additional cost, will prepare a report for City identifying why all the bids exceed the estimate. The City has four (4) options if all bids exceed Golf Course Architect's estimate. The City may: (1) give written approval of an increase in the project cost up to a maximum of 7% of the authorized total; (2) authorize rebidding of the project; (3) terminate the project and this Agreement; or

(4) cooperate in revising the Project scope or specifications, or both, as necessary to reduce the construction cost. In the case of (4), Golf Course Designer, Engineer and Architect, without additional charge to City, shall consult with City and shall revise and modify the drawings and specifications as necessary to achieve compliance with the Final Cost Estimate.

H. CITY COUNCIL APPROVAL OF CONSTRUCTION BIDS- \$5,000.00

1. Submittals: The Consultants shall submit and present the project to the City Council for final approval of the project. If the plan is not approved the consultants will revise their documents and submit for the next scheduled meeting.
2. Contractor Approval: The Consultants will make a contractor recommendation to the City based upon the bids and contractor qualifications for the project.

I. CONSTRUCTION OBSERVATION - \$50,000.00

1. Pre-Construction Meeting: Golf Course Designer shall conduct a Pre-Construction Meeting with the Contractor, Owner, Engineer, Architect and other consultants as may be necessary. The purpose of the meeting is review project requirements, submittals and schedule.
2. Inspection and Construction Observation Duties: The Golf Course Designer shall inspect and observe the execution of the construction work performed under the construction contract on a weekly basis with no less than twenty (20) site visits during the construction process to see that the work is constructed in accordance with plans and specifications. Golf Course Designer shall report promptly to the City if satisfactory progress is not being made. The Golf Course Designer shall re-inspect the project prior to expiration of the contractor's

maintenance time period, inform the contractor of work to be performed, if any, and advise the City accordingly. The Golf Course Designer agrees that the Project Manager shall have the right to require removal from the Project of any inspector who in the opinion of the Project Manager is not performing his/her duties satisfactorily.

3. Additional Drawings: If during construction, situations arise which require additional drawings or details, Golf Course Designer, Engineer and Architect agrees to provide such additional drawings or details at no cost to City when the additional drawings or details are required to correct errors or omissions or clarify the intent in the original design and preparation of construction drawings. If such situations occur through no fault of Golf Course Designer, Engineer and or Architect, or are beyond his/her control, both parties agree to negotiate an equitable payment for his/her services rendered, which shall be accomplished through a Change Order.
4. Staking: Unless otherwise provided, staking shall be included in the bid specifications to be performed by the construction contractor. The Golf Course Designer and Engineer will survey the initial golf course control points for the project.
5. Notice of Defects: If, based on Golf Course Designer, Engineer and or Architect's involvement during the construction phase, the consultant observes or otherwise becomes aware of any defect in the work, he shall give prompt written notice to City of such defects and their approximate location on the Project. However, the consultants shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions, inspections and programs in connection with the work, since these are solely the Contractor's responsibility under the

contract for construction. The consultants shall not be responsible for the Contractor's schedules or failure to carry out the work in accordance with the Contract Documents. The consultants shall not have control over or charge of acts or omissions of the Contractor, Contractor's subcontractors, or their agents or employees.

6. Shop Drawings: The consultants shall review and take appropriate action on Contractor's shop drawings and samples, and the results of tests and inspections and other data which each contractor is required to submit for the purposes of checking for compliance with the design concept and conformance with the requirements of the Contract Documents. Such review shall not extend to means, methods, sequences, techniques or procedures of construction, or to safety precautions and programs incident thereto, unless an obvious deficiency exists wherein the consultant will advise City of such defect or deficiency so the same can be prevented.
7. As Constructed Plans: The consultant's technical specifications shall require the golf course contractor to prepare final plan drawings which reflect change orders, minor design changes and which include changes made in the field and which are marked on the construction plan set. Because some of the data contained on the "As Constructed Plans" may be based on unverified information provided by others, the consultants do not warrant the accuracy of information provided by others.
8. Field Changes: The Golf Course Designer shall have the authority to implement field changes which do not require an adjustment to the cost of construction set forth in the Construction Contract. The Owner must approve, in writing, field changes that will result in adjustments in the cost of the Construction Contract. The Owner will pay for all Change Orders based on the approval and

direction of the Owner.

9. Restroom/Shelter Administration: The Architect will provide construction administration for the restroom/shelters portion of the project.
10. Entrance Road Administration: The Engineer will provide construction administration for the entrance drive.
11. Final Acceptance: The Golf Course Designer, Engineer and Architect will perform close out procedures by creating a punch list of items to be completed by the Contractor prior to approval of Final Application for Payment.

SECTION IV-GENERAL DUTIES AND RESPONSIBILITIES

1. Responsibilities under the General Conditions of the Contract for Construction: In addition to the responsibilities herein set forth, Golf Course Designer agrees to be responsible for those matters identified in the General Conditions as being responsibilities of the Golf Course Designer. Golf Course Designer specifically acknowledges receipt of a copy of the General Conditions and acceptance of the responsibilities as set forth therein. (PLEASE PROVIDE A COPY OF THE CITY'S STANDARD GENERAL CONDITIONS FOR REVIEW)
2. Personnel: Golf Course Designer shall assign only qualified personnel to perform any service concerning the Project. At the time of execution of this Agreement, the parties anticipate that the following individual will perform as the principal on this Project: **Todd J. Clark** as principal on this Project, this person shall be the primary contact with the City's Project Manager.
3. Subsurface Borings & Material Testing: If tests, additional to those provided for in Exhibit

A, are required for design, Project Engineer hired by City shall prepare specifications for the taking of the additional borings. Such subsurface borings and testing, as defined herein, shall be provided by Project Engineer or its subcontractors and compensated as an Additional Service.

4. Service By and Payment to Others: Any work authorized in writing by City and performed by anyone other than Golf Course Designer or its subcontractors in connection with the proposed Project shall be contracted for and paid for by City directly to the third party or parties. In addition to payments for professional services, this may also include necessary permits, licenses, ownership certifications, materials testing, advertising costs, and other special tests or other work required or requested by City or Golf Course Designer which is not defined within the scope of services of Golf Course Designer. Fees for such extra work shall be subject to negotiation between City and the third party. Fees shall be approved prior to the execution of any extra work. Although Golf Course Designer may assist City in procuring such services of third parties, Golf Course Designer shall in no way be liable to either City or such third parties in any manner whatsoever for such services or for payment thereof.
5. Subcontracting of Service: Golf Course Designer shall subcontract with only the Engineer and Architect as listed on page 1 and shall not subcontract or assign any other Golf Course Design Services to be performed under this Agreement without first obtaining the written approval of City regarding the Golf Course Design Services to be subcontracted or assigned and the consulting firm or person proposed to accomplish the subcontracted/assigned portion of the Project. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement.

Any person or firm proposed for subcontracting Golf Course Design Services under this Agreement shall maintain throughout the duration of the Agreement, insurance as provided in Section V. D. (8) herein, and shall additionally maintain Professional Liability insurance in a minimum amount of \$1,000,000 and provide the City with certification thereof.

6. Endorsement: The Consultants shall sign and seal all final plans, specifications, estimates furnished by him/her. City shall accept the seal of a licensed civil engineer in lieu of the requirement of a seal by the Golf Course Designer. Any review or approval by City of any documents prepared by the Consultants, including but not limited to the plans and specifications, shall be solely for the purpose of determining whether such documents are consistent with City's construction program and intent and shall not be construed as approval of same by City. No review of such documents shall relieve Consultants of its responsibility for the accuracy, adequacy, fitness, suitability and coordination of its work product.
7. Inspection of Documents: The Consultants shall maintain all project records for inspection by City during the contract period and for three (3) years from the date of final payment.

SECTION V - CITY OF OVERLAND PARK'S RESPONSIBILITIES

A. CITY RESPONSIBILITIES

Communication: City shall provide to Consultants information and criteria regarding City's requirements for the Project; examine and timely respond to Consultant's submissions; and give written notice to Consultants, who shall respond promptly, whenever City observes or otherwise becomes aware of any defect in the Engineering/Architectural Services.

Access: City will provide access for Consultants to enter public and private property.

Duties: City shall furnish and perform the various duties and services in all phases of the Project

which are outlined and designated in Exhibit A as City's responsibility.

Program and Budget: City shall provide full information, including a program which shall set forth City's objectives, schedule, constraints, budget with reasonable contingencies, and other necessary design criteria.

Legal, Insurance, Audit: City shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project. City shall furnish all bond forms required for the Project.

Project Representative: City shall designate a Project Manager to represent City in coordinating this Project with Consultants, with authority to transmit instructions and define policies and decisions of City.

SECTION VI - GENERAL PROVISIONS

A. TERMINATION

Notice: City reserves the right to terminate this Agreement for either cause or for its convenience and without cause or default on the part of Golf Course Designer, by providing ten (10) days' written notice of such termination to Golf Course Designer. Upon receipt of such notice from City, Golf Course Designer shall, at City's option as contained in the notice: (1) immediately cease all Golf Course Design Services; or (2) meet with City and, subject to City's approval, determine what Golf Course Design Services shall be required of Golf Course Designer in order to bring the Project to a reasonable termination in accordance with the request of City. Golf Course Designer shall also provide to City copies of all drawings and documents completed or partially completed at the date of

termination. If City defaults on its obligation under this Agreement, Golf Course Designer is entitled to terminate this Agreement by providing ten (10) days' written notice.

Termination for Cause: If this Agreement is terminated for cause, after notice to Golf Course Designer, such termination shall not affect any rights or remedies of the City against Golf Course Designer then existing or which may later accrue. Similarly, any retention or payment of monies due Golf Course Designer shall not release Golf Course Designer from liability.

Compensation for Convenience Termination: If City shall terminate for its convenience as herein provided; City shall compensate Golf Course Designer for all Golf Course Design Services completed to date of its receipt of the termination notice and any additional Golf Course Design Services requested by City to bring the Project to reasonable termination. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.

Compensation for Cause Termination: If City shall terminate for cause or default on the part of Golf Course Designer, City shall compensate Golf Course Designer for the reasonable cost of Golf Course Design Services completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed. City also retains all its rights and remedies against Golf Course Designer including but not limited to its rights to sue for damages, interest and attorney fees.

Incomplete Documents: Neither Golf Course Designer nor its subcontractors shall be responsible for errors or omissions in documents which are incomplete as a result of an early termination under this Section; Golf Course Designer having been deprived of the opportunity to complete such documents and certifies them as ready for construction.

B. DISPUTE RESOLUTION

City and Golf Course Designer agree that disputes relative to the project should first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute, Golf Course Designer shall proceed with the Golf Course Design Services as per this Agreement as if no dispute existed, and the City shall continue to make payment for Golf Course Designer's completed Services; and provided further that no dispute will be submitted to arbitration without both parties' express written consent.

C. OWNERSHIP OF ENGINEERING/ARCHITECTURAL DOCUMENTS

All Golf Course Design, Engineer and Architect documents prepared in connection with this Project shall be the property of the Golf Course Designer, whether the Project for which they are made is executed or not, however, the Golf Course Designer will provide City a copy of all final documents, including but not limited to prints and reproductions. Reports, plans, specifications and related documents are Golf Course Designer's copyrighted instruments, and Golf Course Designer at his/her option may so identify them by appropriate markings. Provided that Golf Course Designer is paid in full for its services, then City may subsequently reuse these final documents without any additional compensation or agreement of Golf Course Designer, however, such reuse without written verification or adaptation by Golf Course Designer for the specific purpose, intended by City shall be at City's sole risk and without liability or legal exposure to Golf Course Designer whatsoever. City does not take any responsibility for the reuse of documents by others.

D. INSURANCE

1. GENERAL

The Golf Course Designer shall maintain, throughout the duration of this Contract, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Professional Liability may be written on a “claims made” basis.

Golf Course Designer shall provide certificates of insurance and renewals thereof on forms provided by the City or on forms acceptable to the City. The City shall be notified by receipt of written notice from the insurer or the Golf Course Designer at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

2. NOTICE OF CLAIM REDUCTION OF POLICY LIMITS

The Golf Course Designer, upon receipt of notice of any claim in connection with the Contract, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

The Golf Course Designer shall promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the Contract Documents) in excess of \$10,000.00, whether or not such impairment came about as a result of this Agreement.

In the event the City shall determine that the Golf Course Designer’s aggregate limits of protection shall have been impaired or reduced to such extent that the City shall determine such limits inadequate for the balance of the project, the Golf Course Designer shall, upon

notice from the City, promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

3. COMMERCIAL GENERAL LIABILITY

Limits -

General Aggregate:	\$ 500,000
Products / Completed Operations:	\$ 500,000
Personal & Advertising Injury:	\$ 500,000
Each Occurrence:	\$ 500,000

Policy MUST include the following conditions:

- a) Explosion, Collapse & Underground
- b) Independent Contractors
- c) Pollution Liability (Applicable only to contracts involving pollutants such as asbestos & lead abatement, sludge or other waste abatement, etc.)

Name City of Overland Park as “Additional Insured”

4. AUTOMOBILE LIABILITY

Policy shall protect the Golf Course Designer against claims for bodily injury and/or property damage arising out of the ownership or use of any owned, hired and/or non-owned vehicle and must include the protection for either:

Any Auto
Or
All Owned Autos;
Hired Autos; and
Non-Owned Autos

Limits –

Each Accident Combined Single Limits, Bodily Injury and Property Damage:

Same as General Liability

Policy MUST include the following condition:

Name City of Overland Park as “**Additional Insured**”

5. WORKERS’ COMPENSATION

This insurance shall protect the Golf Course Architect against all claims under applicable state workers’ compensation laws. The Golf Course Architect shall also be protected against claims for injury, disease or death of employees for which, for any reason, may not fall within the provisions of workers’ compensation law. The policy limits shall not be less than the following:

Workers’ Compensation: Statutory

Employers Liability -

Bodily Injury by Accident:	\$ 100,000 Each Accident
Bodily Injury by Disease:	\$ 500,000 Policy Limit
Bodily Injury by Disease:	\$ 100,000 Each Employee

6. PROFESSIONAL LIABILITY

The Golf Course Architect shall maintain throughout the duration of this Contract, Professional Liability Insurance in an amount not less than One Million Dollars (\$1,000,000.00).

7. INDUSTRY RATINGS

The City will only accept coverage from an insurance carrier who offers proof that it:

- a) Is licensed to do business in the State of Kansas;

- b) Carries a Best's policyholder rating of B+ or better; and
- c) Carries at least a Class X financial rating.

OR

Is a company mutually agreed upon by the City and Golf Course Designer.

8. SUBCONTRACTORS' INSURANCE

If a part of the Agreement is to be sublet, the Golf Course Designer shall either:

- a) Cover all subcontractors in its insurance policies, or
- b) Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.

Whichever option is chosen, Golf Course Designer shall indemnify and hold harmless the City as to any and all damages, claims or losses, including attorney's fees, arising out of the acts or omissions of its subcontractors.

9. RAILROAD PROTECTIVE LIABILITY

(Additional requirement applicable when working on railroad property.)

Named Insured:	Applicable Railroad
Limits - Bodily Injury & Property Damage:	Per Railroad Requirements

10. AIRCRAFT LIABILITY

(Additional requirement applicable for aerial photograph or contract involving any use of aircraft.)

Limits-	Single Limit Bodily Injury; Including Passengers; and Property Damage:
	\$ 1,000,000 Each Occurrence

Coverage must include all Owned, Hired and Non-Owned Aircraft.

Policy MUST include the following condition:

Name City of Overland Park as “Additional Insured” on the hired and non-owned Aircraft Liability.

E. INDEMNITY

1. Definition: For purposes of indemnification requirements, the term “Loss” shall have the meaning set forth as follows:

“Loss” means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney’s fees and the cost of defense), in connection with any action, proceeding, demand or claim for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of this Agreement whether arising before or after the completion of the Engineering/Architectural Services required hereunder.

2. Indemnity: For purposes of this Agreement, Golf Course Designer hereby agrees to indemnify, defend and hold harmless the City, its employees and agents from any and all Loss where Loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Golf Course Designer, its affiliates, subsidiaries,

employees, agents and subcontractors/assignees and their respective servants, agents and employees.

For purposes of this Agreement, the City hereby agrees to indemnify, defend and hold harmless Golf Course Designer, its employees and agents from any and all Loss where Loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the City, its affiliates, subsidiaries, employees, agents and subcontractors/assignees and their respective servants, agents and employees.

It is agreed as a specific element of consideration of this Agreement that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City, Golf Course Designer or any third party and, further notwithstanding any theory of law including, but not limited to, a characterization of the City's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that the City and the Golf Course Designer's obligation hereunder shall not include amounts attributable to their own fault or negligence or any third party for whom the party is not responsible.

In the case of any claims indemnified under this Agreement, the indemnification obligation contained in this Agreement shall not be limited by any limitation on amount or type of damages, compensation or benefits payable under workers' compensation acts, disability benefit acts, or other employee benefit acts.

F. AFFIRMATIVE ACTION/OTHER LAWS

1. During the performance of this Agreement, the Golf Course Designer agrees that:

- a. Golf Course Designer shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, ancestry or age;
- b. in all solicitations or advertisements for employees, the Golf Course Designer shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the commission;
- c. if the Golf Course Designer fails to comply with the manner in which the Golf Course Designer reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Golf Course Designer shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency;
- d. if the Golf Course Designer is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the commission which has become final, the Golf Course Designer shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency; and
- e. the Golf Course Designer shall include the provisions of subsections (a) through (d) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The provisions of this section shall not apply to a contract entered into by a Golf Course

Designer:

- who employs fewer than four employees during the term of such contract; or
 - whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.
2. The Golf Course Designer further agrees that the Golf Course Designer shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

G. APPLICABLE LAW

This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.

H. APPLICABLE LAW

This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Kansas.

I. ASSIGNMENT OF AGREEMENT

This Agreement shall not be assigned or transferred by Golf Course Designer without the written consent of the City.

J. NO THIRD PARTY BENEFICIARIES

Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

K. INDEPENDENT CONTRACTOR

The Golf Course Designer is an independent contractor and as such is not an agent or employee of the City.

L. WORK PRODUCT FORMAT

1. Project Drawings: Project drawings which are developed by Golf Course Designer through the use of a Computer Aided Drafting (CAD) System shall be made available to City by providing a floppy disk. However, due to the potential that the information set forth on the electronic media (disk) can be modified by City, or City consultants, unintentionally or otherwise, Golf Course Designer shall remove all indices of its ownership, professional corporation name, seal, and/or involvement from each electronic display. For documentation purposes, two sets of an original electronic media (disk) and two (11" x 17" size or larger) duplicate hard copy sets will be prepared. One set will be given to City and one set will be retained by Golf Course Designer. If City provides such electronic media (disk) to others for any purpose, City shall require the electronic media (disk) to be returned to City upon

completion of such use. City recognizes that use of such electronic media (disk) will be at City's sole risk and without any liability risk or legal exposure by Golf Course Designer.

2. Project Documentation: All documentation provided the City other than project drawings shall be furnished on a microcomputer diskette, 3.5 inch, 1.44mb, in either Microsoft Word file format or ASCII file format.
3. "Record" Drawings: Following construction, Golf Course Designer's technical specifications shall specify that golf course contractor will be required to prepare "record drawings". City will provide copies of changes and alterations made in the field during construction to Golf Course Contractor to provide "record" drawings, unless Golf Course Designer has provided a floppy disk to City on which City can make changes. Golf Course Designer has the right to rely on the information provided by the City in preparing such documents, and shall have no independent duty to verify its accuracy.

M. FEDERAL LOBBYING ACTIVITIES

(Only applies to projects receiving federal funds via the City)

31 USCA Section 1352 requires all sub grantees, contractors, subcontractors and consultants who receive federal funds via City to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan or cooperative agreements. In addition, contract applicants, recipients and sub recipients must file a form disclosing any expenditures they make for lobbying out of non-federal funds during the contract period.

Necessary forms are available from the City's Project Manager and should be returned to City with other final contract documents. It is the responsibility of Golf Course Architect to obtain executed forms from any of its subcontractors who fall within the provision of the Code and to provide City with the same.

N. COVENANT AGAINST CONTINGENT FEES

Golf Course Designer warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for Golf Course Designer, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City may terminate this Agreement without liability or may, in its discretion, deduct from the Contract Price or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

O. COMPLIANCE WITH LAWS

Golf Course Designer shall abide by all applicable federal, state and local laws, ordinances and regulations applicable to the Golf Course Design Services or the Project at the time Services are rendered. Golf Course Designer shall secure all occupational and professional licenses and permits from public and private sources necessary for the fulfillment of his/her obligations under this Agreement.

P. TITLES, SUBHEADS AND CAPITALIZATION

Title and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of this Agreement. Some terms are capitalized throughout this Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

Q. SEVERABILITY CLAUSE

Should any provision of this Agreement be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable.

R. EXECUTION OF CONTRACT

The parties hereto have caused this Agreement to be executed in triplicate this _____ day of _____ 20 ____.

CITY OF OVERLAND PARK, KANSAS

BY:

Carl Gerlach, Mayor

ATTEST:

Marian Cook, City Clerk

APPROVED AS TO FORM:

Bart Budetti, Senior Assistant City Attorney

CE Golf Design a Division of Clark Enterprises, DKC LLC

By:

Todd J. Clark, Authorized Signatory

Title: _____

Exhibit A

CE Golf Design

Services provided by CE Golf Design but not included in the scope of services listed in this agreement will be billed separately at the rate of One Hundred Twenty Five Dollars (\$125.00) per hour for Project Designer, Eighty Five Dollars (\$85.00) per hour for Design Associate and Sixty Dollars (\$60.00) per hour for Secretarial/ Clerical.

Phelps Engineering, Inc.

Services provided by Phelps Engineering, Inc. but not included in the scope of services listed in this agreement will be billed separately at the rate of One Hundred Fifty Dollars (\$150.00) per hour for Principal Engineer, One Hundred Dollars (\$100.00) per hour for Project Engineer and Sixty Dollars (\$60.00) per hour for Secretarial/ Clerical.

Nevius / Serig / Palmer Architecture

Services provided Nevius / Serig / Palmer Architecture by but not included in the scope of services listed in this agreement will be billed separately at the rate of One Hundred Twenty Five Dollars (\$125.00) per hour for Principal Architect, Eighty Five Dollars (\$85.00) per hour for Project Architect and Sixty Dollars (\$60.00) per hour for Secretarial/ Clerical.