

**Standard Form of Agreement
Between Owner and Design-Builder**

This **AGREEMENT** is made as of the **18th** day of **June** in the year of **2007**, by and between the following parties, for services in connection with the Project identified below.

OWNER:

City of Overland Park
8500 Santa Fe Drive
Overland Park, KS 66212

DESIGN-BUILDER:

McCownGordon Construction LLC
422 Admiral Boulevard
Suite 100
Kansas City, MO 64106

PROJECT NAME:

Blue Valley Public Works Maintenance Facilities Improvements

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

**Article 1
General**

1.1 Duty to Cooperate. Owner and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith to allow each party to realize the benefits afforded under this Agreement.

1.2 Definitions. Terms, words and phrases used in this Agreement shall have the meanings given them in **Standard Form of General Conditions of Contract between Owner and Design-Builder** ("General Conditions of Contract") and as defined in the **Contract Definitions**.

**Article 2
Design-Builder's Services and Responsibilities**

2.1 Design Services. Design-Builder shall, consistent with Kansas licensing laws, provide design services, including architectural, engineering and other design professional services, required by this Agreement. Such design services shall be provided through qualified, licensed design professionals who are either (i) employed by Design-Builder, or (ii) procured by Design-Builder from independent sources. Nothing in this Agreement is intended to create any legal or contractual relationship between Owner and any independent design professional.

2.2 Schematic Design and Related Services.

.1 Design-Builder shall prepare Schematic Design Documents based on Owner's approved Project Criteria. The Schematic Design Documents shall include design criteria, drawings, diagrams and specifications, including performance specifications (based on CSI UniFormat), setting forth the performance requirements of the Project. The parties shall meet to

discuss the Schematic Design Documents and agree upon what revisions, if any, should be made. Design-Builder shall perform such agreed-upon revisions.

.2 Design – Builder shall perform geotechnical investigations that the Design – Builder requires to accept responsibility for subsurface site conditions during final design and construction of the project, with the exception of conditions relating to hazardous materials and man-made buried objects.

.3 Design – Builder shall perform any additional survey and measurements required to prepare the Schematic Design Documents and prepare a guaranteed maximum price and schedule in accordance with Article 2.3, Proposal.

2.3 Proposal. Based on Owner's Project Criteria, the Schematic Design Documents, as each may be revised pursuant to Sections 2.2.2 and 2.2.3 above, and any other documents upon which the parties may agree, Design-Builder shall submit a proposal to Owner (the "Proposal"), which shall include the following unless the parties mutually agree otherwise:

- .1 a proposed Contract Price for construction, testing and commissioning of the Project, which does not exceed the Owner's Project Budget and which is in the form as agreed by the Owner. Such Contract Price shall consist of an estimate of the cost of the work and the design-builder fees, with a Guaranteed Maximum Price ("GMP"). The Owner retains the right to convert all or any parts of the GMP into a fixed lump sum at the time of its acceptance of the GMP Proposal.
- .2 a breakdown of the construction work to indicate the items of work, equipment and materials that will be competitively bid to outside parties, and the items of work that will be self-performed with their respective estimated costs in the GMP.
- .3 a schedule indicating the main design, procurement and construction activities and guaranteed dates of Substantial and Final Completion for the Project upon which the Contract Price for the Project is based, and a time-phased list of major purchases and subcontracts.
- .4 a schedule of planned interim design submittals and meetings for the Owner to adequately review the design development, and confirm that the design meets the Owner approved Program of Facility Requirements, Schematic Design and other Contract Documents.
- .5 all other information necessary for the parties to enter into *Agreement Between Owner and Design-Builder, Cost Plus Fee with an Option for a Guaranteed Maximum Price*; and
- .6 a time limit of sixty (60) days for acceptance of the Proposal or written response of recommended changes required such that it can be accepted.

2.4 Review and Adjustment to GMP Proposal. After submission of the GMP Proposal, Design-Builder and Owner shall meet to discuss and review the Proposal. If Owner has any comments regarding the Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. As appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the Proposal.

2.5 Acceptance of GMP Proposal. If Owner accepts the GMP Proposal, as may be amended by Design-Builder, its basis shall be set forth in *Agreement Between Owner and Design-Builder-Cost Plus Fee with an Option for a Guaranteed Maximum Price*.

2.6 Failure to Accept the GMP Proposal. If Owner rejects the GMP Proposal, or fails to notify Design-Builder in writing on or before the date specified in the Proposal, the GMP 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 GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with 2.5 above;
- .2 Owner may terminate this Agreement for convenience provided, however, in this event, if Design – Builder has performed the Services in good faith, Design-Builder shall be entitled to full payment of the fee established for the Services under this Agreement.

2.7 Completion of this Agreement. Design-Builder's Services under this Agreement shall be deemed completed upon meeting with Owner to discuss the Proposal and making those revisions to the Proposal, if any, Design-Builder finds acceptable or proceeding in accordance with Section 2.5 or 2.6 above.

2.8 Additional Services. Design-Builder may perform Additional Services as may be set forth in a separate exhibit to this Agreement. The additional cost for such services shall be as set forth in such exhibit or as mutually agreed by Owner and Design-Builder, with the Contract Price for this Agreement, as set forth in Section 6.1 hereof, being adjusted accordingly.

2.9 Permits. Owner will support the Design-Builder to obtain required permits. Cost of permits shall be at no cost to the Design-Builder.

Article 3

Owner's Services and Responsibilities

3.1 Timely Performance. Owner shall throughout the performance of this Agreement cooperate with Design-Builder. Owner shall perform its responsibilities, obligations and services, including its reviews and approvals of Design-Builder's submissions, in a timely manner so as not to delay or interfere with Design-Builder's performance of its obligations under this Agreement.

3.2 Owner's Project Criteria. Owner shall provide Design-Builder with Owner's Project Criteria and other relevant data for Design – Builder to provide Services under this Agreement. If Owner desires that Design-Builder assist Owner in developing additional studies and / or criteria as an Additional Service under Section 2.8 hereof, Owner shall provide Design-Builder with its objectives, limitations and other relevant information regarding such services.

3.3 Owner Provided Information. Owner shall provide, at its own cost and expense, for Design-Builder's information and use, the following, all of which Design-Builder is entitled to rely upon in performing its obligations hereunder:

- .1 Survey describing the property, boundaries, general topography, including known existing service and utility lines;
- .2 Geotechnical studies performed describing limited subsurface conditions at the Site;
- .3 Easements and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project;

- .4 To the extent available, record drawings of any existing structures at the Site; and
- .5 To the extent available, documentation describing the environmental conditions in existence at the Site.

Article 4 **Ownership of Work Product**

4.1 Work Product. All planning, investigations, programs, drawings, specifications and other documents and data produced by Design-Builder for Owner under this Agreement (“Work Product”) will be the sole property of the Owner upon the Owner’s payment for services under this Agreement.

4.2 Owner’s Use of Work Product. If Owner fails to enter into a contract on this Project with Design-Builder to complete the design and construction of the Project and abandons the Project, or if Owner proceeds to design and construct the Project through its employees, agents or third parties, in accordance with Article 4.1, Owner may use the Work Product to complete the Project conditioned on the provision that Owner proceeds at its sole risk 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”).

Article 5 **Contract Time**

5.1 Commencement Date. Design-Builder shall commence performance of the services set forth in this Agreement 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. Design-Builder shall provide such services to meet Owner dates for review and City approvals, but duration of services shall not exceed thirty (30) calendar days after the Date of Commencement unless mutually agreed by the parties under this Agreement.

5.2 Interim Dates. Interim milestone dates, if any, of identified portions of the services set forth in this Agreement and in the Design-Builder’s Proposal shall be achieved as described as an Exhibit to this Agreement.

Article 6 **Contract Price**

6.1 Contract Price. The Contract Price for this Agreement is as set forth below:

A fixed lump sum of one hundred two thousand, four hundred thirty-eight and 00/100 dollars (\$102,438.00)

6.2 Scope of Contract Price. The Contract Price shall be the full compensation due Design-Builder for the performance of all services set forth in this Agreement. The Contract Price shall be adjusted to reflect any Additional Services, if any, agreed upon by the parties after execution of this Agreement.

Article 7 **Procedure for Payment**

Payment. Design-Builder and Owner agree that portions of the Contract Price will be invoiced monthly, without retention, or based on agreed progress measurements achieved as may be included in an Exhibit to this Agreement, or upon completion of Services if no progress

measurements are established. Payment is due within forty-five (45) days by Owner after receipt of an approved invoice.

Article 8
Insurance

The Design–Builder shall maintain throughout the duration of this Agreement the insurance amounts, at a minimum, as specified below. All general and automobile liability insurance shall be written on an occurrence basis unless otherwise agreed in writing by the Owner.

8.1 General Liability

General Aggregate:	\$1,000,000.00
Products-Completed Operations Aggregate:	\$1,000,000.00
Personal & Advertising Injury:	\$1,000,000.00
Each Occurrence:	\$1,000,000.00

Policy must include the following:

- i) Broad Form Contractual/Contractually Assumed Liability
- ii) Independent Contractors

Name City of Overland Park as “Additional Insured”.

8.2 Automobile Liability: Policy shall protect the Design-Builder against claims for bodily injury and/or property damage arising from the ownership or use of all owned, hired and/or non-owned vehicles and must include protection for either:

- i) Any Auto
- OR**
- ii) All Owned Autos; Hired Autos; and Non-Owned Autos.

Limits

Each Accident, Combined Single Limits Bodily Injury and Property Damage:	\$1,000,000
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Name City of Overland Park as “Additional Insured”

8.3. Workers' Compensation and Employer's Liability: This insurance shall protect the Design-Builder against all claims under applicable state workers' compensation laws. The Design-Builder shall also be protected against claims for injury, disease or death of employees which, for any reason may not fall within the provisions of a workers' compensation law. The policy limits shall not be less than the following:

Workers' Compensation:	Statutory
Employer's 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

8.4 Professional Liability: The Design-Builder or each of its Design Consultant(s) shall maintain throughout the duration of this Agreement Professional Liability Insurance in an amount not less than one million dollars (\$ 1,000,000.00), and shall provide the Owner with certification thereof.

8.5 Industry Ratings: The City will only accept coverage from an insurance carrier who offers proof of the following:

- 1) Is licensed to do business in the State of Kansas;
- 2) Carries a Best's policyholder rating of B+ or better;

AND

- 3) Carries at least a Class X financial rating.

OR

Is a company mutually agreed upon by the Owner and Design-Builder. Certification of insurance coverage shall be on the City's standard Certificate of Insurance form or on forms acceptable to the City.

8.6 Subcontractor's Insurance: If a part of this Contract is to be sublet, Design-Builder shall either:

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

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:

City of Overland Park

Carl Gerlach
Mayor

Date: _____

Attest:

Marian Cook
City Clerk

Approved as to Form:

Jane Neff-Brain
Senior Assistant City Attorney

DESIGN-BUILDER:

McCownGordon Construction, LLC

(Signature)

Date: _____

Exhibits

- Design-Builder's Price Proposal dated, May 4, 2007
- Labor & Expense Rate Sheet for Additional Services as negotiated and agreed by the Owner
- Standard Form of General Conditions of Contract Between Owner and Design-Builder
- Contract Definitions
- Design-Builder's/Owner's List of Deliverables
- Certificate of Insurance

EXHIBIT A

**CITY OF OVERLAND PARK
Public Works Facility Additions
Overland Park, KS
Design-Build Proposal**

CLARIFICATIONS & QUALIFICATIONS

May 4, 2007

RECAP: This Lump Sum proposal is based on providing preconstruction and design services for the addition of a Pre-Wash, Covered Parking / Maintenance Facility and salt/sand storage at the current Public Works location at 153rd and Metcalf in Overland Park, KS. These services shall be incorporated into the Design Build Contract between the City of Overland Park and McCownGordon Construction.

Below is a summary of costs for the services included in this proposal, see below for clarifications to these costs

- The cost for Pre-Construction (for 2.5 month duration) is a lump sum of \$11,821
 - Per week unit price for Pre-Construction services (not including design fees) is \$1,092.
- Design Fees for this project are a lump sum of \$85,276
- Design Builder Fee to be 5.5%

Total for Design Builder Services / Fees is as follows

• Preconstruction	\$ 11,821
• Arch/Structural Design Services	\$ 37,700
• Civil Eng. Design Services	\$ 35,400
• MEP Design Services	\$ 12,176
• Design Builder's Fee (on above items)	<u>\$ 5,341</u>
• TOTAL	\$ 102,438

The 5.5% fee shall also be applied to the cost of work portion of the GMP that will be finalized at a later date.

1. Pre-Construction services include:
 - a. Preconstruction is estimated for a 2.5 month period starting on 2/14/07 and ending on 4/23/07
 - b. Project management / coordination
 - c. Budgeting / Estimating:
 - i. Verification of Budget
 - ii. Budget Updates prior to GMP
 - iii. Evaluation of options for cost savings throughout budgeting / design phase
 - iv. Development and management of overall master project budget with input from Owner.
 - v. Development of Guaranteed Maximum Price
 - d. Project Scheduling
 - i. Development and management of overall project schedule.
 - ii. Weekly schedule updates
 - iii. Phasing and scheduling of Owner items including equipment installations, etc.
 - e. Subcontractor Selection
 - i. Coordination of bid packages and subcontractor bidding
 - ii. Analysis and shake-out of subcontractor bids
 - iii. Completion of subcontractor contract documents
2. Design Services are included as follows

**OVERLAND PARK
Public Works Additions**

- a. Architectural services are included
 - i. Design and Construction documents for permit submittal
 - b. Civil & Site design is included:
 - i. Land Planning
 - ii. Final Stormwater Study
 - 1. This fee does not include the preparation of a Macro Drainage study for a larger area outside the limits of the project site and assumes that the detention calculations will be provided by the City.
 - iii. Demolition Plan
 - iv. Site Plan
 - v. Final Grading and Drainage Plan
 - vi. Erosion Control Plan
 - vii. SWPPP & NPDES Permit Plan
 - viii. Storm and Utility Plans
 - ix. Sanitary Main Extension
 - x. Detention Basin Design
 - xi. Reimbursable
 - c. Civil and Site not included:
 - i. Traffic Studies
 - ii. Jurisdictional wetland evaluation and corps of engineers permit
 - iii. Soils report including pavement recommendations
 - iv. Environmental Studies
 - v. Public Water Main Plans
 - vi. Public Sanitary Main Plans
 - vii. Corps of Engineer Permits
 - viii. Prelim Development
 - ix. Public Roadway Improvements
 - x. Surveying
 - xi. Retaining Wall Design
 - xii. Irrigation design
 - xiii. Construction Testing and Observation
 - xiv. Surveying
 - xv. Construction Staking
 - xvi. JCWW Fees
 - xvii. Water One Fees
 - xviii. Public Roadway Improvements
 - d. Footings & Foundations Design is included
 - e. Preparation of Final Plan Development Submittal is included
 - f. Pre-engineered Metal Building design services are not included, these services to be provided by a contractor selected at a later date
 - g. Mechanical and Electrical design services are included.
3. Exclusions
- a. Geotechnical Services and development of Report
 - b. Planning and Permitting
 - c. Special Inspections & Testing
 - d. Bid Document Printing
 - e. Construction Services
 - f. General Conditions



Finkle Williams Inc.
9900 West 109th St.
Suite 250 Overland Park, KS 66210

Additional Services

Compensation for Additional Services authorized in writing by the client shall be computed on an hourly basis (unless otherwise agreed to in writing) according to the following hourly rate schedule for professional services.

Architect, Principal	\$145.00
Architect, Sr. Manager	\$115.00
Architect, Manager	\$105.00
Architect, Sr. Project	\$95.00
Architect, Project	\$85.00
Designer, Sr.	\$75.00
Designer	\$65.00

KANSAS CITY BILLING RATE SCHEDULE - YEAR 2007

<u>Classification</u>	<u>Hourly Rate</u>
Project Principal	179.00
Regional Manager	201.00
Team Leader	174.00
Group Leader	146.00
Client Manager	143.00
Senior Engineer	154.00
Senior Project Engineer	137.00
Project Engineer	119.00
Associate Engineer	98.00
Assistant Engineer	81.00
Student Engineer	51.00
Senior Landscape Architect	125.00
Senior Project Landscape Architect	106.00
Project Landscape Architect	93.00
Associate Landscape Architect	75.00
Assistant Landscape Architect	60.00
Senior Project Planner	106.00
Assistant Planner	64.00
Senior Scientist	122.00
Senior Project Scientist	104.00
Project Scientist	91.00
Assistant Scientist	62.00
Associate Scientist	74.00
Senior Surveyor	96.00
Surveyor	83.00
Associate Surveyor	61.00
Assistant Surveyor	48.00
2-Man Support Crew	0.00
Technical Manager	104.00
Design Associate	91.00
Design Technician	76.00
Senior Technician	70.00
Associate Technician	59.00
Assistant Technician	51.00
Student Technician – Level 1	39.00
Student Technician – Level 2	51.00

Community Services Specialist	174.00
Community Consultant	62.00
Economic Dev. Consultant/Fund.	72.00
Business Operations Manager	126.00
Facilitation Specialist	119.00
Administrative Manager	91.00
Administrative Specialist	103.00
Administrative Supervisor	83.00
Administrative Coordinator	65.00
Administrative Assistant	53.00
Secretarial	54.00
Office Assistant	35.00
Computer Systems Coordinator	68.00
Computer Systems Technician	50.00
Web Developer	57.00

**Standard Form of General Conditions
of Contract Between Owner and Design-Builder**
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Article 1
General

1.1 Mutual Obligations

1.1.1 Owner and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.2 Basic Definitions

1.2.1 Agreement refers to the executed contract between Owner and Design-Builder under Standard Form of Agreement Between Owner and Design-Builder, Cost Plus Fee with an Option for a Guaranteed Maximum Price.

1.2.2 Day or Days shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.3 Design Consultant is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder or Subcontractor, to furnish design services required under the Contract Documents.

1.2.4 Hazardous Materials are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.2.5 General Conditions of Contract refer to the Standard Form of General Conditions of Contract Between Owner and Design-Builder.

1.2.6 Legal Requirements are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

1.2.7 Owner's Project Criteria are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

1.2.8 Site is the land or premises on which the Project is located.

1.2.9 Subcontractor is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include material men and suppliers.

1.2.10 Sub-Subcontractor is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include material men and suppliers.

1.2.11 Substantial Completion is the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

1.2.12 Work is comprised of all Design-Builder's design, construction, testing, commissioning and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

Article 2 **Design-Builder's Services and Responsibilities**

2.1 General Services

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

2.1.2 Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including whether (i) the Work is proceeding according to schedule and the status of planned project procurements, (ii) discrepancies, conflicts, or ambiguities existing in the Contract Documents that require resolution, (iii) health and safety issues existing in connection with the Work, and (iv) status of the GMP with respect to individual items over and under budget, and the forecast of cost to complete the Project, and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

2.1.3 Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall confirm the agreed dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of and response to the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

2.1.4 The parties will meet for a kick-off meeting within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals, quality management, safety, site operations, and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.2 Design Professional Services

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

2.3 Standard of Care for Design Professional Services

2.3.1 The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. Notwithstanding the preceding sentence, if the parties agree upon specific performance standards for any aspect of the Work, which standards are to be set forth in an exhibit to the Agreement entitled "Performance Standard Requirements," the design professional services shall be performed to achieve such standards.

2.4 Design Development Services

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

2.4.2 Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

2.4.3 Owner's review and approval of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of all the Construction Documents for the entire Work.

2.5 Legal Requirements

2.5.1 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

2.5.2 The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

2.6 Government Approvals and Permits

2.6.1 Except as identified in an Owner's Permit List attached as an exhibit to the Agreement, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

2.6.2 Design-Builder shall provide all required assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

2.7 Design-Builder's Construction Phase Services

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction, testing and commissioning of the Project consistent with the Contract Documents.

2.7.2 Design-Builder shall perform all construction, testing and commissioning activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance.

2.7.4 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.7.5 Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.7.6 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with normal traffic of vehicles and other uses of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.8 Design-Builder's Responsibility for Project Safety

2.8.1 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative

with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

2.8.2 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.8.3 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

2.9 Design-Builder's Warranty

Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than Design-Builder or anyone for whose acts Design-Builder may be liable. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.10 Correction of Defective Work

2.10.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within the period of warranty, as specified in the Agreement, from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents.

2.10.2 Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces or third parties. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day periods identified herein shall be deemed inapplicable.

2.10.3 The warranty period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for

any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

Article 3

Owner's Services and Responsibilities

3.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.2 Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

3.3 Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

3.4 Owner shall be responsible for providing Owner-supplied information and approvals in a timely manner to allow Design-Builder to fulfill its obligations under the Contract Documents. Owner shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work.

3.5 As indicated as an Owner responsibility, Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in the Owner's Permit List attached as an exhibit to the Agreement. Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

3.6 Owner is responsible for all work performed on the Project or at the Site by any separate contractors under Owner's control. Owner shall contractually require its separate contractors, if any, to cooperate with, and coordinate their activities with, Design – Builder so as not to interfere with Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

Article 4

Hazardous Materials and Differing Site Conditions

4.1 Hazardous Materials

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Materials encountered at the Site. Upon encountering any Hazardous Materials, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Materials, Owner shall take the necessary measures required to ensure that the Hazardous Materials are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Materials have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Materials or render the Hazardous Materials harmless.

4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Materials have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

4.1.4 Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Materials.

4.1.5 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Materials introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Materials introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.2 Differing Site Conditions

Except for the unknown existence of Hazardous Materials or man – made buried objects, Design – Builder accepts full responsibility for concealed latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work. Such conditions are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will accommodate such condition in performing to meet the Contract Documents, and will not be entitled to an adjustment in the Contract Price and/or Contract Time(s) under the Agreement. If it becomes known that Hazardous Materials exist, Design – Builder will proceed in accordance with Article 13, Hazardous Materials, and will be entitled to reimbursement as approved by the Owner.

Article 5 **Insurance and Bonds**

5.1 Design-Builder's Insurance Requirements

5.1.1 Design-Builder is responsible for procuring and maintaining from insurance companies authorized to do business in the State of Kansas in which the Project is located, and with a minimum rating set forth in the Agreement, the following insurance coverages for certain claims which may arise from or out of the performance of the Work and obligations under the Contract Documents:

- .1** Coverage for claims arising under workers' compensation, disability and other similar employee benefit laws applicable to the Work;
- .2** Coverage for claims by Design-Builder's employees for bodily injury, sickness, disease, or death;
- .3** Coverage for claims by any person other than Design-Builder's employees for bodily injury, sickness, disease, or death;
- .4** Coverage for usual personal injury liability claims for damages sustained by a person as a direct or indirect result of Design-Builder's employment of the person, or sustained by any other person;

- .5 Coverage for claims for damages (other than to the Work) because of injury to or destruction of tangible property, including loss of use;
- .6 Coverage for claims of damages because of personal injury or death, or property damage resulting from ownership, use and maintenance of any motor vehicle; and
- .7 Coverage for contractual liability claims arising out of Design-Builder's obligations under Section 7.4.1 hereof.

5.1.2 Design-Builder's liability insurance required by Section 5.1.1 above shall be written for the coverage amounts set forth in the Agreement and shall include completed operations insurance for the period of time set forth in the Agreement.

5.1.3 Design-Builder's liability insurance set forth in Sections 5.1.1.1 through 5.1.1.7 above shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

5.1.4 To the extent Owner requires Design-Builder or any Design Consultant to provide professional liability insurance for claims arising from the negligent performance of design services by Design-Builder or the Design Consultant, the coverage limits, duration and other specifics of such insurance shall be as set forth in the Agreement. Any professional liability shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project. Such policies shall be provided prior to the commencement of any design services hereunder.

5.1.5 Prior to commencing any construction services hereunder, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Owner.

5.2 Owner's Liability Insurance

Owner shall maintain liability insurance coverages to the extent necessary from insurance companies authorized to do business in the State of Kansas to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

5.3 Design - Builder Property Insurance ("Builder's Risk")

5.3.1 Unless otherwise provided in the Contract Documents, Design - Builder shall procure and maintain property insurance from insurance companies authorized to do business in the State of Kansas upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Design - Builder shall include as additional insured's the interests of Owner, Design-Builder, Design Consultants, Subcontractors and Sub-Subcontractors, and shall insure against the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by Owner.

5.3.2 Unless the Contract Documents provide otherwise, Design - Builder shall procure and maintain boiler and machinery insurance that will include the interests of Owner, Design-Builder, Design Consultants, Subcontractors and Sub-Subcontractors.

5.3.3 Prior to commencing any Work, Design - Builder shall provide Owner with certificates evidencing that (i) all Design–Builder’s insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Design-Builder has completed all of the Work and has received final payment from Owner and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Owner. Design – Builder’s property insurance shall not lapse or be canceled if Owner occupies a portion of the Work pursuant to Section 6.6.3 hereof. Design - Builder shall provide Owner with the necessary endorsements from the insurance company prior to occupying a portion of the Work.

5.3.4 Any loss covered under Design – Builder’s property insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.

5.3.5 Owner and Design-Builder waive against each other and Owner’s separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner’s separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts.

5.4 Bonds and Other Performance Security

Unless otherwise indicated in the Agreement, Performance and Statutory bonds will be required for the full value and scope of services of the Project. The form and other conditions of providing such security shall be as set forth in the Agreement.

Article 6 **Payment**

6.1 Invoicing Plan

Within ten (10) days after execution of the Agreement, Design-Builder shall submit for Owner’s review and approval an invoicing plan for all of the Work, based on the Contract Price and Schedule. The Invoicing Plan will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

6.2 Monthly Progress Payments

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner’s review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof. Items to be invoiced based on lump sums or fixed unit prices may be invoiced according to agreed progress of the Work. Items invoiced to be included in the Cost of the Work shall be supported by specific documentation justifying the cost of such items.

6.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

6.2.3 The Application for Payment shall constitute Design-Builder's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

6.2.4 Based on site inspections and Work progress review, Design Consultant will verify that the invoiced progress of the Work is accurately reflected, meets the quality requirements of the Contract Documents, and is in accordance with the design plans and specifications issued for construction of the Work.

6.3 Withholding of Payments

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

6.4 The Design Consultant shall perform quality assurance reviews of the construction work in progress and completed to assure that the quality control procedures and tests have been performed as required, and are acceptable in accordance with the Contract Documents. Design Consultant shall indicate in applications for payment that it has completed such reviews for the work covered by such application.

6.5 Design-Builder's Payment Obligations

Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment.

6.6 Substantial Completion

6.6.1 Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents. If such Work is substantially complete in the opinion of the Owner, Design – Builder shall prepare a Certificate of Substantial Completion for approval and issue by the Owner that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

6.6.2 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, 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 that specified in the Agreement for the estimated value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

6.6.3 Owner, at its option, may use a portion of the Work which has been determined to be substantially complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for that portion of Work addressing the items set forth in Section 6.6.1 above, (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers and the appropriate government authorities having jurisdiction over the Project, and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

6.7 Final Payment

6.7.1 After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has completed all of the Work in conformance with the Contract Documents.

6.7.2 At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

- .1** an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;
- .2** a general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;
- .3** consent of Design-Builder's surety, if any, to final payment;
- .4** all operating manuals, warranties and other deliverables required by the Contract Documents;
- .5** record plans and specifications including all changes and additions made during the construction, testing and commissioning of the Project.
- .6** quality documentation for the construction and testing of the Project, signed by the Design Consultant as accurate and complete, and that the Work meets performance specification requirements established for the Project.
- .7** certificates of insurance confirming that required coverage's will remain in effect consistent with the requirements of the Contract Documents.

Article 7
Indemnification

7.1 Patent and Copyright Infringement

7.1.1 Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

7.1.2 If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

7.1.4 The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or copyright.

7.2 Tax Claim Indemnification

7.2.1 If, in accordance with Owner's direction, an exemption for all or part of the Work is claimed for taxes, Owner shall indemnify, defend and hold harmless Design-Builder from and against any liability, penalty, interest, fine, tax assessment, attorneys' fees or other expenses or costs incurred by Design-Builder as a result of any action taken by Design-Builder in accordance with Owner's directive.

7.3 Payment Claim Indemnification

7.3.1 Providing that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.4 Design-Builder's General Indemnification

7.4.1 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 work required hereunder.

7.4.2 Indemnity: For purposes of this Agreement, Design-Builder 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 Design-Builder, its affiliates, subsidiaries, employees, agents, design consultants, 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 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 Design-Builder's obligation hereunder shall not include amounts attributable to the fault or negligence of the City or any third party for whom the Design-Builder is not responsible.

In the case of any claims against the City, its employees or agents indemnified under this Agreement, by an employee of the Design-Builder, its affiliates, subsidiaries, or assignees, the indemnification obligation contained in this Agreement shall not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for the Design-Builder, its affiliates, subsidiaries, or assignees, under workers' compensation acts, disability benefit acts, or other employee benefit acts.

Article 8 **Time**

8.1 Obligation to Achieve the Contract Times

Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement.

8.2 Force Majeur Delays to the Work

If Design-Builder is delayed in the performance of the Work due to force majeure events beyond its control and due to no fault of its own, the Contract Time(s) for performance shall be reasonably extended by Change Order. Such force majeure events that will entitle Design-Builder to an extension of the Contract Time(s) are limited to hazardous site Materials or man-made buried objects on the site, wars, floods, epidemics, and adverse weather conditions not reasonably anticipated, and other acts of God. In addition to Design-Builder's right to a time extension for those force majeure events set forth herein, Design-Builder shall also be entitled to a justifiable adjustment of the Contract Price.

Article 9
Changes to Contract Price and Time

9.1 Change Orders

9.1.1 A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

- .1 The scope of the change in the Work;
- .2 The amount of the adjustment to the Contract Price; and
- .3 The extent of the adjustment to the Contract Time(s).
- .4 Any change to the terms and conditions of the Agreement or the General Conditions

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

9.2 Work Change Directives

9.2.1 A Work Change Directive is a written order prepared and signed by Owner, directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

9.2.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.3 Minor Changes in the Work

Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder and provided to the Owner prior to the invoice for final payment.

9.4 Contract Price Adjustments

9.4.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

- .1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;
- .2 A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;
- .3 Costs, fees and any other markups set forth in the Agreement; and
- .4 An agreed amount to be added or deleted from the Cost of the Work

- .5 If an increase or decrease cannot be agreed to as set forth in items .1 through .3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement. If the net result of both additions and deletions to the Work is an increase in the Contract Price, overhead and profit shall be calculated on the basis of the net increase to the Contract Price. If the net result of both additions and deletions to the Work is a decrease in the Contract Price, there shall be no overhead or profit adjustment to the Contract Price. Design-Builder shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

9.4.2 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

9.5 Emergencies

In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed fourteen (14) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

10.2 Dispute Avoidance and Resolution

10.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

10.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative.

10.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

10.2.4 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, Design/Builder shall proceed with the Work in the Agreement as if no dispute existed, and the Owner shall continue to make payment for Design/Builder completed Services; and provided further that no dispute will be submitted to mediation or arbitration without both parties' express written consent.

10.5 CONSEQUENTIAL DAMAGES

10.5.1 Notwithstanding anything herein to the contrary (except as set forth in section 10.5.2 below), neither design-builder nor owner shall be liable to the other for any consequential losses or damages, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including but not limited to losses of use, profits, business, reputation or financing.

10.5.2 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner for some damages that might otherwise be deemed to be consequential.

Article 11 **Stop Work and Termination**

11.1 Owner's Right to Stop Work

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than one hundred twenty (120) days during the duration of the Project.

11.1.2 Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of work by Owner.

11.2 Owner's Right to Terminate for Cause

11.2.1 If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute

the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.

In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder.

Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner.

Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the re-procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

11.2.4 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

11.3 Design-Builder's Right to Terminate for Cause

11.3.1 Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

- .1 The Work has been stopped for sixty (60) consecutive days, or more than one hundred twenty (120) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.
- .2 Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work

being stopped for sixty (60) consecutive days, or more than one hundred twenty (120) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Article 11 hereof.

11.3.2 Upon the occurrence of an event set forth above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

11.4 Bankruptcy of Design-Builder

11.4.1 If Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

- .1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and
- .2 The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

11.4.2 The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

11.5 Owner's Right to Terminate for Convenience

11.5.1 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:

- .1 All Work executed and for proven loss, cost or expense in connection with the Work;
- .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

- .3 The fair and reasonable sums for Design-Builder Fees on the sum of items .1 and .2 above.

11.5.2 If Owner terminates this Agreement for its convenience above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's shall have rights to use the Work Product as set forth in the Agreement.

Article 12 **Affirmative Action**

Equal Employment Opportunity: During the performance of this Agreement, the Design-Builder agrees as follows:

- A. The Design-Builder shall comply with the Kansas Act against discrimination and shall not discriminate against any employee because of race, religion, color, sex or national origin and will abide by the provisions of the Age Discrimination in Employment Act of 1967, as amended. The Design-Builder will take affirmative action to ensure that applicants are employed and that applicants are treated during employment without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment advertisement; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Design-Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the requirements of these nondiscrimination provisions.
- B. The Design-Builder will, in all solicitations or advertisements for employees placed by or on behalf of the Design-Builder, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin and shall include the phrase "equal opportunity employer" or a similar phrase approved by the Kansas Commission on Civil Rights.
- C. If the Design-Builder fails to comply with the manner in which the Design-Builder reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Design-Builder shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City.
- D. If the Design-Builder is found to have violated the Kansas Act against discrimination under a final decision or order of the Kansas Commission on Civil Rights, the Design-Builder shall be deemed to have breached the Contract, and it may be canceled, terminated or suspended, in whole or in part, by the City.
- E. The Design-Builder will include all of Subsections A through D in every design subconsultant agreement, subcontract or purchase order, so that such provisions will be binding upon each subcontractor or vendor.

Other Laws: The Design-Builder agrees to abide by all other Federal, State of Kansas or 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 with same.

Article 13
Hazardous Materials

13.1 Certain Definitions

13.1.1 "Hazardous Materials" means any substance.

- the presence of which requires investigation or remediation under federal, state or local law, statute, regulation, ordinance, order, action, policy or common law.

- which is or becomes defined as a "hazardous waste", "hazardous substance", pollutant or contaminant under any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. ' ' 9601 et seq. ("CERCLA"), as amended, or the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. ' ' 6901 et seq. ("RCRA");

- which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA, including without limitation gasoline, diesel fuel or other petroleum hydrocarbons;

- which toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority or instrumentality of the United States or the District of Columbia;

- the presence of which on the Site causes or threatens to cause a nuisance upon the Site or to the adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Site, or

- the presence of which on adjacent properties could constitute a trespass by the Design/Builder or the Owner.

13.1.2 "Underground Storage Tank" shall have the definition assigned to that term by Section 9001 of RCRA, 42 U.S.C. ' ' 6991, and also shall include:

- any tank of 1,100 gallons or less capacity used for storing motor fuel;
- any tank used for storing heating oil for consumption on the premises where stored;
- any septic tank; and any pipes connected to hazardous items

13.1.3 "Environmental Requirements" means all applicable laws, statutes, regulations, rules, ordinances, codes, licenses, permits, orders and similar items of all governmental agencies or other instrumentalities of the United States or the District of Columbia and all applicable judicial, administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation:

- all requirements, including but not limited to, those pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of Hazardous Materials into the air, surface water, ground water or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of

Hazardous Materials; and

- all requirements pertaining to the protection of the health and safety of employees or the public.

13.1.4 "Environmental Damages" means all claims, judgments, damages, losses, penalties, fines, liabilities, encumbrances, liens, costs and expenses of investigation and defense of any claim, including, without limitation, attorney's fees, which are incurred at any time as a result of the existence of Hazardous Materials upon, about or beneath the Site or migrating or threatening to migrate to or from the Site, and including, without limitation;

- damages for personal injury, or injury to property or to natural resources occurring upon or off the Site;

- fees incurred for the services of attorneys, consultants, the Design/Builder, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials or violation of Environmental Requirements; and

- liability to any third party or governmental agency or political subdivision to indemnify such party, agency or political subdivision for costs expended in connection with the items listed in subparagraph 1.42.

13.1.5 "Environmental Conditions" means collectively, Hazardous Materials and Underground Storage Tanks.

13.2. Investigation of the Site

13.2.1 Upon written notice from the Owner, the Design/Builder shall prepare for execution by the Owner, one or more contracts ("Environmental Contracts") with suitably qualified consultants and/or engineers ("Environmental Engineers"), each of which Environmental Engineer and which form of Environmental Contract shall be subject to the approval of the Owner, for purposes of performing an investigation and analysis of the Site prior to demolition and excavation activities, to determine the presence of any Environmental Conditions on, in or under the Site. The Environmental Contracts shall provide for a commercially reasonable scope of investigation approved by the Owner, and may provide for conducting the investigation and testing in phases acceptable to the Owner. The Environmental Contracts shall also provide that the Environmental Engineers shall begin their tests and inspections at the Site as soon as the Owner is able to arrange access to the Site, or any portions thereof, for such purposes. The Environmental Contracts shall provide that the Design/Builder, acting as agent of the Owner, shall coordinate the activities of the Environmental Engineers.

13.2.2 The Environmental Contracts shall provide that the Environmental Engineers shall prepare such reports, feasibility studies and remedial plans ("Environmental Assessments") as may be reasonably necessary in order to identify and explain the quantity, scope and nature of the Environmental Conditions found to exist at the Site. The Environmental Assessments shall contain a detailed analysis of the Environmental Conditions discovered, and the actions ("Remedial Actions") required for the response, removal, cleanup or remediation of such Environmental Conditions (i) which are required by Environmental Requirements, or (ii) which are reasonably necessary to mitigate Environmental Damages.

13.2.3 The Environmental Contracts shall provide that the Environmental Engineers shall promptly provide the Owner and the Design/Builder with a copy of each Environmental Assessment, together with any other reports and test results generated pursuant to the Environmental

Contracts. The Design/Builder shall, promptly after receipt of the foregoing matters from the Environmental Engineers, prepare and submit to the Owner a written report setting forth the Design/Builder's understanding of whether and to what extent any recommended Remedial Actions may result in an amendment to the Schedule and the progress of the Work.

13.2.4 The Environmental Contracts shall provide that it shall be the responsibility of the Environmental Engineers to give any necessary notice to the Federal District or other agencies of the presence of any Environmental Conditions; to pursue all necessary negotiations with Federal and District agencies concerning preparation and approval of a plan for clean-up to the extent required; and to obtain all necessary permits to perform any Remedial Actions.

13.3 Remedial Actions

13.3.1 If so instructed by the Owner, based upon the results of the Environmental Assessments, the Design/Builder shall obtain bids from remediation contractors ("Remediation Contractors") suitably qualified and approved by the Owner, to perform the Remedial Actions selected by the Owner and shall submit such bids to the Owner, together with the Design/Builder's recommendation of the Remediation Contractor(s) who should be retained. If the Owner elects to go forward with all or any portion of the Remedial Actions covered by the bids submitted, the Owner will so advise the Design/Builder in a written notice on or before the date which is sixty (60) Days after receipt of the foregoing matters from the Design/Builder. Promptly after receipt of such notice, the Design/Builder shall prepare for the Owner's execution remediation contracts ("Remediation Contracts") with the Remediation Contractors identified in such notice.

13.3.2 The Design/Builder shall be responsible for coordinating the work and services performed by the Remediation Contractors, and coordinating such work with the Work.

13.3.3 If in the course of performance of the Work, the Design/Builder encounters on the Site any Hazardous Materials not previously disclosed and remediated by the Environmental Engineers or the Remediation Contractors, the Design/Builder shall immediately suspend the Work in the area affected and promptly thereafter report the condition to the Owner.

13.4. Payments: Liability of Design/Builder

13.4.1 All payments due under the Environmental Contracts and the Remediation Contractors shall be made by the Owner directly to the Environmental Engineers and the Remediation Contractors. Such payments will be based on requisitions, which requisitions shall be approved by the Design/Builder prior to submission to the Owner.

13.4.2 All payments due under the Environmental Contracts, the Remediation Contracts and for Environmental Damages, shall not be a part of the GMP, and shall be the sole responsibility of the Owner, except as expressly provided otherwise in Section 5 hereof.

13.4.3 It is agreed that with respect to any Environmental Conditions existing on the Site, the Design/Builder is not, and shall not be deemed to be, a generator, arranger, owner, operator, treater, storer, transporter or disposer of, or otherwise responsible for, any such Environmental Conditions. It is understood and agreed that the Design/Builder shall have no right to direct the means or methods of performance of any Environmental Engineer or Remediation Contractor.

13.5. Environmental Responsibilities of the Design/Builder

13.5.1 The Owner acknowledges and agrees that the Design/Builder shall not commence or continue any demolition or construction activities on any portion of the Site on or in which Remedial Actions are to be performed until such Remedial Actions are to the point where construction activities will not interfere with such Remedial Actions, as evidenced by appropriate certification by the applicable Environmental Engineer and/or Remediation Contractor and any required approvals of any applicable government agencies. The Design/Builder agrees to use good faith diligent efforts to adjust and reschedule its activities at the Site so as to minimize, to the extent reasonably practical, the adverse effect on the progress of the Work resulting from any Remedial Actions.

13.5.2 The Design/Builder shall not bring Hazardous Materials to the Site, and shall not include Hazardous Materials in any construction materials, unless permitted by Environmental Requirements. The Design/Builder shall comply, and shall cause the Subcontractors to comply, with all Environmental Requirements regarding the generation, handling, storage, treatment and disposal of Hazardous Materials.

13.5.3 The Design/Builder shall indemnify, defend and hold harmless the Indemnified Parties from and against any Environmental Damages asserted against or sustained by such parties as a result of any violation by the Design/Builder, the Subcontractors, of any Environmental Requirements arising out of the performance of the Work.

Article 14 **Miscellaneous**

14.1 Dispute Resolution. Owner and Design/Builder/Architect 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, Design/Builder shall proceed with the Services in accordance with this Agreement as if no dispute existed, and the Owner shall continue to make payment for Design/Builder completed Services; and provided further that no dispute will be submitted to mediation or arbitration without both parties' express written consent.

14.2 Assignment. Neither Design-Builder nor Owner shall without the written consent of the other party assign, transfer, or sublet any portion or part of its obligations under this Agreement.

14.3 Successorship. Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

14.4 Governing Law. It is the intention of the parties that this Agreement and the performance hereunder, and all suits and special proceedings under this Agreement, be construed in accordance with and under and pursuant to the laws of the State of Kansas and that, in any action, special proceeding or other proceeding that may be brought arising out of, in connection with, or by reason of this contract, the laws of the State of Kansas shall be applicable and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which any action or special proceeding may be instituted. The Design-Builder agrees to abide by all other Federal, State of Kansas or 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 with same.

14.5 Severability. If any provision or any part of a provision of this Agreement shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to applicable

laws by any authority having jurisdiction, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provisions or parts of the provision of this Agreement, which shall remain in full force and effect as if the unenforceable provision or part was deleted.

14.6 No Waiver

The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

14.7 Notice

Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

14.8 Entire Agreement. This Agreement forms the entire agreement between Owner and Design-Builder. And contains the complete agreement between the parties and shall, as of the effective date hereof, supersede all other agreements between the parties. No oral representations or other agreements have been made by the parties except as specifically stated in this Agreement. The parties stipulate that neither of them has made any representation with respect to the subject matter of this Agreement except such representations as are specifically set forth in this document and each of the parties acknowledges that it has relied on its own judgment in entering into this Agreement.

14.9 Amendments.

This Agreement may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of both parties.

14.10 Headings

The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

CONTRACT DEFINITIONS

APPLICABILITY: THESE DEFINITIONS ARE INTEGRAL TO THE AGREEMENTS.

- A. Contract Documents: Those documents identified in the Agreements.
- B. Owner's Project Criteria as defined in the General Conditions of Contract and as follows:
 - 1. Budget Cost Estimates.
 - 2. Conceptual Design:
 - a. Site.
 - b. Facility Floor Plans.
- C. Proposer's Qualifications Statement Submittal: A description of the proposer's organization, experience including references, project approach and legal and financial information to demonstrate the proposer capacity and capabilities to accomplish the design and construction of the project.
- D. Proposer's Price Proposal: The fully completed and executed Price Proposal Form which comprises the offer prepared by the Design-Builder.

Phase 1 Services Definitions:

- A. Phase 1 Services Schedule: The time included from Notice to Proceed (NTP) with the Preliminary Agreement for Phase 1 Services, and concludes upon action by the Owner to accept or otherwise decide in accordance with the Agreement with respect to the completed work products and the Design-Builder's GMP Proposal, not to exceed 120 days.
- B. Design – Builder Site Survey: In addition to information provided by the Owner, Design-Builder shall prepare or provide any further detailed site survey including but not limited to: legal boundary survey, easements and right-of-ways, topographical information, location of all surface structures and other improvements, location of significant trees, location of all underground and overhead utilities on site or in/over adjacent right-of-ways required for Design – Builder to prepare and present the GMP Proposal for Owner review and acceptance. Surveyor's scope-of-work shall be prepared or approved by the Design-Builder's architect-of-record.
- C. Design – Builder Geotechnical Investigation Report: In addition to information provided by Owner, Design-Builder shall prepare or provide a detailed geotechnical subsurface investigation suitable for the design of the project's foundations and other subsurface improvements. Geotechnical engineer's scope-of-work for drilling, number and location of test holes or pits, soil sample analysis and foundation recommendations shall be prepared or approved by the Design-Builder's structural and civil engineers. Note: in the Final Agreement for Phase 2 Services, the Design-Builder assumes responsibility for all subsurface conditions, except hazardous materials (as defined by the U.S. Government or by the State of Kansas) and unknown man-made objects.
- D. Program of Facility Requirements (Program): Developed by the Design-Builder in consultation with the Owner. The Owner's requirements for size, arrangement, organization, and location of functional spaces, description of space functions, identification of fittings, equipment, and furnishings, description of the physical and environmental requirements for each space, together with a description of the image, goals, or "mission" of the project. Includes detailed Room Data Sheets for each programmed space.
- E. Schematic Design Documents: The process of finalizing the Owner's Program of Facility Requirements, performance specifications, and design criteria and preparing preliminary drawings and written descriptions to illustrate the proposed design of the Work or a portion of the Work to the Owner, as described in the General Conditions of the Contract. Schematic Design consists of drawings prepared to a schematic level as defined in the AIA Handbook of Professional Practice, 2001, pages 569, and performance specifications organized according to CSI's "UniFormat" classification of construction systems and assemblies. Schematic Design performance specifications, when approved by the Owner, shall have precedence over later Design Development and Construction Documents, unless changes have been specifically authorized by the Owner. Schematic Design Documents shall be the basis for the Design-Builder's GMP

Proposal.

- F. LEED Feasibility: Design-Builder shall, as a part of its' Phase 1 Services, investigate the feasibility and cost to the Owner to achieve a LEED Silver Certification or better for the project from the U.S. Green Building Council. Unless directed otherwise by the Owner, the costs to design, construct, and submit documentation to the U.S. Green Building Council for certification (including Council fees), shall be included in the Design-Builder's GMP Proposal.
- G. Design-Builder's GMP Proposal (Final Proposal): A guaranteed maximum price (GMP) proposal prepared by the Design-Builder, which corresponds to the Owner approved Program and Schematic Design Documents, and meets the Owners project budget and schedule objectives as well as to the terms and conditions of the Final Agreement for Phase 2 Services.

Phase 2 Services Definitions:

- A. Phase 2 Services Schedule commences upon 1) the execution of the Final Agreement for Phase 2 Services by both parties, and 2) the receipt of a Notice-to-Proceed (NTP) from the Owner. Phase 2 concludes at the end of the Warranty Period, as defined in the Agreement and the General Conditions of Contract.
- B. Design Development: The process of determining the form, arrangement, size, and materials of the work or a portion of the work, as described in the General Conditions of the Contract. Design Development consists of drawings prepared to an advanced level as defined in the AIA Handbook of Professional Practice, 2001, pages 570, and preliminary outline prescriptive specifications organized according to CSI's "MasterFormat."
- C. Construction Documents: The process of preparing working drawings, prescriptive specifications, and other documents describing the work or a portion of the work in sufficient detail to allow permitting by authorities having jurisdiction, and for the accurate and complete construction.
- D. Construction Period: The Construction period is the time from the transfer of the project site to custody of the Design-Builder until final payment as defined by the General Conditions of the Contract.
- E. Substantial Completion: As defined in the General Conditions of the Contract; prerequisites are:
 - 1. Design-Builder's complete punch list of remaining minor items of Work to be completed with a schedule of completion for such items.
 - 2. Owner's complete punch list of items to be completed.
 - 3. Compliance with requirements of governing authorities, for submittals, inspections, and permits, including but not limited to an occupancy permit issued by the authority having jurisdiction.
 - 4. Compliance with Owner's requirements for access to areas occupied by the Owner.
 - 5. The Project is available for use by the Owner for its intended purposes.
- F. Closeout: The process of completing all details of construction, testing and commissioning. Closeout period is the time from the Date of Substantial Completion until final payment, as defined by the General Conditions of Contract.
- G. Warranty Period: The warranty period commences on the date of Substantial Completion and is the period in which the Design-Builder or the Owner may discover and require the Design-Builder to correct defective work.

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

05/02/2008

DATE (MM/DD/YY)

06/13/2007

PRODUCER
 LOCKTON COMPANIES, LLC-1 KANSAS CITY
 444 W. 47th Street, Suite 900
 Kansas City Mo 64112-1906
 (816) 960-9000

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED
 1063193
 MCCOWN GORDON COMPANIES, INC.
 MCCOWN GORDON CONSTRUCTION, LLC
 PB GROUP, LLC
 422 ADMIRAL BOULEVARD
 SUITE 100
 KANSAS CITY MO 64106

INSURER A : LEXINGTON INS CO (LOCKTON AFFINITY)
 INSURER B :
 INSURER C :
 INSURER D :
 INSURER E :

COVERAGES JA THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER AND THE CERTIFICATE HOLDER.

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX FIRE DAMAGE (Any one fire) \$ XXXXXXXX MED EXP (Any one person) \$ XXXXXXXX PERSONAL & ADV INJURY \$ XXXXXXXX GENERAL AGGREGATE \$ XXXXXXXX PRODUCTS - COMP/OP AGG \$ XXXXXXXX
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	NOT APPLICABLE			COMBINED SINGLE LIMIT (Ea accident) \$ XXXXXXXX BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO	NOT APPLICABLE			AUTO ONLY - EA ACCIDENT \$ XXXXXXXX OTHER THAN EA ACC \$ XXXXXXXX AUTO ONLY: AGG \$ XXXXXXXX
	EXCESS LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> UMBRELLA FORM RETENTION \$	NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX AGGREGATE \$ XXXXXXXX \$ XXXXXXXX \$ XXXXXXXX \$ XXXXXXXX
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	NOT APPLICABLE			WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ XXXXXXXX E.L. DISEASE - EA EMPLOYEE \$ XXXXXXXX E.L. DISEASE - POLICY LIMIT \$ XXXXXXXX
A	OTHER PROFESSIONAL LIABILITY	0151791	05/02/2007	05/02/2008	EACH OCCURRENCE: \$1,000,000; GENERAL AGGREGATE: \$1,000,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
 PROJECT: OVERLAND PARK MAINTENANCE FACILITY.

CERTIFICATE HOLDER 2885912 CITY OF OVERLAND PARK KANSAS 8500 SANTA FE DRIVE OVERLAND PARK KS 66212	ADDITIONAL INSURED; INSURER LETTER: _____	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE _____
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**CITY OF OVERLAND PARK
CERTIFICATE OF INSURANCE – FOR CONSULTANTS**

NAME AND ADDRESS OF AGENCY LOCKTON COMPANIES 444 WEST 47 TH STREET, SUITE 900 KANSAS CITY, MO 64112-1906	COMPANIES AFFORDING COVERAGES	
	COMPANY LETTER	A THE CHARTER OAK FIRE INS.
NAME AND ADDRESS OF INSURED MCCOWN GORDON CONSTRUCTION LLC 422 ADMIRAL BLVD., SUITE 100 KANSAS CITY, MO 64106	COMPANY LETTER	B THE STANDARD FIRE INS. CO.
	COMPANY LETTER	C
	COMPANY LETTER	D

This is to certify that policies of insurance listed below have been issued to the insured named above and are in force at this time.

COMPANY LETTER	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	ALL LIMITS IN THOUSANDS (000)	
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> ON AN OCCURRENCE BASIS <input type="checkbox"/> "X", "C", "U"	DTCO893700 AIND06	11/01/06	11/01/07	GENERAL AGGREGATE	\$ 2,000
					PRODUCTS / COMPLETED OPERATIONS AGGREGATE	\$ 2,000
					PERSONAL & ADVERTISING INJURY	\$ 1,000
					EACH OCCURRENCE	\$ 1,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTO	DT810893J70 0APHX06	11/01/06	11/01/07	CSL	\$ 1,000
					BODILY INJURY (PER PERSON)	\$
					BODILY INJURY (PER ACCIDENT)	\$
					PROPERTY DAMAGE	\$
A	EXCESS LIABILITY <input checked="" type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM	DTSMCUP893 7J700ATIL05	11/01/06	11/01/07	EACH OCCURRENCE \$ 5,000	GENERAL AGGREGATE \$ 5,000
B	WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY	DTACRUB893 J700AIND06	11/01/06	11/01/07	STATUTORY	
					\$ 1,000	(EACH ACCIDENT)
					\$	(DISEASE-POLICY LIMIT)
					\$ 1,000	(DISEASE-EACH EMPLOYEE)
					\$	(EACH CLAIM)
	PROFESSIONAL LIABILITY				\$	(EACH CLAIM)
					\$	(ANNUAL AGGREGATE)

THE INSURANCE COMPANY AFFORDING COVERAGE UNDER THIS CONTRACT:

COMPANY LETTER

	A			B			C			D		
	Yes	X	No	Yes	X	No	Yes	X	No	Yes	X	No
1. Is licensed to do business in the State of Kansas												
2. Carries a Best's policyholder rating of			A+			A+						
3. Carries a Best's financial rating of			XV			XV						

COMMENTS: The commercial general liability policy includes contractual liability assumed by contract, and vicarious liability associated with Independent Contractors.

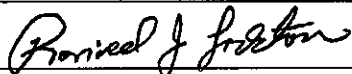
The commercial general liability policy provides primary protection for subcontractors not otherwise insured. XX Yes No*
 * If "No", all subcontractors must submit a certificate of liability insurance pursuant to the Contract between City and Consultant.

City of Overland Park is named as additional insured with respects to General Liability and Auto Liability.

Project Name: OVERLAND PARK MAINTENACE FACILITY.

Cancellation or modification. Should any of the above described policies be cancelled or materially modified before the expiration date thereof, the issuing company will mail 30 days written notice to the below named certificate holder.

NAME AND ADDRESS OF CERTIFICATE HOLDER
 ATTN: MARY LOU MCCANN
 CITY OF OVERLAND PARK
 8500 SANTA FE DRIVE
 OVERLAND PARK, KS 66212

DATE ISSUED JUNE 13, 2007

 AUTHORIZED REPRESENTATIVE