

CITY OF OVERLAND PARK, KANSAS
AGREEMENT BETWEEN
CITY OF OVERLAND PARK, KANSAS AND DESIGN BUILDER

**DENNIS GARRETT TRUCK PORT
PB-1431**

Owner:

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

Design Builder:

Combes Construction, LLC
1550 E. Spruce, Olathe, KS 66061

TABLE OF CONTENTS

	Description	Page Number
Article 1	General Provisions	6
	1.1 Definitions	6
	1.2 Relationship of Parties	8
	1.3 Design-Builder	8
Article 2	Design-Builder's Responsibilities	8
	2.1 Design Services and Responsibilities	9
	2.2 Preconstruction Phase	10
	2.3 Guaranteed Maximum Price Proposal and Contract Time	11
	2.4 Basis of GMP	11
	2.5 Construction Phase	12
Article 3	City's Responsibilities	14
	3.1 Information and Services	14
	3.2 Structural and Environmental Tests, Surveys, and Reports	14
	3.3 City's Designated Representative	14
Article 4	Compensation and Completion Date for Design and Preconstruction Phase Services	15
	4.1 Compensation	15
	4.2 Payments	15
	4.3 City's Right to Withhold Payment	15
	4.4 Completion Date	15
Article 5	Compensation for Construction Phase Services	15
	5.1 Compensation	15
	5.2 Guaranteed Maximum Price (GMP)	16
	5.3 Savings	16
	5.4 Change Orders	16
Article 6	Cost of the Work for Construction Phase	18
	6.1 Costs To Be Reimbursed	18
	6.2 Costs Not To Be Reimbursed	19
	6.3 Discounts, Rebates, and Refunds	20
	6.4 Accounting Records	20
Article 7	Construction Phase	20
	7.1 Payments	20
	7.2 Payments Withheld	22
	7.3 Final Completion and Final Payment	22
Article 8	Liquidated Damages	23

Article 9	Non-Discrimination / Other Laws	24
9.1	Non-Discrimination, Affirmative Action, and Sexual Harassment	24
Article 10	Insurance Bonds	24
10.1	Insurance	24
10.2	Notice of Claim Reduction of Policy Limits	25
10.3	Minimum Requirements Commercial General Liability Policy	25
10.4	Automobile Liability	25
10.5	Umbrella Liability	25
10.6	Workers' Compensation	26
10.7	Professional Liability	26
10.8	Industry Ratings	26
10.9	Subcontractor's Insurance	26
10.10	Design-Builder Property Insurance ("Builder's Risk")	26
10.11	Bonds and Other Performance Security	27
Article 11	Indemnity	27
11.1	The Indemnity	27
11.2	General Limitation	28
11.3	Waiver of Statutory Defenses	28
Article 12	Dispute Resolution	28
12.1	Dispute Resolution	28
Article 13	Termination or Suspension	28
13.1	Termination	28

	Description	Page Number
Article 14	General Conditions	29
14.1	Extent of Contract	29
14.2	Assignment	29
14.3	Appointment of Service Agent	30
14.4	Contract Documents / Agreement Design-Build	30
14.5	Defects in the Contract Documents	30
14.6	Copies of the Agreement	30
14.7	Scope, Nature, and Intent of Drawings and Specifications	31
14.8	Shop Drawings	31
14.9	Concealed Conditions	32
14.10	Permits, Fees, and Notices	32
14.11	General Administration of the Contract	33
14.12	Design-Builder's Employees	33
14.13	Samples	34
14.14	Protection of Work and Property	34
14.15	Protection of Property/Liability	35
14.16	Tests and Inspections	35
14.17	Superintendence and Supervision	36

14.18	Design-Builder's Office at Site of Work	36
14.19	Work Stoppages	36
14.20	Patent Liability Clause	37
14.21	Independent Contractor	37
14.22	Separate Contracts	37
14.23	Relations with other Contractors	37
14.24	Provisions for Emergencies	38
14.25	Assignment and Subletting of Contract	38
14.26	Substantial Completion	39
14.27	Partial Occupancy or Use	40
14.28	Correction of Labor, etc. – Before or After Substantial Completion	40
14.29	Correction of Labor, etc. – After Substantial Completion	40
14.30	Acceptance of Nonconforming Work	41
14.31	Beginning, Progress, and Time of Completion of Work	41
14.32	Construction Schedules	42
14.33	Delays and Extensions of Time	44
14.34	Use of Premises	45
14.35	Allowances	45
14.36	Cutting, Patching, and Digging	45
14.37	Cleaning Up	45
14.38	Temporary Facilities	45
14.39	Sanitary Regulations and Water	46
	Description	Page Number
14.40	Unfavorable Construction Conditions	46
14.41	Design-Builder's Risk	46
14.42	Safety Precautions and Programs	46
14.43	Weekends, Holidays, and Night Work	48
14.44	Approval of Equals	48
14.45	Test of Materials Offered by Design-Builder	48
14.46	Testing of Completed Work	49
14.47	Borrow and Waste Areas	49
14.48	Street Signs and Traffic Aids	49
14.49	Federal Lobbying Activities	49
14.50	Titles, Subheads, and Capitalization	49
14.51	Severability	49
14.52	Taxes	50
14.53	Governing Law	50
14.54	Venue	50
14.55	Warranty	50
14.56	Access to Work	50
14.57	Hazardous Materials	50
14.58	Order of Precedence	51
Article 15	Execution of the Agreement	52

AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2011, by and between the City of Overland Park, Kansas, hereinafter the "City", and _____, hereinafter the "Design-Builder";

WITNESSETH:

ARTICLE 1 GENERAL PROVISIONS

1.1 Definitions

Whenever any word or expression defined herein, or pronoun used in its stead, occurs in these Contract Documents, it shall have the meaning herein given. Work described in words which so applied have a well-known technical or trade meaning shall be held to refer to such recognized standards.

- 1.1.1 "Applicable Laws" means all laws, statutes, ordinances, codes, regulations, rules, orders and resolutions of all national, administrative, state, local, municipal, and other governing bodies relating to the Project or to the performance of the Services or the Work.
- 1.1.2 "Application for Payment" means a written request for compensation for Work performed submitted per AIA document G703.
- 1.1.3 "Architect" means the individual, firm, or entity hired and employed by the Design-Builder for the performance of professional design services in connection with the Project.
- 1.1.4 "Certificate of Substantial Completion" means written certification from the City which establishes the date of Substantial Completion, responsibilities of the City and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and fixes the time within which the Design-Builder shall finish all items on the list accompanying the Certificate.
- 1.1.5 "Change Order" means a written order issued after the Agreement is executed by which the City and the Design-Builder agree to construct additional items of Work, to modify the Contract time, or to change the character and scope of Work shown in the Drawings and Specifications. Change Orders must be signed by the City and Design-Builder to be binding.
- 1.1.6 "Construction Phase" means the phase of the Project commencing upon completion of the Pre-Construction Phase, or upon award of the first Subcontract related to construction of the Project, whichever occurs first, and ending upon Final Completion. The parties acknowledge that the Design Phase and the Construction Phase may overlap.
- 1.1.7 "Contract Documents" shall consist of (but not necessarily be limited to) the Agreement between the City and Design-Builder (sometimes referred to herein as the "Agreement"), including all addenda issued prior to execution of the Agreement, the Project, including changes to the Work proposed by the Design-Builder and accepted by the City, if any; the Design-Builder's Proposal and written modifications to the Proposal accepted by the City, if any; and any other documents attached to this Agreement. The Contract Documents shall not be construed to create a contractual relationship of any kind (a) between the Architect and the City, (b) between the City and a Subcontractor, or (c) between any persons or entities other than the City and Design-Builder, including but not limited to any consultant retained by the City to prepare or review the Work. It is understood that the Work shall be carried out and the Project shall be constructed fully in accordance with the

Contract Documents.

- 1.1.8 “Cost of Work” means costs necessarily incurred by the Design-Builder in the proper performance of the Work.
- 1.1.9 “Defective Work” means Work not conforming to the Contract Documents and substitutions not properly approved and authorized.
- 1.1.10 “Design-Builder” means the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Design-Builder may be an architect or other design professional, a construction contractor, a real estate developer or any other person or entity legally permitted to do business as a Design-Builder in the location where the Project is located. The term “Design-Builder” means the Design-Builder or the Design-Builder’s authorized representative. The Design-Builder’s representative is authorized to act on the Design-Builder’s behalf with respect to the Project.
- 1.1.11 “Drawings” means the graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.
- 1.1.12 “Final Certificate for Payment” means written certification from the City stating that to the best of the City’s knowledge, information and belief, and on the basis of the City’s on-site visits and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Design-Builder and noted in the final Certificate is due and payable.
- 1.1.13 “Guaranteed Maximum Price for the Project” or “GMP” as defined and subsequently established in Change Order No. 1 and any subsequent Change Orders and shall include the Cost of Work as defined in Article 6 and shall be the sum of the estimated cost of the work and contingency.
- 1.1.14 "Life Cycle Costs" means the sum of all costs of the Project over its useful life, and includes the cost of design, construction, acquisition, operation, maintenance and salvage/resale value.
- 1.1.15 “Preconstruction Phase” shall mean the phase during which Design-Builder shall perform value engineering and constructability services in working with the City. Preliminary scheduling and cost estimate activities shall also take place during this phase.
- 1.1.16 “Shop Drawings” are drawings, diagrams, schedules, and other data specially prepared for the Work by the Design-Builder or a Subcontractor, Sub-Subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.
- 1.1.17 “Specifications” means that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards, and workmanship for the Work, and performance of related services.
- 1.1.18 “Subcontractor” means an individual, firm, or corporation having a direct contract with the Design-Builder or with another subcontractor for the performance or supply of any part of the Work required by the Contract Documents or the supply of any materials, services, equipment, or installation services required by the Contract Documents.

- 1.1.19 “Substantial Completion or Substantially Complete” means the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the City can occupy or utilize the Work for its intended use and a temporary certificate of occupancy and any other permits and orders necessary for occupancy have been issued by the proper governmental authority. Warranties called for by this Agreement or by the Contract Documents shall commence on the Substantial Completion date.
- 1.1.20 “Value Engineering” means the detailed analysis of systems, equipment, materials, services, facilities, and supplies required by the Contract Documents for the purpose of achieving the desired and essential functions of the Project at the lowest Life Cycle Cost consistent with required and necessary performance, reliability, quality, and safety. Value Engineering is to be performed during the Preconstruction Phase as a part of the services required to reach a GMP acceptable to all parties.
- 1.1.21 “Warranties” means warranties obtained from the Design-Builder, Subcontractors, and all other contractors pursuant to this Agreement covering the Work performed or materials furnished to the Project or any portion thereof by the Design-Builder.
- 1.1.22 “Work or Project” (used interchangeably) means the work to be done necessary to complete the design and construction required of the Design-Builder by the Contract Documents, and includes all design, construction, labor, materials, tools, equipment, services, and transportation necessary in accordance with the Contract Documents to fulfill the Design-Builder’s obligations.

1.2 Relationship of Parties

The Design-Builder accepts the relationship of trust and confidence established with the City by this Agreement, and covenants with the City to furnish the Design-Builder’s reasonable skill and judgment and to cooperate in furthering the interests of the City. The Design-Builder shall furnish construction administration, management services, Value Engineering services, and constructability services to perform the Project in an expeditious and economical manner consistent with the interests of the City. The City shall endeavor to promote harmony and cooperation among the City, Design-Builder, and other persons or entities employed by the City for the Project.

1.3 Design-Builder

Design-Builder shall act as consultant to the City in the Preconstruction Phase and as the equivalent of a general contractor during the Construction Phase. Design-Builder shall act as the City’s interest and shall manage and control construction costs so as not to exceed the GMP.

ARTICLE 2 DESIGN-BUILDER’S RESPONSIBILITIES

The Design-Builder shall perform the Work in accordance with the Contract Documents and to the City’s full satisfaction. Design-Builder shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by tests, inspections, or approvals required or performed by persons other than the Design-Builder. The Design-Builder shall perform the Work described in this Article which shall be considered the Design and Preconstruction Phase Services.

If the City and Design-Builder agree the Construction Phase may commence before the Design and Preconstruction Phases are completed, in which case both phases may proceed concurrently.

2.1 Design Services and Responsibilities

2.1.1 When Applicable Law requires that services be performed by licensed professionals, the

Design-Builder shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions.

- 2.1.2 The Agreements between the Design-Builder and Architect or other design professionals identified in the Agreement, and in any subsequent modifications, shall be in writing. These Agreements, including services and financial arrangements with respect to this Project, shall be promptly and fully disclosed to the City upon the City's written request.
- 2.1.3 The Design-Builder shall be responsible to the City for acts and omissions of the Design-Builder's employees, Architect, Subcontractors, and their agents and employees, and other persons or entities, including the Architect and other design professionals, performing any portions of the Design-Builder's obligations under the Contract Documents.
- 2.1.4 The Design-Builder shall carefully study and compare the Contract Documents, materials, and other information provided by the City pursuant to Article 3, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the City any errors, inconsistencies or omissions discovered.
- 2.1.5 The Design-Builder shall provide to the City for the City's written approval design documents sufficient to establish the size, quantity, and character of the Project; its architectural, structural, mechanical, and electrical systems; and the materials and such other elements of the Project to the extent required by the Contract Documents. Deviations, if any, from the Contract Documents shall be approved by the City in writing.
- 2.1.6 Upon the City's written approval of the design documents submitted by the Design-Builder, the Design-Builder shall provide construction documents for review and written approval by the City. The construction documents (the "Construction Documents") shall set forth in detail the requirements for construction of the Project. The Construction Document shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the Contract Documents shall be disclosed and approved by the City in writing. Construction Documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:
 - A. be consistent with the approved design documents;
 - B. provide information for the use of those in the building trades; and
 - C. include documents customarily required for regulatory agency approvals.
- 2.1.7 The Design-Builder shall meet with the City periodically to review progress of the design and Construction Documents.
- 2.1.8 Upon the City's written approval of Construction Documents, the Design-Builder, with the assistance of the City, shall prepare and file documents required to obtain necessary approvals of the City.
- 2.1.9 The Design-Builder shall obtain from each of the Design-Builder's professionals and furnish to the City certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services provided by such professionals (i) are consistent with the Project set forth in the Contract Documents, except to the extent specifically identified in such certificate, (ii) comply with applicable professional practice standards, and (iii) comply with

Applicable Laws, ordinances, codes, rules, and regulations governing the design of the Project; and (b) that the City and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.

2.1.10 If the City requests the Design-Builder, the Architect or the Design-Builder's other design professionals to execute certificates other than those required by Section 2.1.9, the proposed language of such certificates shall be submitted to the Design-Builder, or the Architect and such design professionals through the Design-Builder, for review and negotiation at least fourteen (14) days prior to the requested dates of execution. Neither the Design-Builder, the Architect nor such other design professionals shall be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of their respective Agreements with the City or Design-Builder.

2.2 Preconstruction Phase Services

2.2.1 Preliminary Evaluation

The Design-Builder shall provide a preliminary evaluation of the City's program and Project budget requirements, each in terms of the other.

2.2.2 Consultation

The Design-Builder shall schedule and attend regular meetings with the City. The Design-Builder shall consult with the City regarding site use and improvements and the selection of materials, building systems, and equipment. The Design-Builder shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction costs, including estimates of alternative designs or materials, preliminary budgets and possible economies.

2.2.3 Preliminary Project Schedule

When the Project requirements described in Section 3.1.1 have been identified, the Design-Builder shall prepare, and periodically update, a preliminary Project schedule for the City's approval. The Design-Builder shall coordinate and integrate the preliminary Project schedule with the services and activities of the City and Design-Builder. The preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a GMP proposal, preparation and processing of Shop Drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, City's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Design-Builder shall make appropriate recommendations to the City.

2.2.4 Phased Construction

The Design-Builder shall make recommendations to the City regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

2.2.5 Preliminary Cost Estimates

2.2.5.1 When the City has sufficiently identified the Project requirements and the Design-Builder has prepared other basic design criteria, the Design-Builder shall prepare, for

the approval of the City, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

2.2.5.2 When schematic design documents have been prepared by the Design-Builder and approved by the City, the Design-Builder shall prepare, for approval of the City a more detailed estimate with supporting data. During the preparation of the design development documents, the Design-Builder shall update and refine this estimate at appropriate intervals agreed to by the City and Design-Builder.

2.2.5.3 When design development documents have been prepared by the Design-Builder and approved by the City, the Design-Builder shall prepare a detailed estimate with supporting data for review and approval by the City. During the preparation of the Construction Documents the Design-Builder shall update and refine this estimate at appropriate intervals agreed to by the City and Design-Builder.

2.2.5.4 If any estimate submitted to the City exceeds previously approved estimates or the City's budget, the Design-Builder shall make appropriate recommendations to the City.

2.2.6 Long Lead Time Items

The Design-Builder shall recommend to the City a schedule for procurement of long lead time items which will constitute part of the Work as required, to meet the Project schedule. If such long lead time items are procured by the City, they shall be procured on terms and conditions acceptable to the Design-Builder. Upon the City's acceptance of the Design-Builder's GMP proposal, all contracts for such items shall be assigned by the City to the Design-Builder, who shall accept responsibility for such items as if procured by the Design-Builder. The Design-Builder shall expedite the delivery of long lead items.

2.3 Guaranteed Maximum Price Proposal and Contract Time

2.3.1 When the Drawings and Specifications are sufficiently complete, the Design-Builder shall propose a GMP, which shall be the sum of the estimated Cost of Work.

2.3.2 As the Drawings and Specifications may not be finished at the time the GMP proposal is prepared, the Design-Builder shall provide in the GMP for further development of the Drawings and Specifications that are consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds, and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

2.4 Basis of GMP

2.4.1 The Design-Builder shall include with the GMP proposal a written statement of its basis, which shall include:

2.4.1.1 A list of the Drawings and Specifications, including all addenda thereto and the conditions of the Agreement, which were used in the preparation of the GMP proposal.

2.4.1.2 A list of allowances and a statement of their basis.

2.4.1.3 A list of the clarifications and assumptions made by the Design-Builder in the preparation of the GMP proposal to supplement the information contained in the Drawings and Specifications.

- 2.4.1.4 The proposed GMP, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the fee that comprise the GMP.
- 2.4.1.5 The Date of Substantial Completion upon which the proposed GMP is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.
- 2.4.1.6 Detailed construction schedule.
- 2.4.2 The Design-Builder shall meet with the City to review the GMP proposal and the written statement of its basis. In the event that the City discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Design-Builder, who shall make appropriate adjustments to the GMP proposal.
- 2.4.3 Unless the City accepts the GMP proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Design-Builder, the GMP proposal shall not be effective without written acceptance by the Design-Builder.
- 2.4.4 Prior to the City's acceptance of the Design-Builder's GMP proposal and issuance of a Notice to Proceed, the Design-Builder shall not incur any costs to be reimbursed as part of the Cost of the Work, except as the City may specifically authorize in writing.
- 2.4.5 Upon acceptance by the City of the GMP proposal, the GMP and its basis shall be set forth in Change Order No. 1. The GMP shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.
- 2.4.6 City shall authorize and cause the Design-Builder to revise the Drawings and Specifications to the extent necessary to reflect agreed upon assumptions and clarifications contained in Change Order No. 1. The Design-Builder shall promptly notify the City if such revised Drawings and Specifications are inconsistent with the agreed upon assumptions and clarifications.
- 2.5 Construction Phase
 - 2.5.1 General

The Construction Phase shall commence on the City's acceptance of the Design-Builder's GMP proposal and issuance of a Notice to Proceed and issuance of applicable permits.
 - 2.5.2 Administration

Those portions of the Work the Design-Builder does not customarily perform with the Design-Builder's own personnel shall be performed under Subcontracts or by other appropriate agreements with the Design-Builder. The Design-Builder shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the City. The City will then determine, with the advice of the Design-Builder which bids will be accepted. The City may designate specific persons or entities from whom the Design-Builder shall obtain bids; however, if the GMP has been established the City may not prohibit the Design-Builder from obtaining bids from other qualified bidders. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has reasonable objection.

- 2.5.2.1 Unless otherwise agreed to in writing by the City, all Work packages and material/equipment items estimated in the Cost of Work at or above specified amounts will require that the Design-Builder obtain competitive bids in writing as follows:
 - 2.5.2.1.1 At or above \$25,000 – at least two (2) competitive bids
 - 2.5.2.1.2 At or above \$50,000 – at least three (3) competitive bids
 - 2.5.2.1.3 At or above \$250,000 – at least three (3) competitive sealed bids which shall be opened jointly with the City
- 2.5.2.2 A list of approved/prequalified bidders will be established between City and Design-Builder prior to commencement of bidding.
- 2.5.2.3 With prior consent of City, mechanical, plumbing, and electrical Subcontractors may be selected during the Preconstruction Phase based upon a qualification based selection process administered by Design-Builder. The selection process will evaluate experience with similar types of projects/systems and an evaluation of proposed fee structures. Subcontractors would enter into an “open book” GMP contract.
- 2.5.2.4 If the GMP has been established and a specific bidder among those whose bids are delivered by the Design-Builder to the City; (a) is recommended to the City by the Design-Builder; (b) is qualified to perform that portion of the Work; and (c) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the City requires that another bid be accepted, then the Design-Builder may require that a change in the Work be issued to adjust the contract time and the GMP by the difference between the bid of the person or entity recommended to the City by the Design-Builder and the amount of the Subcontract or other agreement actually signed with the person or entity designated by the City.
- 2.5.2.5 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Section 7.1.5 and Section 7.1.7 and shall not be awarded on the basis of cost plus a fee without the prior consent of the City.
- 2.5.2.6 The Design-Builder shall schedule and conduct meetings at which the City and Design-Builder, and appropriate Subcontractors can discuss the status of the Work. The Design-Builder shall prepare and promptly distribute meeting minutes.
- 2.5.2.7 Promptly after the City’s acceptance of the GMP proposal, the Design-Builder shall prepare a schedule in accordance with Section 14.32, including the City’s occupancy requirements.
- 2.5.2.8 The Design-Builder shall provide monthly written reports to the City on the progress of the entire Work. The Design-Builder shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the City may reasonably require. The log shall be available to the City.
- 2.5.2.9 The Design-Builder shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Design-Builder shall identify variances between actual and estimated costs and report the variances to the City at regular intervals.

ARTICLE 3 CITY'S RESPONSIBILITIES

3.1 Information and Services

3.1.1 The City shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the City's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

3.1.2 The City shall establish and update an overall budget for the Project, based on consultation with the Design-Builder, which shall include contingencies for changes in the Work and other costs which are the responsibility of the City.

3.2 Structural and Environmental Tests, Surveys, and Reports

In the Preconstruction Phase, the City shall furnish the following with reasonable promptness and at the City's expense. Except to the extent that the Design-Builder knows of any inaccuracy, the Design-Builder shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings, and tests described in Sections 3.2.1 through 3.2.6 but shall exercise customary precautions relating to the performance of the Work.

3.2.1 Reports, surveys, drawings, and tests concerning the conditions of the site which are required by law.

3.2.2 Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a Project benchmark.

3.2.3 The services of a geotechnical engineer when such services are requested by the Design-Builder. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations.

3.2.4 Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

3.2.5 The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Design-Builder and agreed to by City.

3.2.6 As-built drawings of existing facilities, as available.

3.3 City's Designated Representative

The City shall designate in writing a representative who shall have express authority to bind the City with respect to all matters requiring the City's approval or authorization. This representative shall have the authority to make decisions on behalf of the City concerning estimates and schedules, construction budgets, and changes in the Work, and shall render

such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Design-Builder.

ARTICLE 4 COMPENSATION and COMPLETEION DATE FOR DESIGN AND PRECONSTRUCTION PHASE SERVICES

The City shall compensate and make payments to the Design-Builder for design and Preconstruction Phase services as follows:

4.1 Compensation

4.1.1 For the services described in Section 2.1 and 2.2 above, the Design-Builder's compensation shall be calculated as follows:

4.1.2 Lump sum of Twenty-Two Thousand Nine Hundred Sixty-Six dollars (\$22,966.00).

4.1.3 If compensation is based on a multiple of direct personnel expense, direct personnel expense is defined as the direct salaries of the Design-Builder's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions, and similar contributions and benefits.

4.2 Payments

4.2.1 Payments shall be made monthly following presentation of the Design-Builder's Application for Payment and, where applicable, shall be in proportion to services performed.

4.2.2 Payments are due and payable thirty (30) days from the City's receipt of the Design-Builder's undisputed Application for Payment.

4.3 City's Right to Withhold Payment

In the event the City becomes credibly informed that any representations of Design-Builder provided in its monthly pay requests, are wholly or partially inaccurate, City may withhold payment of disputed sums then or in the future otherwise due to Design-Builder until the inaccuracy and the cause thereof, is corrected to City's reasonable satisfaction. In the event the City questions some element of a pay request, that fact shall be made known to the Design-Builder immediately. Design-Builder will help effect resolution and transmit a Application for Payment, if necessary. Amounts not questioned by City shall be paid to Design-Builder in accordance with the contract payment procedures.

4.4 Completion Date

4.2.1 The Design-Builder shall complete Preconstruction Phase Services including submittal of the GMP by September 2, 2011.

ARTICLE 5 COMPENSATION FOR DESIGN-BUILDER'S PERFORMANCE

City shall compensate the Design-Builder for Construction Phase Services as follows:

5.1 Compensation

For the Design-Builder's performance of the Construction Phase Work as described in

Article 2 herein, the City shall pay the Design-Builder in current funds the Contract Sum consisting of the Cost of Work as defined in Article 1 and further clarified in Article 6.

5.2 GMP

The Cost of Work is guaranteed by the Design-Builder not to exceed the amount provided in Change Order No. 1, subject to additions and deductions by changes in the Work as provided in the Contract Documents and approved in writing by the City. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the GMP. Costs which would cause the GMP to be exceeded shall be paid by Design-Builder without reimbursement by the City.

5.3 Savings

If at the time of final payment to Design-Builder, the sum of the actual Cost of Work is less than the GMP, as such GMP may have been adjusted over the course of the Project for approved scope changes, the difference ("Savings") shall be shared as follows:

Up to and including a total Savings of Forty Thousand dollars (\$40,000.00) shall be shared Fifty percent (50%) to Design-Builder and 50 percent (50%) to City. All savings over Forty Thousand dollars (\$40,000.00) shall be for the total benefit of the City.

5.4 Change Orders

City, without invalidating the Agreement, may, by Change Order, direct changes in the Work which may result in an addition to or deduction from the GMP and/or changes in the schedule. All Change Orders shall be executed under the provisions of the original Contract Documents. If the Change Order consists of a modification to the GMP, the value of such change shall be determined as per Section 5.4.3, below.

5.4.1 Except for Work done as a result of an emergency endangering life or property, no activity resulting in additional Work shall be performed unless pursuant to the provisions of a Change Order.

5.4.2 From time to time the City may issue written orders to Design-Builder for needed clarifications, modifications, or corrections. Should a difference of opinion arise as to whether the order constitutes extra Work for which additional compensation is due, and the City insists on its performance, the Design-Builder shall proceed with the Work after making a written request for a Change Order, and it shall keep an accurate account of the actual field cost thereof as provided for in Section 5.4.3, below. The Design-Builder will thereby preserve the right to submit a claim therefore.

5.4.3 The value of any change in the Work which results in an addition/deletion to the GMP shall be determined in one or more of the following ways, at the option of City:

- A. By agreed lump sum.
- B. By agreed upon unit prices.
- C. By actual field cost (time and material) and shall include a "Not to Exceed" figure.

5.4.4 In order to arrive at the value for any change, Design-Builder shall credit City with its projected cost(s), for any Work which was previously included but which has been excluded by any such change.

5.4.5 No change in the Work shall entail additional time unless both parties determine that additional time is required and specifically so provides in the Change Order. No change in

the Work shall entitle the Design-Builder to delay damages unless so provided in said approved Change Order.

- 5.4.6 Where extra Work is performed under this Section, the term "actual field cost" as referenced in Section 5.4.3, above, of such extra Work is hereby defined to be and shall include:
 - 5.4.6.1 The cost of all workers, such as foremen, timekeepers, mechanics, and laborers, for the time actually employed in the performance of the extra Work;
 - 5.4.6.2 All materials and supplies;
 - 5.4.6.3 Trucks and rentals on machinery and equipment for the time actually employed or used in the performance of said extra Work;
 - 5.4.6.4 Any transportation charges necessarily incurred in connection with said equipment authorized by the City for use on said Work and similar operating expenses;
 - 5.4.6.5 All incidental expenses incurred as a direct result of such extra Work, including payroll taxes and a ratable proportion of premiums on construction bonds and, where the premiums therefore are based on payroll costs, public liability and property damage, worker's compensation, and other insurance required by the Contract Documents; provided, however, Design-Builder must enumerate and justify to City's satisfaction any such claimed incidental expenses; and provided, further, that without in any way limiting City's right to challenge any individual costs claimed by Design-Builder, incidental costs shall **not** include:
 - 5.4.6.5.1 Payroll costs and other compensation of Design-Builder's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Design-Builder whether at the site or in Design-Builder's principal or a branch office for general administration of the Work unless specifically agreed to by City - all of which are to be considered administrative costs covered by the Design-Builder's overhead and profit.
 - 5.4.6.5.2 Expenses of Design-Builder's principal and branch offices other than Design-Builder's office at the site.
 - 5.4.6.5.3 Any part of Design-Builder's capital expenses, including interest on Design-Builder's capital employed for the Work and charges against Design-Builder for delinquent payments.
 - 5.4.6.5.4 Costs due to the negligence of Design-Builder, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of Defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.
 - 5.4.6.5.5 Other overhead of general expense costs of any kind and the costs of any item not specifically and expressly agreed to by City.
- 5.4.7 Both parties shall agree to the form in which accounts of the actual field cost shall be kept and may also specify in writing, before the Work commences, the method of doing the

Work and the type and kind of machinery and equipment, if required, which shall be used in the performance of extra Work under this Section. In the event that machinery and heavy construction equipment shall be required for such extra Work, the authorization and basis of payment for the use thereof shall be stipulated in the Change Order.

- 5.4.8 No claim for extra Work of any kind will be allowed except as provided herein. If extra Work orders are given in accordance with the provisions of this Agreement, such Work shall be considered a part hereof and subject to each and all of the terms and requirements of this Agreement.
- 5.4.9 Design-Builder shall be responsible for notifying its surety(ies) of any modifications to the GMP or schedule, and said surety(ies) shall not seek discharge as a result of any failure on Design-Builder's part to notify surety(ies).

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

6.1 Costs To Be Reimbursed

Cost of Work items shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the City. The Cost of Work shall include only the items set forth in this Article 6.

6.1.1 Labor Costs

6.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the City's agreement, at off-site workshops.

6.1.1.2 Wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site, with the agreement of the City.

6.1.1.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops, or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

6.1.1.4 Costs paid or incurred by the Design-Builder for payroll taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations, and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Section 6.1.1.1 through 6.1.1.4.

6.1.2 Subcontract Costs

Payments made by the Design-Builder to Subcontractor in accordance with the requirements of the subcontracts.

6.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction.

6.1.3.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

6.1.3.2 Cost of the materials described in Section 6.1.3.1 in excess of those actually installed but required to provide reasonable allowance for waste and spoilage. Unused excess materials, if any, shall be handed over to the City at the completion of the Work or, at

the City's option, shall be sold by the Design-Builder; amounts realized, if any, from such sales shall be credited to the City as a deduction from the Cost of Work.

6.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items.

6.1.4.1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Design-Builder at the site and fully consumed in the performance of the Work, whether sold to others or retained by the Design-Builder. Cost for items previously used by the Design-Builder shall mean fair market value.

6.1.4.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Design-Builder at the site, whether rented from the Design-Builder or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to City's prior approval.

6.1.4.3 Cost of removal of debris from site.

6.1.4.4 Reproduction costs, costs of telegrams, facsimile transmissions and long distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office.

6.1.4.5 That portion of the reasonable travel and subsistence expense of the Design-Builder's personnel incurred while traveling in discharge of duties connected with the Work shall be subject to City's prior approval.

6.1.5 Miscellaneous Costs

6.1.5.1 That portion directly attributable to this Agreement of premiums for insurance and bonds. (If charges for self-insurance are to be included, specify the basis of reimbursement.)

6.1.5.2 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work.

6.1.5.3 Data processing costs related to the Work.

6.1.5.4 Legal costs, other than those arising from disputes between the City and the Design-Builder, reasonably incurred by the Design-Builder in the performance of the Work and with the City's written permission, which permission shall not be unreasonably withheld.

6.1.6 Other Costs

Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the City.

6.1.7 Emergencies and Repairs to Damaged or Nonconforming Work

The Cost of the Work shall also include costs which are incurred by the Design-Builder:

6.1.7.1 In taking action to prevent threatened damage, injury or loss in case of emergency affecting the safety of persons and property.

6.1.7.2 In repairing or correcting damaged or nonconforming Work executed by the Design-Builder or the Design-Builder's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the City set forth in this Agreement of the Design-Builder or the Design-Builder's personnel to supervise adequately the Work of the Subcontractor or suppliers, and only to the extent that the cost of the repair or correction is not recoverable by the Design-Builder from insurance, Subcontractors or suppliers.

6.2 Costs Not To Be Reimbursed

6.2.1 The Cost of the Work shall not include:

6.2.1.1 Salaries, expenses, and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the Project site office, except as specifically provided for in Section 6.1.1.2 and 6.1.1.3.

6.2.1.2 Expenses of the Design-Builder's principal office and offices other than the site office, except as specifically provided in Section 6.1.

6.2.1.3 Overhead and general expenses, except as may be expressly included in Section 6.1.

6.2.1.4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work.

6.2.1.5 Rental costs of machinery and equipment, except as specifically provided in Section 6.1.4.2.

6.2.1.6 Costs due to negligence of the Design-Builder or to the failure of the Design-Builder to fulfill a specific responsibility to the City set forth in this Agreement.

6.2.1.7 Costs incurred in the performance of design and Preconstruction Phase Services.

6.2.1.8 Any costs not specifically and expressly described in Section 6.1.

6.2.1.9 Costs which would cause the GMP to be exceeded.

6.3 Discounts, Rebates, and Refunds

6.3.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the City if before making payment the Design-Builder included them in an Application for Payment and received payment therefore from the City otherwise cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the City, and the Design-Builder shall make provisions so they can be secured.

6.3.2 Amounts which accrue to the City shall be credited to the City as a deduction from the Cost of Work.

6.4 Accounting Records

The Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the City. The City and the City's accountants shall

be afforded access to the Design-Builder's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to this Project, and the Design-Builder shall preserve these for a period of three (3) years after final payment, or for such longer period as may be required by law.

ARTICLE 7 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

7.1 Payments

- 7.1.1 Based upon Applications for Payment submitted to the City by the Design-Builder, the City shall make payments on account of the contract sum to the Design-Builder as provided below and elsewhere in the Contract Documents.
- 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month or on a mutually agreed date by City and Design-Builder.
- 7.1.3 Before the first Application for Payment, the Design-Builder shall submit to the City a schedule of values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the City may require. This schedule, unless objected to by the City, shall be used only as a basis for the Design-Builder's Applications for Payment and does not constitute approval by the City of the method or performance by the Design-Builder.
- 7.1.4 Payment will be made to Design-Builder monthly from funds available on the basis of a duly certified estimate of value of all labor and materials delivered on the site and accepted by the City during the preceding month, calculated in proportion to the GMP, but to ensure the proper performance of the Agreement, ten percent (10%) of the amount of each estimate will be retained until Substantial Completion and acceptance of Work covered by this Agreement.
- 7.1.5 Each payment made to the Design-Builder shall be on account of the total amount payable to the Design-Builder by or for the City, and all materials and Work covered by the partial payments made shall therefore become the sole property of the City. This provision shall not be construed as relieving the Design-Builder from the responsibility imposed by the Contract Documents for the care and protection of materials and Work upon which payments have been made, for the restoration of any damaged Work, or as a waiver of the right of the City to require the fulfillment of all the terms of the Agreement. Progress payments in respect to materials will be made only for materials delivered on the site and accepted by the City, all calculated in proportion to the GMP.
- 7.1.6 In general, no allowance will be made in estimates for materials on site, or stored at a facility approved by the City, if site is unable to take delivery, and not incorporated in the Work except in case of those items considered by the City to be major items of considerable magnitude, which will be allowed in estimates on the basis of ninety-five percent (95%) of invoices, the value calculated in proportion to the GMP.
- 7.1.7 The retained percentages herein provided for are to be retained and held for the sole protection and benefit of the City, and no other person, firm or corporation shall have or assert any lien, claim, right or priority therein, thereon or thereto, or be entitled to receive any part thereof, except as herein expressly provided.
- 7.1.8 The City shall require at intervals as it shall determine and at any time before final payment is made for the Work specified herein that the Design-Builder furnish the City with written acknowledgments (to the extent of payment made) by all Subcontractor and

vendors who have done Work or labor on, or who have furnished materials for, this Project that they have been fully paid by the Design-Builder for such Work or labor done or materials furnished by them. Design-Builder's failure to furnish said list or to include all such Subcontractor and vendors shall not relieve Design-Builder or its surety of any obligation assumed under this Agreement, nor shall the City's request for such list create any obligation on City's part to verify accuracy. City may require, at its option, lien waivers on forms supplied by City or Design-Builder.

- 7.1.9 The Design-Builder has accepted this job net of all sales and compensation taxes. No Application for Payment shall include any amount for reimbursement of such taxes paid by Design-Builder resulting from Design-Builder's failure to use City's tax exemption certificate for any purchase in connection with the Work. Final payment will not be made to Design-Builder until the City receives two Project Completion Certifications from the Design-Builder along with a Consent of Surety to final payment.
- 7.1.10 The Design-Builder shall be responsible for the return and/or exchange of surplus materials, and all credits for returned or exchanged materials shall be first submitted to the City for approval. Applications for Payment shall reflect any such credits, and the GMP shall be adjusted as necessary to reflect such credits. Unreturnable excess materials shall be turned over to the City, or, at its option, be removed from the Project site at Design-Builder's expense.
- 7.1.11 The acceptance by the Design-Builder of final payment shall be and shall operate as a release to the City of all claims and all liability to the Design-Builder other than written claims in stated amounts as may be specifically excepted by the Design-Builder for all things done or furnished in connection with this Agreement and for every act and neglect of the City and others relating to or arising out of this Agreement. Any payment, however, final or otherwise, shall not release the Design-Builder or its sureties from any obligations under the Contract Documents, the Bonds, or insurance coverage's.

7.2 Payments Withheld

City may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any Application for Payment to the extent necessary to protect City from loss on account of:

- A. Incomplete work or Defective Work not remedied;
- B. A reasonable doubt that the Work can be completed for the balance of the Agreement price then unpaid;
- C. Damage to City; or
- D. A breach of this Agreement.

7.3 Final Completion and Final Payment

- 7.3.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, City will promptly make such inspection. Upon receipt of the Final Certificate of Payment, the City will process the final payment. The Design-Builder's Final Certificate of Payment will constitute a further representation that conditions listed in Section 7.3.2, below, as precedent to the Design-Builder's being entitled to final payment have been fulfilled.
- 7.3.2 Final payment shall not become due until the Design-Builder submits to the City (a) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the City or the City's property might be responsible or

encumbered (less amounts withheld by City) have been paid or otherwise satisfied, (b) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the City, (c) a written agreement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (d) consent of surety to final payment and (e) if required by the City, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the City. If a Subcontractor refuses to furnish a release or waiver required by the City, the Design-Builder may furnish a bond satisfactory to the City to indemnify the City against such lien. If such lien remains unsatisfied after payment is made, the Design-Builder shall refund to the City all money that the City may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

- 7.3.3 If after Substantial Completion of the Work, final completion is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, and the City so confirms, the City shall, upon application by the Design-Builder and without terminating the Contract, make payment of the balance due for that portion of the Work completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the City prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims. The making of final payment shall constitute a waiver of claims by the City except those arising from:
- 7.3.3.1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
 - 7.3.3.2 failure of the Work to comply with the requirements of the Contract Documents; or
 - 7.3.3.3 warranties required by the Contract Documents.
- 7.3.4 Acceptance of final payment by the Design-Builder, a Subcontractor, or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final acceptance for payment.

ARTICLE 8 LIQUIDATED DAMAGES

- 8.1 It is mutually understood and agreed by and between the parties to this Agreement that time is of the essence in this Agreement, and that in the event that the Design-Builder shall fail in the performance of the Work specified and required to be performed within the period of time stipulated therefore in the Agreement, after due allowance for any extension or extensions of time which may be granted under the Agreement, the said Design-Builder shall pay to City, as stipulated liquidated damages and not as a penalty, the sum stipulated herein for each and every day that the Design-Builder shall be in default.
- 8.2 In the case of joint responsibility for any delay in the final completion of the Work covered by this Agreement, where two or more separate contracts are in force at the same time and cover Work on the same project and at the same site, the total amount of liquidated damages assessed against all contractors under such Agreements, for any one day of delay

in the final completion of the Work will not be greater than the approximate total of the damages sustained by the City by reason of such delay in completion of the Work as set forth in the table below, and the amount assessed against any one contractor for such one day of delay will be based upon the individual responsibility of such contractor for the aforesaid delays as determined by, and in the judgment of, the City.

- 8.3 In case of failure on the part of the Design-Builder to effect completion within the time specified, the City shall have the right to deduct from the total compensation otherwise due the Design-Builder as liquidated damages based on the amount of the GMP and the date of Substantial Completion as specified in Change Order No. 1, fixed and agreed to in advance, an amount according to the following schedule:

<u>Contract Amount</u>		<u>Liquidated Damages</u>
\$0	to \$50,000	\$250.00
\$50,000	to \$100,000	\$400.00
\$100,000	to \$500,000	\$800.00
\$500,000	to \$1,000,000	\$1,000.00
\$1,000,000	to \$2,000,000	\$1,750.00
\$2,000,000	to \$5,000,000	\$2,500.00
\$5,000,000	to \$10,000,000	\$3,500.00
\$10,000,000	to \$20,000,000	\$5,500.00
\$20,000,000	and up	\$6,000.00

For each 24-hour calendar day, including weekends and holidays, the Work remains incomplete over the specified completion time. **(THE CITY RESERVES THE RIGHT TO ADJUST THE SCHEDULE OF LIQUIDATED DAMAGES PRIOR TO ACCEPTANCE OF GMP PRICE BASED ON THE SCOPE AND URGENCY OF THE PROJECT.)**

ARTICLE 9 NON-DISCRIMINATION/OTHER LAWS

9.1 Non-Discrimination, Affirmative Action, and Sexual Harassment

9.1.1 The Design-Builder agrees that:

9.1.1.1 The Design-Builder shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, ancestry or age;

9.1.1.2 In all solicitations or advertisements for employees, the Design-Builder shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);

9.1.1.3 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 contract and it may be cancelled, terminated or suspended, in whole or in part, by the City;

9.1.1.4 If the Design-Builder is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Design-Builder shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the City; and

- 9.1.1.5 The Design-Builder shall include the provisions of subsections (9.1.1.1) through (9.1.1.4) in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.
- 9.1.2 The provisions of this section shall not apply to a contract entered into by a Design-Builder: (a) Who employs fewer than four (4) employees during the term of such contract; or (b) Whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.
- 9.1.3 The Design-Builder further agrees that they shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this Project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

ARTICLE 10 INSURANCE AND BONDS

10.1 Insurance

The Design-Builder shall secure and maintain, throughout the duration of this Contract, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Design-Builder shall provide certificates of insurance and renewals thereof on forms provided by the City or on forms acceptable to the City (City's form attached). The City shall be notified by receipt of written notice from the insurer or the Design-Builder at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

10.2 Notice of Claim Reduction of Policy Limits

The Design-Builder, upon receipt of notice of any claim in connection with this Agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

The Design-Builder shall promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the Contract Documents) if the Design-Builder's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Design-Builder shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

10.3 Minimum Requirements Commercial General Liability Policy Limits –

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

Policy **MUST** include the following conditions:

- A. Commercial General Form
- B. Explosion, Collapse & Underground
- C. Broad Form Contractual / Contractually Assumed Liability
- D. Independent Design-Builders
- E. Broad Form Property Damage
- F. Pollution Liability (Applicable only to contracts involving pollutants such as asbestos & lead abatement, sludge or other waste abatement, etc.)

G. NAME CITY OF OVERLAND PARK AS “ADDITIONAL INSURED”

10.4 Automobile Liability

Policy shall protect the Design-Builder against claims for bodily injury and/or property damage arising from the ownership or use of any owned, hired and/or non-owned vehicle.

Limits (Same as General Liability) -

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

Policy **MUST** include the following condition:

NAME CITY OF OVERLAND PARK AS “ADDITIONAL INSURED”

10.5 Umbrella Liability

The Umbrella / Excess Liability must be at least as broad as the underlying general liability and automobile liability policies.

Limits –

Each Occurrence \$1,000,000

General Aggregate \$1,000,000

10.6 Workers' Compensation

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 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

10.7 Professional Liability

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

10.8 Industry Ratings

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

A. Is licensed to do business in the State of Kansas;

B. Carries a Best's policy holder rating of A- or better; and

C. Carries at least a Class VIII financial rating, **or**

D. Is a company mutually agreed upon by the City and Design-Builder.

10.9 Subcontractor's Insurance

If a part of the Agreement is to be sublet, the Design-Builder shall either:

A. Cover all Subcontractor's in its insurance policies, **or**

B. Require each Subcontractor not so covered to secure insurance which will protect Subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.

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

- 10.10 Design-Builder Property Insurance ("Builder's Risk", to be submitted with Change Order No. 1)
- 10.10.1 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 City, Design-Builder, Design Consultants, Subcontractor and Sub-Subcontractors, and shall insure against the risk of direct physical loss including but not limited to 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 City. All deductibles are the responsibility of the Design-Builder.
- 10.10.2 Unless the Contract Documents provide otherwise, Design-Builder shall procure and maintain boiler and machinery insurance that will include the interests of City, Design-Builder, Design Consultants, Subcontractors and Sub-Subcontractors.
- 10.10.3 Prior to commencing any Work, Design-Builder shall provide City with certificates evidencing that (1) 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 City and (2) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to City. Design-Builder's property insurance shall not lapse or be canceled if City occupies a portion of the Work. Design-Builder shall provide City with the necessary endorsements from the insurance company prior to occupying a portion of the Work.
- 10.10.4 Any loss covered under Design-Builder's property insurance shall be adjusted with City and Design-Builder and made payable to both of them as trustees for the insured's 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 12 hereof.
- 10.10.5 City and Design-Builder waive against each other and City's separate Design-Builders, 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 City shall, where appropriate, require similar waivers of subrogation from City's separate Design-Builders, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts.
- 10.11 Bonds and Other Performance Security
Design-Builder shall provide a Performance Bond and a Statutory Bond or Labor and Material Payment Bond (forms attached hereto as Exhibit A, Exhibit B and Exhibit C) to be

submitted with Change Order No. 1, in the amount of one hundred percent (100%) of the Contract Price to cover the entire scope of Work including planning, Value Engineering, design, procurement, construction, and completion of the Project, and any other specific performance security that may be indicated in this Agreement. With each bond there shall be filed with the City one copy of "Power of Attorney" certified to include the date of the bonds.

ARTICLE 11 INDEMNITY

11.1 Definitions

For purposes of indemnification requirements as set forth throughout the Agreement, the following terms shall have the meanings set forth below:

11.1.1 "The Design-Builder" means and includes Design-Builder, all of its affiliates and subsidiaries, its Subcontractors and materialmen and their respective servants, agents, and employees; and

11.1.2 "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, whether real or spurious, 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.

11.2 The Indemnity

11.2.1 For purposes of this Agreement, and without in any way limiting indemnification obligations that may be set forth elsewhere in the Contract Documents, Design-Builder hereby agrees to indemnify, defend and hold harmless the City 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 employees, agents, Subcontractors, and suppliers.

11.2.2 It is agreed as a specific element of consideration of this Agreement that this indemnity shall apply notwithstanding the joint, concurrent 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, concurrent or contributory or comparative fault or negligence as either passive or active in nature.

11.3 General Limitation

Nothing in this section shall be deemed to impose liability on the Design-Builder to indemnify the City for Loss to the extent that the City's negligence or other actionable fault is the cause of Loss.

11.4 Waiver of Statutory Defenses

With respect to the City's rights as set forth herein, Design-Builder expressly waives all statutory defenses, including, but not limited to, those under workers compensation, contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the purposes of this Section.

ARTICLE 12 DISPUTE RESOLUTION

12.1 Dispute Resolution

City and Design-Builder agree that disputes relative to the Work shall 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 Work as per the Contract Documents as if no dispute existed; and provided further that no dispute will be submitted to arbitration without the City's express written consent.

ARTICLE 13 TERMINATION OR SUSPENSION

13.1 Termination

13.1.1 Without in any manner limiting the right of the City to terminate the Contract or declare the Design-Builder in default thereof for any reason set forth in the Contract Documents, if the Work to be done under this Agreement shall be abandoned by the Design-Builder; or if this Agreement shall be assigned by Design-Builder otherwise than as herein provided; or if the Design-Builder should be judged as bankrupt; or if a general assignment of its assets should be made for the benefit of its creditors; or if a receiver should be appointed for the Design-Builder or any of its property; or if at any time the City determines that the performance of the Work under this Agreement is being unnecessarily delayed, that the Design-Builder is violating any of the conditions or covenants of this Agreement or the Specifications therefore, that it is executing the same in bad faith or otherwise not in accordance with the terms of said Agreement; or if all items included in the Cost of Work are not completed within the time named for their completion or within the time to which such completion date may be extended; then, in addition to other rights the City may choose to exercise, at its option, to serve written notice upon the Design-Builder and its surety of City's intention to terminate this Agreement and, unless within five (5) days after the serving of such notice upon the Design-Builder, a satisfactory arrangement be made for the continuance thereof, this Agreement shall cease and terminate. In the event of such termination, the City shall immediately serve notice thereof upon the surety and the Design-Builder, and the surety shall have the right to take over and complete the Work; provided, however, that if the surety does not commence performance thereof within thirty (30) days from the date of said notice of termination, the City may take over the Work and prosecute same to completion, by contract or otherwise, for the amount and at the expense of the Design-Builder, and the Design-Builder and its surety shall be liable to the City for any and all excess cost sustained by the City by reason of such prosecution and completion; and in such event the City may take possession of, and utilize in completing the Work, all such materials, equipment, tools and plant as may be on the site of the Work and necessary therefore. When Design-Builder's services have been so terminated, such termination shall not affect any rights or remedies of City against Design-Builder then existing or which may later accrue. Similarly, any retention or payment of monies due Design-Builder shall not release Design-Builder from liability.

13.1.2 City reserves the right, in its sole discretion and for its convenience and without cause or default on the part of Design-Builder, to terminate this Agreement in whole or in part by providing written notice of such termination to Design-Builder. Upon receipt of such notice from City, Design-Builder shall: (a) immediately cease all Work; or (b) meet with City and, subject to City's approval, determine what Work shall be required of Design-Builder in order to bring the Project to a reasonable termination in accordance with the request of City.

- 13.1.3 If City shall terminate for its convenience as herein provided, City shall: (a) compensate Design-Builder for all design fees, purchased materials, actual cost of Work satisfactorily completed to date of termination, and the percentage of the Design-Builders Fee that represents the percentage of the Cost of Work completed to date of termination; and (b) release and indemnify Design-Builder against any liability Design-Builder may have to any third parties as the result of any contracts, commitments, purchase orders or any other such liabilities Design-Builder may have incurred as a result of its obligations under the provisions of this Agreement. Design-Builder agrees that it shall minimize such potential liabilities by, where practical, informing third parties of City's right to terminate and attempting to obtain from such third parties a waiver of any liability in the event of such termination.
- 13.1.4 Any termination of the Agreement for alleged default by Design-Builder that is ultimately determined to be unjustified shall automatically be deemed a termination for convenience of the City.
- 13.1.5 No compensation paid to Construction Manager under this Article 13 shall include anticipated profits or consequential damages, neither of which shall be allowed.

ARTICLE 14 GENERAL CONDITIONS

14.1 Extent of Contract

This Agreement, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the City and the Design-Builder and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and Design-Builder. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

14.2 Assignment

The City and Design-Builder respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Agreement shall assign the Agreement as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Agreement.

14.3 Appointment of Service Agent

KSA 16-113 requires that non-resident contractors appoint an agent for the service of process in Kansas. The executed appointment must then be filed with the Secretary of State, Topeka, Kansas. Any contractor domiciled outside of the State of Kansas must comply with these statutory requirements; (form attached hereto as Exhibit D) to be submitted with Change Order No. 1.

14.4 Contract Documents/Agreement for Design-Build

14.4.1 The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of the Contract Documents is to include all construction, labor, materials, tools, equipment, and transportation necessary for the workmanlike construction of the Project in accordance with the Contract Documents.

14.4.2 If there is any conflict or discrepancy between the Agreement between the City and the Design-Builder and any other of the Contract Documents, the Agreement between City

and Design-Builder shall prevail. The Contract Documents supersede all previous agreements and understandings between the parties, which previous agreements and understandings are of no further force and effect.

14.4.3 The Contract Documents as enumerated herein form the Agreement for design build services. The Agreement may not be amended or modified except by a modification as hereinabove defined. These Contract Documents do not, nor shall they be construed to, create any contractual relationship of any kind between the City and any Subcontractor or remote tier Subcontractor.

14.4.4 All time limits stated in the Contract Documents are of the essence.

14.5 Defects in the Contract Documents

If Design-Builder has reasonable cause such that it should, in the exercise of ordinary care of someone in its position, know that any errors, omissions, discrepancies or inconsistencies (hereinafter "Defects") appear in the Contract Documents, including, but not limited to, the plans, Specifications and other documents or the Work, Design-Builder shall, notify the City in writing of such Defects. The Contract Documents shall be appended to all Agreements between the Design-Builder and any Subcontractor or any more remote tier Subcontractor, and such Subcontractors and remote tier Subcontractors shall, likewise, notify the Design-Builder in writing of any Defects therein. The Design-Builder will not be permitted to take advantage of any such Defect.

14.6 Copies of the Agreement

Unless otherwise provided in the Contract Documents, the Design-Builder shall be furnished a maximum of five (5) copies of the Contract Documents. Design-Builder shall keep at the Project site and make available to City, one copy of all Contract Documents for the Work, in good order and legibly marked to reflect actual construction. Design-Builder shall also maintain at the site all approved samples and a print of all approved Shop Drawings. Such documents, samples, and Shop Drawings, shall be turned over to the City at the completion of the Work if requested by City. Contract Documents are the property of the City, and none of the Contract Documents are to be used on other work by Design-Builder. At City's request, all Contract Documents shall be returned to the City with the exceptions of one record set for Design-Builder. All models and calculations are the property of the City.

14.7 Scope, Nature and Intent of Drawings and Specifications

14.7.1 Should anything be omitted from the Drawings and Specifications which is necessary to a clear understanding of the Work, or should it appear that various instructions are in conflict, or in the event the Drawings and Specifications are silent as to any detail then it shall be the duty of the Design-Builder to secure in written instructions from the City before proceeding with the construction affected by such omissions, discrepancies or silence. Design-Builder's failure to bring any such matter to the attention of the City shall be at the Design-Builder's peril, and there shall be no compensation for extra Work necessitated thereby.

14.7.2 Dimensions and elevations shown on the Drawings shall be accurately followed, even though they may differ from scaled measurements. No Work shown on the Drawings, the dimensions of which are not indicated, shall be executed until the required dimensions have been obtained from the City. Design-Builder shall be responsible for verification of all locations, dimensions, and elevations in the field (including, but not limited to verification of location of underground facilities and utilities) and shall verify all field dimensions shown on the Contract Documents.

14.7.3 All Work performed under this Contract shall be done to the lines, grades, and elevations shown on the Drawings. The Design-Builder shall keep the City informed, a reasonable time in advance of the times and places at which it wishes to do Work, in order that lines and grades may be furnished and necessary measurements for record and payment may be made with the minimum of inconvenience and delay to the City and Design-Builder. Any Work done without being properly located and established by base lines, offset stakes, bench marks, or other basic reference points may be ordered removed and replaced at the Design-Builder's cost and expense.

14.7.4 Design-Builder, together with its Subcontractors, shall carefully examine the Drawings and Specifications for any interference with the Work and clearances that may be required. Design-Builder shall be responsible for the proper fitting of materials and equipment without substantial alterations. Design-Builder shall be responsible for eliminating interferences without additional cost to City. If departures from the Drawings and Specifications, of other Contract Documents, are deemed necessary by Design-Builder, details of such discrepancies and reasons therefore shall be submitted to the City, with drawings (if City determines that drawings are necessary), for approval as soon as practical. No such departure shall be made except at the peril of the Design-Builder without the prior written approval of the City.

14.8 Shop Drawings

14.8.1 The Design-Builder shall review for compliance with the Contract Documents and approve and submit to the City only those Shop Drawings, product data, samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the City or of separate contractors. All submittals, regardless of origin, shall be stamped with the approval of the Design-Builder and identified with the name and number of this Contract; Design-Builder's name and references to applicable Drawings and Specification paragraphs. Each submittal shall indicate the intended use of the item in the Work. Design-Builder's stamp of approval is representation to the City, that the Design-Builder accepts full responsibility for determining and verifying all quantities, dimensions, field construction criteria, materials, and similar data, and that they have reviewed or coordinated each submittal with the requirements of the Work and the Contract Documents. All deviations from the Contract Documents shall be identified on each submittal and shall be tabulated in the Design-Builder's letter of transmittal. Such submittals shall, as pertinent to the deviation, indicate essential details of all changes proposed by Design-Builder (including modifications to other facilities that may be a result of each deviation).

14.8.2 The City shall review the Shop Drawings for conformance with the design concept of the Work and information as given in the Contract Documents. The Design-Builder is not relieved of responsibility for any deviation from the requirements of the Contract Documents by the City's approval of the Shop Drawings, product data, or samples. The Design-Builder is not relieved from responsibility for errors or omissions in Shop Drawings by the City's approval thereof. The City Engineer shall respond to, accept or reject such submissions within a reasonable time after receipt thereof. Design-Builder shall make such revisions as deemed necessary. On final acceptance, the City shall be furnished with a total of five (5) copies of each Drawing as finally approved, such number to include any copies of preliminary or revised Drawings which are approved as submitted. No Work shall be performed in connection with the fabrication or manufacture of material or equipment shown by any Drawing thereof, nor shall any accessory, appurtenance or device not fabricated or manufactured by the Design-Builder or its Subcontractors be

purchased, until the Drawing or Drawings therefore have been approved as stipulated, except at the Design-Builder's own risk and responsibility.

14.9 Concealed Conditions

Design-Builder understands the City does not warrant that the various and sundry materials and information, including, for example, soil tests, bore reports, utility locations and other such data and as-built drawings, in the case of renovation of or addition to existing facilities, reflect actual conditions. Design-Builder warrants that it has examined the site and conducted such tests and examinations as it deems necessary. That being the case, should concealed conditions encountered in the performance of the Work below the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents, or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Contract, be encountered, there may be an equitable adjustment in the contract sum or time, or both, for any extra Work necessitated thereby as reasonably determined by the City. If the City and the Design-Builder cannot agree on an adjustment in the contract sum or contract time, the Parties will follow the process outlined in Article 12 for Dispute Resolution.

14.10 Permits, Fees, and Notices

14.10.1 Unless otherwise provided in the Contract Documents, the Design-Builder shall secure and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

14.10.2 If Design-Builder performs Work contrary to Applicable Laws without such notice to the City, the Design-Builder shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

14.10.3 Design-Builder shall give all notices required by, and all Work shall be done in accordance with, all Applicable Laws bearing on the conduct of the Work.

14.10.4 Design-Builder shall notify all affected utilities of the Work and coordinate with the utilities to avoid interruption of utility service and damage to utility lines and property. This notice requirement shall also apply as to the owner/operator of any affected underground facility. Any Project delay, damages or increases in construction costs due to utility relocation delays shall be at the Design-Builder's risk.

14.11 General Administration of the Contract

The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention.

14.11.1 Unless otherwise stipulated, Design-Builder shall provide and initially pay for all Work (including labor, transportation, tools, equipment, machinery, plant, and appliances) necessary in producing the results called for by the Contract Documents.

14.11.2 Unless otherwise specified, all supplies, materials, equipment, and other facilities are guaranteed to be new and all Work shall be of good quality and workmanship and free from defects or fault. Design-Builder shall, if required, furnish satisfactory evidence as to the kind and quality of the Work.

- 14.11.3 The Design-Builder shall be solely responsible for and have complete control and charge of construction means, methods, techniques, sequences, and procedures, and for safety precautions and programs in connection with the Work. The City shall not be responsible for nor have control or charge over the acts or omissions of the Design-Builder, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.
- 14.11.4 The Design-Builder shall, in addition to the schedule required by Section 14.32, give to the City full information in advance as to its plans for carrying on any part of the Work. If at any time before the beginning or during the progress of the Work, any part of the Design-Builder's plant or equipment or any of its methods of executing the Work, appear to the City to be unsafe, inefficient or inadequate to ensure the required quality or rate of progress of Work, the City may order the Design-Builder to increase or improve its facilities or methods, and the Design-Builder shall promptly comply with such orders; but neither compliance with such orders nor failure of the City to issue such orders shall relieve the Design-Builder from its obligation to secure the degree of safety, the quality of Work and the rate of progress required by the Agreement.
- 14.11.5 Any plan or method of Work suggested by the City, to the Design-Builder, but not specified or required, if adopted or followed by the Design-Builder in whole or in part, shall be used at the risk and responsibility of the Design-Builder, and the City will assume no responsibility therefore.
- 14.11.6 Design-Builder shall be responsible to the City for acts and omissions of the Design-Builder's employees, Subcontractors, and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Design-Builder or any of its Subcontractors.
- 14.11.7 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.
- 14.12 Design-Builder's Employees
- 14.12.1 Design-Builder shall at all times enforce strict discipline and good order among its employees and shall not employ on the Work any unfit person or anyone not skilled in the Work assigned to them.
- 14.12.2 Design-Builder shall be responsible for compliance with all Applicable Laws including those pertaining to wages, hours and benefits for workers employed to carry out the Work.
- 14.13 Samples
Design-Builder shall furnish, for approval, samples if directed by the City or the Contract Documents. The Work shall be in accordance with approved samples.
- 14.14 Protection of Work and Property
- 14.14.1 Design-Builder shall maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of life, the Work, supplies, materials, and equipment on the Project site not yet incorporated in the Work, City's property and adjacent property.

- 14.14.2 Design-Builder shall comply with any and all instructions from the City regarding prevention of accidents, fires, or for the elimination of any unsafe practice and shall observe all the applicable recommendations of the National Fire Protection Association Standard No. 241 (or other later revisions) "Standard For Safeguarding Building Construction and Demolition Operations".
- 14.14.3 Design-Builder shall post danger signs warning against the hazards created by such features of construction as protruding nails, hod hoists, well holes, elevator hatchways, scaffolding, window openings, stairways, falling materials, open trenches, other excavations, obstructions and similar conditions. It shall designate a responsible member of its organization on the project whose duty shall be the prevention of accidents. The name and position of the person so designated shall be reported to the City by Design-Builder.
- 14.14.4 In an emergency affecting the safety of life, the Work, City's property or of adjoining property, Design-Builder, without special instruction or authorization from the City, is hereby permitted to act, at its discretion, to prevent such threatened injury or Loss. Any compensation claimed by Design-Builder on account of emergency Work shall be determined by mutual agreement of City and Design-Builder.
- 14.14.5 Design-Builder shall develop and maintain an up-to-date emergency action plan, taking into account fires, hazardous materials, explosions, adverse weather, floods, etc., which shall be in compliance with all Applicable Laws. The procedures should outline specific action to be taken to protect life and to secure and protect the building materials, constructed Work, buildings, equipment, and the position of cranes. Design-Builder shall be fully responsible for the contents of and procedures outlined in said plan, including deficiencies therein, whether or not City shall have reviewed said plan.
- 14.14.6 Design-Builder shall be solely liable for all damages to the City or the property of the City, to other contractors or other employees of the City, to neighboring premises, or to any private or personal property, due to improper, illegal or negligent conduct of the Design-Builder, its Subcontractors, employees or agents in and about said Work, or in the execution of the Work. The Design-Builder shall be liable to the City for any damages, whether property damage or personal injury, occasioned by Design-Builder's use of any scaffolding, shoring, apparatus, ways, works, machinery, plant or any other process or thing that is required for the Work.

14.15 Protection of Property/Liability

- 14.15.1 Without in any manner limiting Design-Builder's responsibilities as provided elsewhere in the Contract Documents, the Design-Builder shall assume full responsibility for the protection of all public and private property, structures, sewers, and utilities, for both above ground and underground facilities, along, beneath, above, across or near the site or sites of the Work being performed under this Agreement, or which are in any manner affected by the prosecution of the Work or the transportation of men/women or materials in connection therewith. Barriers shall be kept placed at all times to protect persons other than those engaged on or about the Work from accident, and the Design-Builder will be held responsible for all accidents to persons or property resulting from the acts of Design-Builder or its employees.
- 14.15.2 The Design-Builder shall give reasonable notice to the affected owner or owners when any such property is liable to injury or damage through the performance of the Work and

shall make all necessary arrangements with such owner or owners relative to the removal and replacement or protection of such property and/or utilities.

14.15.3 The Design-Builder shall satisfactorily shore, support, and protect any and all structures and all pipes, sewers, drains, conduits, and other facilities and shall be responsible for any damages resulting thereto. The Design-Builder shall not be entitled to any additional time on account of any postponement, interference, or delay caused by any such structures and facilities being on the line of the Work, whether they are shown on the Plans or not.

14.16 Tests and Inspections

14.16.1 City shall at all times have access to the Work for the observation and inspection thereof wherever it is in preparation or progress, and Design-Builder shall provide proper facilities for such inspection. The Design-Builder shall furnish all reasonable aid and assistance required for any such inspection.

14.16.2 All Work must be inspected, tested or approved and the Design-Builder shall give the City timely notice of its readiness for such inspection, testing or approval and the date fixed for such inspection, testing or approval, if the inspection, testing or approval is by an authority other than the City.

14.16.3 If any Work should be covered up which is required by the above to be inspected, tested or approved and which, by virtue of being so covered up, is not susceptible to being properly inspected, tested or approved, Design-Builder shall, if requested by the City, uncover such Work and at Design-Builder's expense bear the cost of uncovering such Work and redoing same after inspection, testing or approval and redoing such other Work damaged as a result of having to uncover and redo same. City reserves the right to inspect any and all Work before it is covered up; and, accordingly, Design-Builder must notify the City before covering any Work. City shall be given a reasonable time to make its inspection. Design-Builder shall not cover any Work prior to the City having a reasonable time to inspect. If Work to be covered does not conform to the Contract Documents, City can withhold its consent to covering up Work until such Work is made to conform at Design-Builder's expense.

14.16.4 If any labor, supplies, materials or equipment are found not to be in accordance with the Contract Documents, Design-Builder shall at its own expense bear the cost of uncovering such labor, supplies, materials or equipment, the cost of removing same, as well as the cost of undoing and redoing the Work and other Work damaged by such nonconforming labor, supplies, materials or equipment.

14.16.5 The City and all designated inspectors shall be free at all times to perform their duties, including the observation and inspection of the Work, and intimidation or attempted intimidation of any one of them by the Design-Builder or by any of its employees shall be sufficient reason, if the City so desires, to terminate the contract.

14.16.6 Any inspection, by whosoever conducted, shall not relieve the Design-Builder from any obligation to perform the Work strictly in accordance with the Drawings and Specifications, and any of the Work not so constructed shall be removed and made good by the Design-Builder at its own expense.

14.17 Superintendence and Supervision

- 14.17.1 Design-Builder shall provide all necessary supervision to the Work using its best skill, care, judgment, and attention and shall keep on the Work, during its progress, a competent superintendent and any necessary assistants, all satisfactory to the City. The superintendent shall not be changed except with the consent of the City unless the superintendent proves to be unsatisfactory to the Design-Builder and/or ceases to be in its employ; provided however, that the City retains the right to require that the Design-Builder replace the superintendent at any time, such right not to be arbitrarily exercised.
- 14.17.2 The superintendent shall be fully authorized to act for the Design-Builder and receive whatever orders as may be given for the proper prosecution of the Work or notices in connection therewith.
- 14.17.3. Use of Subcontractors on portions of the Work shall not relieve the Design-Builder of its obligation to have a competent superintendent directly employed by the Design-Builder on the Work at all times.
- 14.18 Design-Builder's Office at Site of Work
During the performance of this Agreement, the Design-Builder shall maintain a suitable office at or near the site of the Work which shall be the headquarters of the superintendent authorized to receive Drawings, instruction, or other communications or articles from the City, and any such communication given to said superintendent or delivered at the Design-Builder's office at the site of Work in his/her absence shall be deemed to have been given to the Design-Builder.
- 14.19 Work Stoppages
Design-Builder warrants to the City that there shall be no Work stoppages or interruptions arising out of labor disputes, including, but not limited to, those due to the presence of both union and non-union workforces at the job site. Design-Builder further agrees that in the event of any strike, picket, sympathy strike, Work stoppage or other form of labor dispute or picket in connection with the Work of the Design-Builder, other contractors, Subcontractors, the City, or any other person, the Design-Builder will, contingent upon the City providing a picket-free entrance, continue to perform the Work required herein without interruption or delay. Anything in this Agreement to the contrary notwithstanding, in the event the Design-Builder fails to continue performance of the Work included herein without interruption or delay, because of such picket or other form of labor dispute, the City may terminate the services of said Design-Builder after giving forty-eight (48) hours written notice to Design-Builder and its sureties of its intent to do so, or the City may invoke any of the rights set forth elsewhere in the Contract Documents.
- 14.20 Patent Liability Clause
- 14.20.1 Design-Builder agrees to defend any claim, action or suit that may be brought against City, its governing body, officers, agents or employees for infringement of any Letters Patent of the United States arising out of the performance of this Contract or out of the use or disposal by or for the account of City of supplies furnished or construction Work performed hereunder, and also to indemnify and hold harmless the City, its governing body, officers, agents, and employees against all judgments, decrees, damages, costs and expenses recovered against it or them or sustained by it or them on account of any such actual or alleged infringement.
- 14.20.2 It is understood that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment used in or furnished for the Work shall be included in the GMP. Final payment to the Design-Builder

by the City shall not be made while any suit or claim involving infringement or alleged infringement of any patent remains unsettled.

14.21 Independent Contractor

The right of general supervision of the City shall not make the Design-Builder an agent of the City, and the liability of the Design-Builder for all damages to persons, firms, and corporations arising from the Design-Builder's execution of the Work shall not be lessened because of such general supervision, but as all such persons, firms, and corporations, and the damages, if any, to them or their property, the Design-Builder herein is an independent contractor in respect to the Work.

14.22 Separate Contracts

14.22.1 City reserves the right to perform by itself or let other contracts in connection with Work. Design-Builder shall afford reasonable opportunity for the introduction and storage of materials and the execution of Work by City or others and shall properly connect and coordinate its Work with the Work of City or others.

14.22.2 If any part of Design-Builder's Work depends upon the Work of the City or others, Design-Builder shall inspect and promptly report to City any defects in any such work that render it unsuitable for proper execution or results. Its failure to so inspect and report shall constitute an acceptance by it of such other work as fit and proper for the reception of its Work.

14.23 Relations with other Contractors

14.23.1 The Design-Builder shall cooperate with all other contractors or workers who may be performing work on behalf of the City or any other entity on any work in the vicinity of the Work to be done under this Agreement, and it shall so conduct its operations as to interfere to the least possible extent with the work of such contractors or workers. Design-Builder shall be responsible for any injury or damages that may be sustained by other contractors, workers or their Work because of any fault or negligence on Design-Builder's part, and shall at its own expense repair or pay for such injury or damage. Any difference or conflict which may arise between the Design-Builder and other contractors, or between the Design-Builder and the workers of the City or any other entity, in regard to their Work, shall be adjusted and determined by the City. If the Work of the Design-Builder is delayed or damaged because of any acts or omissions of any other contractor or contractors, over which the Design-Builder has no control and which is not a result of the Design-Builder's acts or the acts of any of its employees, Subcontractor or suppliers, negligent or otherwise the City may, in its discretion, grant an extension of time.

14.23.2 When two or more contracts are being executed at one time in such manner that Work on one contract may interfere with that on another, the City shall decide which Contractor or Design-Builder shall cease Work and which shall continue, whether the Work on both contracts shall progress at the same time, and in what manner the Work is to proceed.

14.23.3 When the territory of one contract is the necessary or convenient means of access for the transportation or movement of men/women, materials or appliances required for the execution of another contract, such privileges of access or any other responsible privilege may be granted by the City to the Contractor or Design-Builder so desiring to the extent which may be reasonably necessary.

14.23.4 In the event that Design-Builder is performing work at a site or on a project involving City and one or more other private or governmental entities, which have their own contractors on site as well, Design-Builder shall advise the City when it anticipates there may be interference with the Design-Builder's work or with the work of any other contractor. The City shall, to the best of its ability, with input from Design-Builder as to coordination of the Work, seek to schedule Work of the various contractors so as to avoid as much inconvenience and delay as possible; provided, however, that in the event Design-Builder experiences a delay or damage to Design-Builder's Work as a result of the presence of other such contractors, the City may, in its discretion, grant an extension of time and/or an adjustment in the GMP as may be appropriate for the circumstances.

14.24 Provision for Emergencies

Whenever, in the opinion of the City, the Design-Builder has not taken sufficient precaution for the safety of the public or the protection of the Work to be constructed under this Contract, or of adjacent structures or property which may be injured by process of construction, and whenever, in the opinion of the City, an emergency shall arise and immediate action shall be considered necessary in order to protect property interests and to avoid personal injury and/or death, then the City, with or without notice to the Design-Builder, shall provide suitable protection to the said interests by causing such work to be done and materials to be furnished at places as the City may consider necessary and adequate. The cost and expense of such work and material so furnished shall be borne by the Design-Builder and, if the same shall not be paid on presentation of the bills therefore, such costs shall be deducted from any amounts due or to become due the Design-Builder. The performance of such emergency work shall in no way relieve the Design-Builder of responsibility for damages which may occur during or after such precaution has been duly taken.

14.25 Assignment and Subletting of Contract

14.25.1 In case the Design-Builder assigns all, or any part, of the monies due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due the Design-Builder shall be subject to all prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract and that no money shall be paid assignee on behalf of the Design-Builder by the City until such time as the Design-Builder has discharged its obligations to the City under the Contract. It is expressly understood and agreed that no assignment shall be effective as against the City unless it complies with the foregoing.

14.25.2 Should any Subcontractor fail to perform in a satisfactory manner, the Work undertaken by such Subcontractor shall be immediately terminated by the Design-Builder. The Design-Builder shall be as fully responsible to the City for the acts and omissions of its Subcontractors, and of persons either directly or indirectly employed by them, as Design-Builder is for the acts and omissions of persons directly employed by it. Approval by the City of any Subcontractor shall not constitute a waiver of any right of the City to reject Defective Work, material or equipment not in compliance with the requirements of the Contract Documents. The Design-Builder shall not make any substitution for any Subcontractor accepted by the City unless the City so agrees in writing.

14.25.3 The Design-Builder shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Design-Builder by the terms of the Contract Documents insofar as applicable to the Work of the Subcontractor and to give

the Design-Builder the same power to terminate any subcontract as the City has to terminate the Design-Builder under any provisions of the Contract Documents.

- 14.25.4 Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the City, nor shall anything contained in the Contract Documents create any obligation on the part of the City to pay to or to see to the payment of any sums due any Subcontractor.
- 14.25.5 Prior to the City's approval of the GMP the Design-Builder shall submit to the City for acceptance a list of the names of all Subcontractors proposed for portions of the work and shall designate which work each is to perform. The failure of the City to make objection to a Subcontractor shall constitute an acceptance of such Subcontractor but shall not constitute a waiver of any right of the City to reject Defective Work, material or equipment not in conformance with the requirements of the Contract Documents.
- 14.25.6 The Design-Builder shall not make any substitution for any Subcontractor who has been accepted by the City unless the City determines that there is a good cause for doing so. The City's disapproval of any Subcontractor shall not, under any circumstance, be the basis for an increase in the GMP or a claim for extension of time.

14.26 Substantial Completion

- 14.26.1 When Design-Builder considers the Work, or a portion thereof which the City agrees to accept separately, is Substantially Complete, the Design-Builder shall prepare and submit to the City a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Contract Documents.
- 14.26.2 Upon receipt of the Design-Builder's list, the City will make an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If the City's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Contract Documents to the City can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the City. In such case, the Design-Builder shall then submit a request for another inspection by the City to determine Substantial Completion.
- 14.26.3 When the Work or designated portion thereof is Substantially Complete, the Design-Builder will prepare a Certificate of Substantial Completion for signature by the City. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.
- 14.26.4 The Certificate of Substantial Completion shall be submitted to the City and Design-Builder for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, the City shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

14.27 Partial Occupancy or Use

- 14.27.1 The City may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the City and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, security, maintenance, heat utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of Warranties required by the Contract Documents. When the Design-Builder considers a portion Substantially Complete, the Design-Builder shall prepare and submit a list to the City, per Section 14.26. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written Agreement between the City and Design-Builder or, if no such agreement is reached, by authority having jurisdiction.
- 14.27.2 Immediately prior to such partial occupancy or use, the City and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.
- 14.27.3 Unless otherwise agreed upon, partial occupancy or use of a portion of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.
- 14.28 Correction of Labor, etc. – Before or After Substantial Completion
At the City's request, Design-Builder shall, at Design-Builder's expense, promptly remove from the job site all labor, supplies, materials, equipment and/or other facilities condemned by the City as not in accordance with the Contract Documents, whether incorporated or not; and the Design-Builder shall, at Design-Builder's expense, promptly replace and re-execute all labor, supplies, materials, equipment and/or other facilities in accordance therewith and, at Design-Builder's expense, restore all work of other contractors and Subcontractors destroyed or damaged as a result of such removal, replacement and re-execution.
- 14.29 Correction of Labor, etc. – After Substantial Completion
- 14.29.1 Design-Builder guarantees to City that all Work performed under this Contract shall be free from defects in material or workmanship for a period of not less than two (2) full years from the date of Substantial Completion; provided, however, that whenever any provision of the Contract Documents requires a guarantee for a period in excess of two (2) years to be furnished by Design-Builder, Design-Builder shall promptly execute same in writing and shall promptly deliver same to City.
- 14.29.2 Design-Builder shall promptly procure from each Subcontractor a written guarantee that all Work performed by such Subcontractor shall be free from defects in material or workmanship for a period of not less than two (2) full years from the date of Substantial Completion and shall promptly deliver same to City; provided, however, that wherever any provision of the Contract Documents requires a guarantee for a period in excess of two (2) years to be furnished by a Subcontractor, Design-Builder shall promptly procure same in writing from the appropriate Subcontractor and shall promptly deliver same to City.
- 14.29.3 Whenever any provision of the Contract Documents requires a guarantee for a period in excess of two (2) years, but does not specify who is to give such a guarantee, it shall be given by the Design-Builder regardless of who is performing the Work for which the

guarantee is required. All such guarantees shall be in writing and shall be promptly delivered to City.

- 14.29.4 The furnishing of guarantees by Subcontractors and materialmen shall not relieve Design-Builder of its obligations under guarantees required of Design-Builder under the Contract Documents. In addition to the above guarantees, Design-Builder shall (1) obtain and assign to City all available manufacturers and suppliers Warranties; and (2) at City's sole option, assign to City any rights Design-Builder may have against any Subcontractor and/or supplier for Defective Work, materials or equipment.
- 14.29.5 Any provision of the Contract Documents to the contrary notwithstanding, all guarantees provided for in the Contract Documents shall begin to run from the date of Substantial Completion by City to Design-Builder.
- 14.29.6 Neither the issuance of the final certificate, payment nor any provision in the Contract Documents shall relieve the Design-Builder of responsibility for Work determined by City not to be in accordance with the Contract Documents. If, within two (2) years of the date of Substantial Completion or within any longer period of time as may be prescribed by Applicable Law or by the terms of any applicable special Warranty required by the Contract Documents, any of the Work is found by City to be defective or not in conformance with the Contract Documents then, at City's request, Design-Builder shall, at Design-Builder's expense, promptly remove from the premises all Work determined by the City to be defective or not in accordance with the Contract Documents; and Design-Builder shall, at Design-Builder's expense, promptly replace and re-execute all Work in accordance therewith and, at Design-Builder's expense, restore all Subcontractors' Work and Work of other contractors and Subcontractors damaged as a result of such removal, replacement and re-execution. City shall with reasonable promptness give notice of any Work condemned by City as not in accordance with the Contract Documents. If, within ten (10) days after the mailing of such notice, the Design-Builder shall fail or neglect to make, or undertake to make, with due diligence any required repairs or corrections, the City may make such repairs at Design-Builder's expense; provided, however, that, in case of an emergency which, in the judgment of City, would cause serious Loss, hazard or damage if not corrected immediately, such repairs may be made without prior notice being sent to the Design-Builder, and Design-Builder shall nevertheless be liable to the City for the cost thereof.
- 14.30 **Acceptance of Nonconforming Work**
If the City prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the City may do so instead of requiring its removal and correction, in which case the GMP will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.
- 14.31 **Beginning, Progress, and Time of Completion of Work**
Design-Builder shall, within ten (10) days after being instructed to do so in the written Notice to Proceed from the City, commence the Work to be done under this Contract; and the rate of progress shall be such that the Work shall have been completed in accordance with the terms of the Contract on or before the termination of the construction periods contractually specified, subject to any extension or extensions of such time made as hereinafter provided. The Design-Builder shall furnish the City with a schedule giving the dates on which it expects to start and to complete separate portions of the Work, which schedule shall be strictly adhered to unless agreed to in writing by all parties or modified by an extension or extensions of time as hereinafter provided.

14.32 Construction Schedules

After being awarded the contract, the Contractor shall immediately prepare a Critical Path Method (CPM) schedule for approval by the City Engineer that will ensure completion of the project within the contract time. This schedule shall be submitted and approved by the City Engineer before a Notice to Proceed is issued. No Work on this contract shall begin until said schedule is approved. The City reserves the right to adjust the Contractor's schedule to coordinate with any other projects in the same area.

14.32.1 General Requirements: A computerized network diagram shall be included in the CPM schedule and shall serve as the 'Master Construction Schedule' for the project, giving mathematical analysis (printout) of that network, which verifies and validates logic and planning and defines critical path. The approved schedule shall be kept on site with the superintendent and reviewed with Subcontractors each week. The CPM schedule shall be utilized for planning, organizing, and directing the Work, for reporting progress, and requesting payment for Work completed. The schedule shall be reviewed each week as part of the progress meeting. Abbreviations used in CPM schedules shall be clearly explained in a legend of symbols, either separate or attached. Scheduling software shall be compatible with Microsoft Project 2007.

14.32.2 Schedule Requirements: The CPM schedule shall clearly show sequential interdependencies, with activity duration and float clearly represented. Sequence(s) of activities with no float shall be clearly identified as Critical Path(s). The scheduling system shall be capable of baseline comparison analysis. Upon development and approval of the schedule, the Contractor shall 'freeze' the initial schedule as the baseline schedule. As Work progresses, Contractor shall provide graphics displaying actual progress bars versus baseline or target bars. Activity durations shall be in calendar days.

The CPM schedule shall include pre-construction tasks, construction tasks (bid items), shop drawing submittal and approval process, material and equipment ordering and delivery, submittal of as-built drawings, clean up and punchlist, inspection coordination activities, utility relocation, final inspection and certificate of completion, and final payment. Submittal activities shall be scheduled to allow sufficient time for materials and equipment to be procured and installed, even if the submittal is unacceptable and resubmittal is required. The CPM schedule shall reflect anticipated delays, such as weather delays.

Contractor shall submit the initial schedule, complete revisions, and periodic reports in three hard copies, one reproducible and two prints or plots, and one copy digitally on CD or DVD. This schedule shall include the completed network program consisting of GANTT chart and mathematical analysis within ten (10) days of the executed contract. Allow five (5) days for the City Engineer to review. Contractor shall submit the schedule of submittal activities extracted from the master schedule within 10 days after receipt of Notice to Proceed. During the preparation period, Contractor shall review this information with the City Engineer.

Submittals to the City Engineer of initial and monthly CPM schedule charts shall include three sets of all reports as outlined below. Plots shall be color, blue-line, printed or photocopied prints and, if segmentally generated, fully assembled. Highlight the critical path when the critical path is not clearly defined.

The Contractor will participate in the Engineer's review and evaluation of submitted network diagrams and mathematical analysis of diagrams. Resubmit revisions necessary due to review within five (5) days after the review. Contractor and major Subcontractors shall review the network CPM schedule before final submittal.

14.32.3 Report Formats: Standard set of reports submitted each month including initial submittals shall consist of a GANTT chart of entire Project. Progress bar chart shall include target or baseline comparison bars. Bar positions shall be early start/early finish with float clearly defined. GANTT charts shall include a tabulation of each activity. For each activity on the GANTT charts furnish the following:

- A. Initial/submittal schedule shall include a list of responsible contractors and suppliers, task description, duration, start date, end date, latest start date, latest end date, total slack or float time in calendar days and current schedule bar in Gantt view.
- B. Progress schedule updates shall include a list of responsible contractors and suppliers, task description, duration, actual start date, actual finish date, percentage completion, remaining duration in calendar days and current schedule bar in Gantt view.

Graphics outlined above shall comply with the following criteria unless noted otherwise:

- A. Sheet size of diagram shall be 11 by 17 inches minimum and time scaled in month as the major timescale and weeks as the minor timescale unless approved otherwise.
- B. On each page include a title block containing at a minimum the following information –
 - 1) Project Title
 - 2) Project Number
 - 3) Contractor's Business Name
 - 4) Date of Submittal and Revision (The Date shown must clearly show the current preparation date and separately the revision date of the current schedule - this is a hard date entered and not an auto or status date)
 - 5) Submit a separate Legend Page of Symbols and Abbreviations as applicable.
- C. Prepare and submit to the City Engineer upon request additional charts, reports, and current copy on disk of Project program.

14.32.4 CPM Schedule Implementation and Monitoring: Monthly CPM schedule charts and reports shall accompany the Contractor's pay request for Work completed. Where the Contractor is shown to be behind schedule, provide accompanying written summary, cause, and explanation of planned remedial action. CPM schedules shall reflect those instances, modifications or other alterations to the schedule, which have an impact on the final completion or interim target dates within the schedule. Payments or portions of payments may be withheld by the City Engineer, upon failure to maintain scheduled progress of the Work as shown on the approved CPM schedule. Failure to prepare, submit and maintain a CPM schedule as specified shall be cause for rejection of other schedules submitted and for possible delay of payment. Float time belongs to the Project, not to the Contractor or to the City Engineer, and may be utilized by both parties.

14.32.5 Schedule Changes And Updates: At a minimum the Contractor shall update and submit the CPM Schedule for review weekly. A weekly update is required unless agreed upon by the City Engineer. Monthly submittal of the CPM schedule and approval by the City Engineer is required prior to payment for Work completed. Activities added to the CPM schedule shall be submitted by the Contractor on schedule charts. It is the City Engineer's intent

that the Project be managed and operated according to the CPM schedule. Payment requests may be held up until the CPM schedule is brought back into compliance with the Contract Documents.

Once the CPM schedule is submitted and approved by the City Engineer Contractor shall identify any modifications to activity durations, logic, values, or descriptions resubmit for approval. Such adjustments shall not impact the contracted completion date. Requests for time extensions are addressed in Article 5 Compensation for Design-Builder's Performance paragraph 5.4 Change Orders.

14.33 Delays and Extensions of Time

- 14.33.1 If Design-Builder shall be delayed at any time in the progress of the Work by an act or omission of City or by any separate contractor employed by City and over which Design-Builder has no control and which is not a result of the Design-Builder's acts or the acts of any of its employees, Subcontractor or suppliers, negligent or otherwise, then the time of completion shall be extended and/or adjusted for such reasonable time and amount as the City shall decide.
- 14.33.2 No such extension shall be made for delay unless Design-Builder provides written notice to the City of such delay, the reasons therefore and the expected length of delay within seven (7) days of the commencement of such delay. In the case of a continuing cause of delay, only one claim is necessary.
- 14.33.3 In executing the Contract, the Design-Builder expressly covenants and agrees that, in undertaking to complete the Work within the time therein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such Work, whether growing out of delays in securing materials, workers, and weather conditions or otherwise. No charge shall be made by the Design-Builder for hindrances or delays from any cause during the progress of the Work, or any portion thereof, included in this Contract, except as provided in Sections 14.33.1 and 14.33.4.
- 14.33.4 The Design-Builder shall delay or suspend the progress of the Work or any part thereof, whenever it shall be so required by written order of the City, and for such periods of time as the City shall require; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the Work, or any part thereof, the time for completion of Work so suspended or of Work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the Work shall be stopped by order of the City, through no fault of the Design-Builder, its employees, Subcontractors or suppliers, any incidental expenses which, in the opinion and judgment of the City, are caused thereby shall be paid by the City to the Design-Builder.

14.34 Use of Premises

- 14.34.1 Design-Builder shall confine its operations to limits indicated by law, ordinances, rules, regulations, permits and directions of the City and shall not unreasonably encumber the premises and/or site.
- 14.34.2 Design-Builder shall not load or permit any part of any structure, streets or highways to be loaded with a weight that exceeds load limits that will endanger their safety.

- 14.34.3 Design-Builder shall comply with federal, state, and local laws ordinances, as well as any specific instructions regarding signs, advertisements, fires, and smoking from the City.
- 14.34.4 A laydown area or staging area will be provided at the site and shall be chosen by the City. Design-Builder shall furnish its own weather protection if required.
- 14.34.5 No City equipment will be taken out of service or put into service without approval of the City.
- 14.35 Allowances
Design-Builder agrees that the GMP includes all allowances required by the Contract Documents. Design-Builder declares that the GMP includes all other sums for expenses and overhead and fee on account of allowances as it deems proper. No demand for expenses or overhead and fee other than those included in the GMP shall be allowed.
- 14.36 Cutting, Patching, and Digging
Design-Builder shall do all cutting, fitting, or patching of its Work that may be required to make its several parts come together properly and fit it to receive or be received by work of others shown upon or reasonably implied by the Contract Documents. Design-Builder shall not endanger any property of City or any other individual or entity, or the Work by cutting, digging, or otherwise and shall not cut or alter the work of others except with the written consent of City. Design-Builder shall assume responsibility for the patching or repairs, by the proper trade, of damages caused by the Work under this Contract. Design-Builder shall comply with all Applicable Laws dealing with cutting, patching, and digging and shall obtain all necessary permits.
- 14.37 Cleaning Up
Design-Builder shall at all times keep the premises/site free from accumulations of waste material or rubbish caused by its employees or Work; and at the completion of the daily Work it shall remove all its rubbish from and about the premises/site and all its tools, scaffolding, and surplus materials, and shall leave its Work "broom clean" or its equivalent unless more exactly specified. In case of dispute, City may remove the rubbish and charge the cost to Design-Builder.
- 14.38 Temporary Facilities
- 14.38.1 Except where special permission has been granted by City to use existing toilet facilities belonging to City, Design-Builder shall provide and maintain sanitary temporary toilet facilities located where directed by the City for accommodation of all persons engaged on the Work. Temporary toilets shall be enclosed and weatherproof and kept in sanitary and approved condition at all times. After use for same has ceased, Design-Builder shall remove the temporary toilet facilities from City's premises and disinfect and fill any vaults. All temporary toilet facilities shall comply with Section 14.39.
- 14.38.2 Design-Builder shall provide and maintain any necessary temporary offices, storerooms, roadways, etc., as may be required for the Work. Same shall be located and constructed in an approved manner acceptable to the City. Upon completion of Work or when requested by the City, Design-Builder shall remove same from the City's premises and leave the area in a clean and orderly condition.
- 14.38.3 Design-Builder shall provide and maintain temporary heat as required to protect all Work and material against injury from dampness and/or cold to the satisfaction of the City.

- 14.38.4 Unless otherwise specified in the Contract Documents, Design-Builder shall provide, at its cost and expense, temporary power, wiring and lights from City's provided source as may be required for its operations.
- 14.39 **Sanitary Regulations and Water**
The operations of the Design-Builder shall be in full conformity with all of the rules and regulations of boards and bodies having jurisdiction with respect to sanitation. The Design-Builder shall supply safe and sufficient drinking water to all of its employees. The Design-Builder shall obey and enforce all sanitary regulations and orders, and shall take precautions against infectious diseases and the spread of same. All water used in the course of the Work shall be hauled in or purchased from the local water company's distribution system at the Design-Builder's own cost and expense.
- 14.40 **Unfavorable Construction Conditions**
During unfavorable weather, or other unfavorable conditions for construction operations, the Design-Builder shall pursue only such portions of the Work as will not be damaged thereby. No portions of the Work, the satisfactory quality or efficiency of which will be affected by any unfavorable conditions, shall be constructed while these conditions exist, unless, by special means or precautions approved by the City, the Design-Builder shall be able to perform the Work in a proper and satisfactory manner.
- 14.41 **Design-Builder's Risk**
The Design-Builder shall assume full responsibility for the Work and shall bear any Loss and repair any damage at his/her own cost occasioned by neglect, accident, vandalism, or natural cause, whether foreseen or unforeseen, during the progress of the Work and until the Work is completed and accepted by the City.
- 14.42 **Safety Precautions and Programs**
The Design-Builder shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of this Agreement.
- 14.42.1 **Safety of Persons and Property**
- 14.42.1.1 The Design-Builder shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or Loss to:
- A. employees on the Work and other persons who may be affected thereby;
 - B. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Design-Builder's Subcontractors or Sub-Subcontractors; and
 - C. other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of construction.
- 14.42.1.2 The Design-Builder shall give notices and comply with Applicable Laws and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or Loss.
- 14.42.1.3 The Design-Builder shall erect and maintain, as required by existing conditions and performance of the Agreement, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

- 14.42.1.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Design-Builder shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.
- 14.42.1.5 The Design-Builder shall promptly remedy damage and Loss (other than damage or Loss insured under property insurance required by the Contract Documents) to property referred to in Section 14.42.1.1 B and C caused in whole or part by the Design-Builder, a Subcontractor, a Sub-Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable for and for which the Design-Builder is responsible under Section 14.42.1.1 B and C, except damage or Loss attributable to acts or omissions of the City or anyone directly or indirectly employed by them, or by anyone for whose acts they may be liable for, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Article 11.
- 14.42.1.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization at the site whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the City.
- 14.42.1.7 The Design-Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

14.42.2 Safety Program

- 14.42.2.1 Design-Builder is expected to establish and enforce a comprehensive safety program on this Project for the protection of its personnel, its Subcontractors' personnel, City's employees and all other persons exposed to hazards resulting from Design-Builder's operations. As a minimum requirement, Design-Builder shall review and discuss the details of its program with the City at the first Project meeting. The items to be covered shall include, but not necessarily be limited to,
- A. Personal protective equipment;
 - B. First aid - personnel and facilities;
 - C. Arrangements for medical attention;
 - D. Sanitary facilities;
 - E. Fire protection;
 - F. Signs, signals and barricades;
 - G. Security regulations;
 - H. Safety inspections;
 - I. Designation of persons responsible for the program;
 - J. Reporting forms and procedures;
 - K. Material handling and storage;
 - L. Lines of communication;
 - M. Determination of potential hazards;
 - N. Personnel safety meetings and education;
 - O. Access to Work areas;
 - P. Subcontractors involvement in the program;
 - Q. Inspections and corrective action.

14.42.2.2 Design-Builder is fully responsible for the safety program and any and all methods and procedures provided for therein whether or not the City shall have reviewed and/or accepted such program.

14.43 Weekends, Holiday, and Night Work

14.43.1 No Work shall be done between the hours of 6:00 p.m. and 8:00 a.m., or on weekends or City holidays, without the written approval or permission of the City, 48 hours in advance in each case, except such Work as may be necessary for the proper care, maintenance and protection of Work already done or of equipment, or in the case of an emergency.

14.43.2 Night Work may be established by the Design-Builder, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City.

14.44 Approval of Equals

14.44.1 "Approved Equals", where permitted by the Contract Documents or otherwise made feasible by market conditions, shall be considered for approval as follows:

14.44.1.1 Design-Builder shall notify City in writing if it elects to use an approved equal specifically named in the Contract Documents.

14.44.1.2 If Design-Builder desires to use an "equal" not specifically named in the Contract Documents, it must first inform the City and receive written approval for such substitutions. City has no obligation to approve such request and is not responsible for any delay or cost incurred caused by Design-Builder's making such request.

14.44.2 The Design-Builder shall be solely responsible for design risks, delays and other claims arising out of any approved alternates.

14.45 Test of Materials Offered by Design-Builder

All specified and required tests for approval of material shall be made at the expense of the Design-Builder by a properly equipped laboratory of established reputation, whose work and testing facilities shall be approved by the City. Approval of materials based on acceptable tests will apply only while such materials as furnished equal or exceed the tested samples or test specimens in quality and minimum requirements. Any change in origin, method of preparation or manufacture of such materials will require new tests and approval thereof. Reports of all tests shall be furnished to the City in as many certified counterparts as may be required by the City.

14.46 Testing of Completed Work

Before final acceptance, all installed and constructed equipment, devices and other Work which is to be tested under the Contract Documents shall be tested and each part shall be in good condition and working order or shall be placed in such condition and order at the expense of the Design-Builder. All tests of such completed Work required under this contract shall be made under the direction of the City.

14.47 Borrow and Waste Areas

14.47.1 All borrow materials shall be obtained by the Design-Builder at its own cost and expense. The borrow area and materials shall be approved by the City and shall be friable material suitable for compaction.

14.47.2 All waste areas shall be located off the site and arrangements and payment for use of such areas shall be the sole responsibility of the Design-Builder. All waste disposals shall be in compliance with federal, state, and local laws, ordinances and regulations.

14.48 Street Signs and Traffic Aids

The Design-Builder shall be responsible for all preexisting traffic control devices at the project site, including installation, maintenance, removal, and storage of such devices. All temporary and permanent traffic control devices supplied by the Design-Builder shall comply with and be installed in accordance with the Manual and Uniform Traffic Control Devices, current edition as revised, and the Traffic Control Devices Handbook.

14.49 Federal Lobbying Activities

14.49.1 31 USCS Section 1352 requires all subgrantees, contractors, Subcontractors, and Design-Builder's who receive federal funds via the City to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan, or cooperative agreements.

14.49.2 In addition, Contract applicants, recipients, and subrecipients must file a form disclosing any expenditures they make for lobbying out of non-federal funds during the Contract period.

14.49.3 Necessary forms are available from the City Engineer and must be returned to the City with other Contract Documents. It is the responsibility of the Design-Builder to obtain executed forms from any Subcontractors who fall within the provisions of the Code and to provide the City with the same.

14.50 Titles, Subheads, and Capitalization

Titles and subheadings as used herein and other Contract Documents are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provisions of the Contract Documents. Some terms are capitalized throughout the Contract Documents, but the use of or failure to use capitals shall have no legal bearing on the interpretation of such items.

14.51 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 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.

14.52 Taxes

It is the intent of the City to supply the Design-Builder with a Sales and Compensating Tax Exemption Certificate for use in purchasing materials and supplies used on the Project. The Design-Builder shall, in preparing its bid, omit from its computed costs all sales and compensation taxes. Upon completion of the Project two (2) copies of the State of Kansas Project Completion Certification will be forwarded to the Design-Builder and must be signed and returned to the City prior to final payment. Final payment will not be made to the Design-Builder until the City has received a Consent of Surety Company to Final Payment. All invoices must be retained by the Design-Builder for a period of five (5) years and are

subject to audit by the Kansas Department of Revenue.

14.53 Governing Law

It is the intent of the parties that this Agreement and the performance hereunder, and all suits and special proceedings under this Agreement, be constructed 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 Agreement, 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 government agency in connection with same.

14.54 Venue

Venue of any litigation arising in connection with this Agreement shall be the District Court of Johnson County, Kansas.

14.55 Warranty

The Design-Builder warrants to the City that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work shall conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the City, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

14.56 Access to Work

Design-Builder shall provide the City access to the Work in preparation and progress wherever located.

14.57 Hazardous Materials

14.57.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the City in writing.

14.57.2 The City shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the City shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such materials or substance. The Design-Builder will promptly reply to the City in writing stating whether or not either has reasonable objection to the persons or entities proposed by the City. If the Design-Builder has an objection to a person or entity proposed by the City, the City shall propose another to whom the Design-Builder has no reasonable objection. When the material or

substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the City and Design-Builder. The contract time shall be extended appropriately and the GMP shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Section 5.4, herein.

14.57.3 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the City shall reimburse the Design-Builder for all costs and expense thereby incurred.

14.58 Order of Precedence

If any conflict exists between the provisions of these General Conditions (Article 14) and any other provision of this Agreement, the provision of the General Conditions shall govern.

THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK

ARTICLE 15 EXECUTION OF THE AGREEMENT

The City of Overland Park, Kansas, has caused this Agreement to be executed on its behalf, thereunto duly authorized, and the said Design-Builder has executed _____ counterparts of this Contract in the prescribed form and manner, the day and year first above written.

CITY OF OVERLAND PARK, KANSAS

ATTEST:

By _____
Authorized Signatory

Marian Cook
City Clerk

APPROVED AS TO FORM:

Tammy M. Owens
Senior Assistant City Attorney

Combes Construction, LLC

Contractor

Signature

(SEAL)

Printed Name

President
Title

(If the Contract is not executed by the president of the corporation or general partner of the partnership, please provide documentation which authorizes the signatory to bind the corporation or partnership. If a corporation, Contractor shall furnish City a current certificate of good standing, dated within ten (10) days of the date of this Contract.)

CORPORATE ACKNOWLEDGMENT
ACKNOWLEDGMENT

STATE OF _____ }
COUNTY OF _____ } ss.

BE IT REMEMBERED, That on this ____ day of _____, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came _____, President of _____, a corporation duly organized, incorporated and existing under and by virtue of the laws of _____; who is personally known to me to be the same person who executed as such officer the within instrument on behalf of said Corporation, and such person duly acknowledged the execution of the same to be the act and deed of said Corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Notary Public

My Commission Expires:
