

CITY OF OVERLAND PARK, KANSAS
AGREEMENT BETWEEN
CITY OF OVERLAND PARK, KANSAS AND CONSTRUCTION MANAGER
WHERE CONSTRUCTION MANAGER IS ALSO THE CONTRACTOR

**911 Memorial Monument
FB-1450**

Owner:

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

Construction Manager:

J.E. Dunn Construction Company
1001 Locust
Kansas City, MO 64106

The Architect is:

SFS Architecture
1150 Grand Boulevard
Suite 400
Kansas City, MO 64106

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AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2012, by and between the City of Overland Park, Kansas, hereinafter the "City", and J.E. Dunn Construction Company, hereinafter the "Construction Manager";

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 and is mutually understood to 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 designated in the Contract Documents which has been employed by the City for the performance of professional design services in connection with the Project.
- 1.1.4 "Certificate of Substantial Completion" means written certification from the Architect which establishes the date of Substantial Completion, responsibilities of the City and Construction Manager for security, maintenance, heat, utilities, damage to the Work and insurance, and fixes the time within which the Construction Manager shall finish all items on the list accompanying the Certificate.
- 1.1.5 "Change Order" means a written order issued after this Agreement is executed by which the City, Architect, and the Construction Manager 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 Construction Manager to be binding.
- 1.1.6 "Construction Contingency" means the sum established by the Construction Manager for use at the Construction Manager's discretion to cover costs which are properly reimbursed as a Cost of Work but are not the basis of a Change Order.
- 1.1.7 "Construction Manager's Fee" means any cost that is not directly required to complete the specific contractual scope of Work as defined in Section 5.1.
- 1.1.8 "Construction Phase" means the phase of the Project commencing upon completion of the Preconstruction 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.
- 1.1.9 "Contract Documents" shall consist of the Agreement between the City and Construction Manager (sometimes referred to herein as the "Agreement"), the Drawings, the

Specifications, all addenda issued prior to and all modifications issued after execution of the Agreement (modifications consisting of written amendments to the Agreement signed by both parties, Change Orders, written interpretations issued by the Architect, written orders for minor changes in the Work issued by the Architect and changes in the Work identified in Article 5), and any other Contract Documents listed in this Agreement. It is understood that the Work shall be carried out and the Project shall be constructed fully in accordance with the Contract Documents.

- 1.1.10 "Cost of Work" means costs necessarily incurred by the Construction Manager in the proper performance of the Work.
- 1.1.11 "Defective Work" means Work not conforming to the Contract Documents and substitutions not properly approved and authorized.
- 1.1.12 "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.
- 1.1.13 "Final Certificate for Payment" means written certification from the Architect stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect'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 Construction Manager and noted in the final Certificate is due and payable.
- 1.1.14 "GMP" means the Guaranteed Maximum Price for the Project, as defined and subsequently established in Change Order No. 1 and any subsequent Change Orders and shall include the Construction Manager's Fee outlined in Section 5.1 and the Cost of Work as defined in Article 6 and shall be the sum of the estimated cost of the Work and the Construction Manager's Fee.
- 1.1.15 "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.
- 1.1.16 "Preconstruction Phase" shall mean the phase during which Construction Manager shall perform Value Engineering and constructability services in working with the Architect and the City. Preliminary scheduling and cost estimate activities shall also take place during this Phase.
- 1.1.17 "Shop Drawings" are drawings, diagrams, schedules, and other data specially prepared for the Work by the Construction Manager or a Subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.
- 1.1.18 "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.
- 1.1.19 "Subcontractor" means an individual, firm, or corporation having a direct contract with the Construction Manager 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.

- 1.1.20 “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, provided that if issuance of a temporary certificate of occupancy, permits, or orders is withheld or delayed through no fault of Construction Manager, the Work shall be deemed Substantially Complete if the remaining requirements for Substantial Completion are satisfied. Warranties called for by this Agreement or by the Contract Documents shall commence on the Substantial Completion date.
- 1.1.21 “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.
- 1.1.22 “Warranties” means warranties obtained from the Construction Manager, 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 Construction Manager.
- 1.1.23 “Work or Project” (used interchangeably) means the work to be done necessary to complete the construction required of the Construction Manager by the Contract Documents, and includes all construction, labor, materials, tools, equipment, services, and transportation necessary to produce such construction to the City’s full satisfaction and in accordance with the Contract Documents to fulfill the Construction Manager’s obligations.
- 1.2 Relationship of Parties
The Construction Manager accepts the relationship of trust and confidence established with the City by this Agreement, and covenants with the City to furnish the Construction Manager’s reasonable skill and judgment and to cooperate with the Architect in furthering the interests of the City. The Construction Manager 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, Architect, Construction Manager, and other persons or entities employed by the City for the Project.
- 1.3 Construction Manager
Construction Manager shall act as consultant to the City in the Preconstruction Phase and as the equivalent of a general contractor during the Construction Phase. Construction Manager shall act in the City’s interest and shall manage and control construction costs so as not to exceed the GMP.

ARTICLE 2 CONSTRUCTION MANAGER’S RESPONSIBILITIES

The Construction Manager shall perform the Work in accordance with the Contract Documents. Construction Manager shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect’s administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Construction Manager. The Construction Manager shall perform the Work described in this Article and shall be considered the Preconstruction Phase Services. If the City and Construction Manager agree, after consultation with the Architect, the Construction Phase may

commence before the Preconstruction Phase is completed, in which case both parties will proceed concurrently.

2.1 Preconstruction Phase

2.1.1 Preliminary Evaluation

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

2.1.2 Consultation

The Construction Manager with the Architect shall jointly schedule and attend regular meetings with the City. The Construction Manager shall consult with the City and Architect regarding site use and improvements and the selection of materials, building systems, and equipment. The Construction Manager 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 cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

2.1.3 Preliminary Project Schedule

When the Project requirements described in Section 3.1.1 have been identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Architect's review and the City's approval. The Construction Manager shall obtain the Architect's approval of the portion of the preliminary Project schedule relating to the performance of the Architects' services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the City, Architect, and Construction Manager. 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, the 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 Construction Manager shall make appropriate recommendations to the City and Architect.

2.1.4 Phased Construction

The Construction Manager shall make recommendations to the City and Architect 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.

2.1.5 Preliminary Cost Estimates

2.1.5.1 When the City has sufficiently identified the Project requirements and the Architect has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect and approval of the City, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

2.1.5.2 When schematic design documents have been prepared by the Architect and approved by the City, the Construction Manager shall prepare, for the review of the Architect and

approval of the City a more detailed estimate with supporting data. During the preparation of the design development documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the City, Architect, and Construction Manager.

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

2.1.5.4 If any estimate submitted to the City exceeds previously approved estimates or the City's budget, the Construction Manager shall make appropriate recommendations to the City and Architect.

2.1.6 Long Lead Time Items

The Construction Manager shall recommend to the City and Architect 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 Construction Manager. Upon the City's acceptance of the Construction Manager's GMP proposal, all contracts for such items shall be assigned by the City to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long lead items.

2.1.7 Extent of Responsibility

The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the City and the City's professional consultants. The City acknowledges that the Construction Manager is in no way providing professional services which constitute the practice of architecture or engineering. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with Applicable Laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect and the City in writing.

2.2 Guaranteed Maximum Price Proposal and Contract Time

2.2.1 When the Drawings and Specifications are sufficiently complete, the Construction Manager shall propose a GMP, which shall be the sum of the estimated cost of the Work, Construction Manager's Fee, and Construction Contingency.

2.2.2 As the Drawings and Specifications may not be finished at the time the GMP proposal is prepared, the Construction Manager shall provide in the GMP for further development of the Drawings and Specifications by the Architect that is 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.

2.2.3 The estimated cost of the Work shall include the Construction Contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to

cover costs arising under Section 2.2.2, above and other costs which are properly reimbursable as Cost of Work but not the basis for a Change Order. The Construction Manager shall notify the City as to the item of Work and cost thereof prior to any and each use of the contingency, and shall maintain a statement of the contingency costs.

2.3 Basis of GMP

2.3.1 The Construction Manager shall include with the GMP proposal a written statement of its basis, which shall include:

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

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

2.3.1.3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the GMP proposal to supplement the information contained in the Drawings and Specifications.

2.3.1.4 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.

2.3.1.5 The date of Substantial Completion upon which the proposed GMP is based on and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

2.3.1.6 Detailed construction schedule.

2.3.2 The Construction Manager shall meet with the City and Architect to review the GMP proposal and the written statement of its basis. In the event that the City or Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the GMP proposal.

2.3.3 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 Construction Manager, the GMP proposal shall not be effective without written acceptance by the Construction Manager.

2.3.4 Prior to the City's acceptance of the Construction Manager's GMP proposal and issuance of a notice to proceed, the Construction Manager 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.

2.3.5 Upon acceptance by the City of the GMP proposal, the GMP and its basis shall be set forth in Change Order No. 1.

2.3.6 The City shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect agreed upon assumptions and clarifications contained in Change Order No. 1. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the City, Architect, and Construction Manager. The Construction Manager shall promptly notify the Architect and the City if such revised Drawings and Specifications are inconsistent with the agreed upon assumptions and clarifications.

2.4 Construction Phase

2.4.1 General

The Construction Phase shall commence on the City's acceptance of the Construction Manager's GMP proposal and issuance of a notice to proceed.

2.4.2 Administration

Those portions of the Work the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager 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 and Architect. The City will then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect, which bids will be accepted. The City may designate specific persons or entities from whom the Construction Manager shall obtain bids; however, if the GMP has been established the City may not prohibit the Construction Manager from obtaining bids from other qualified bidders. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

2.4.2.1 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 Construction Manager make good faith efforts to obtain competitive bids in writing as follows:

- A. At or above \$25,000 – at least two (2) competitive bids
- B. At or above \$50,000 – at least three (3) competitive bids

2.4.2.2 A list of approved/prequalified bidders will be established between the City and Construction Manager prior to commencement of bidding.

2.4.2.3 With prior consent of the City, mechanical, plumbing, and electrical Subcontractors may be selected during the Preconstruction Phase based upon a qualification based selection process administered by Construction Manager. 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.

2.4.2.4 If the GMP has been established and a specific bidder among those whose bids are delivered by the Construction Manager to the City and Architect (1) is recommended to the City by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) 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 Construction Manager may request 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 Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the City.

2.4.2.5 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.

- 2.4.2.6 The Construction Manager shall schedule and conduct meetings at which the City, Architect, Construction Manager, and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.
- 2.4.2.7 Promptly after the City's acceptance of the GMP proposal, the Construction Manager shall prepare a schedule in accordance with Section 8.48, including the City's occupancy requirements.
- 2.4.2.8 The Construction Manager shall provide monthly written reports to the City and Architect on the progress of the entire Work. The Construction Manager 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 and Architect.
- 2.4.2.9 The Construction Manager 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 Construction Manager shall identify variances between actual and estimated costs and report the variances to the City and Architect 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 Construction Manager and Architect, 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 Construction Manager knows of any inaccuracy, the Construction Manager 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 Construction Manager. 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 Construction Manager and agreed to by the 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 Construction Manager. Architect does not have such authority.

3.4 Architect

The City shall retain an Architect to provide basic services, including normal structural, mechanical and electrical engineering services, other than cost estimating services. The City shall authorize and cause the Architect to provide those additional services described in this Agreement, requested by the Construction Manager which must necessarily be provided by the Architect for the Preconstruction and Construction Phase of the Work. Such services shall be provided in accordance with time schedules agreed to by the City, Architect, and Construction Manager. Upon request of the Construction Manager, the City shall furnish to the Construction Manager a copy of the City's Agreement with the Architect.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

The City shall compensate and make payments to the Construction Manager for Preconstruction Phase services as follows:

4.1 Compensation

- 4.1.1 For the services described in Section 2.1 above, the Construction Manager's compensation shall be calculated as follows:
- 4.1.2 Lump sum of Zero dollars (\$_____0) for a payable upon execution of Change Order No. 1. Reference Exhibit A, attached hereto and incorporated by reference herein, Preconstruction Scope & Fee, for further clarification. Payments will be made in accordance with Section 4.2.

- 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 Construction Manager'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 the City's receipt of Construction Manager's undisputed invoice and, where applicable, shall be in proportion to services performed.
- 4.2.2 Payments are due and payable thirty (30) days from the date the City received the Construction Manager's undisputed invoice.
- 4.3 City's Right to Withhold Payment
In the event the City becomes credibly informed that any representations of Construction Manager provided in its monthly pay requests, are wholly or partially inaccurate, the City may withhold payment of disputed sums then or in the future otherwise due to Construction Manager until the inaccuracy and the cause thereof, is corrected to the City's reasonable satisfaction. In the event the City questions some element of a pay request, that fact shall be made known to the Construction Manager immediately. Construction Manager will help effect resolution and transmit a revised pay request, if necessary. Amounts not questioned by the City shall be paid to Construction Manager in accordance with the contract payment procedures.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

City shall compensate the Construction Manager for Construction Phase Services as follows:

- 5.1 Compensation
- 5.1.1 For the Construction Manager's performance of the Work as described in Article 2 herein, the City shall pay the Construction Manager in current funds the contract sum consisting of the Cost of Work as defined in Article 1 and further clarified in Article 6 and the Construction Manager's Fee determined as follows:
- 5.1.2 Construction Manager's Fee shall be Zero Percent (0%) of the total Cost of Work and will be included within the GMP. Construction Manager's Fee shall not be reduced on account of savings returned to the City.
- 5.1.3 Construction Manager's Fee of Zero percent (0%) shall apply to any increases in the GMP mutually agreed to by the Parties.
- 5.2 Guaranteed Maximum Price (GMP)
The sum of the Cost of Work and the Construction Manager's Fee are guaranteed by the Construction Manager 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 mutually agreed upon by the Parties. Costs which would cause the GMP to be exceeded shall be paid by Construction Manager without reimbursement by the City.
- 5.3 Savings
If at the time of final payment to Construction Manager, the sum of the actual cost of the Work and Construction Manager's Fees are 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:

One Hundred percent (**100%**) to the City.

5.4 Change Orders

The City, without invalidating the Contract, 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 or Section 5.4.2.

5.4.2 From time to time the City and or Architect may issue written orders to Construction Manager 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 Construction Manager 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 Construction Manager 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 the City:

- A. By agreed lump sum.
- B. By agreed upon unit prices.
- C. By actual field cost (time and material) plus Construction Manager's Fee (which includes overhead and profit) stated in Section 5.1 and shall include a "Not to Exceed" figure.

5.4.4 In order to arrive at the value for any change, Construction Manager shall credit the 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 Construction Manager 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 or at rates established in this Agreement, public liability and property damage, worker's compensation, and other insurance required by the Contract Documents; provided, however, Construction Manager must enumerate and justify to the City's satisfaction any such claimed incidental expenses; and provided, further, that without in any way limiting the City's right to challenge any individual costs claimed by Construction Manager, incidental costs shall **not** include:
- 5.4.6.5.1 Payroll costs and other compensation of Construction Manager'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 Construction Manager whether at the site or in Construction Manager's principal or a branch office for general administration of the Work unless specifically agreed to by the City - all of which are to be considered administrative costs covered by the Construction Manager's overhead and profit.
 - 5.4.6.5.2 Expenses of Construction Manager's principal and branch offices other than Construction Manager's office at the site.
 - 5.4.6.5.3 Any part of Construction Manager's capital expenses, including interest on Construction Manager's capital employed for the Work and charges against Construction Manager for delinquent payments.
 - 5.4.6.5.4 Costs due to the negligence of Construction Manager, 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 the 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 Construction Manager 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 Construction Manager's part to notify surety(ies).

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

6.1 Cost of Work Items

Cost of Work items shall be at rates set forth in this Article, or, if not specifically set forth in this Article, 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.

6.1.1 Labor Costs

- 6.1.1.1 Wages of construction workers directly employed by the Construction Manager 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 Construction Manager's supervisory and administrative personnel, including staffing and support cost of Project Administration, Construction Operations, Purchasing, Billings and Payables staff assigned to the Project, for that portion of their time attributable to the Work, at the Personnel Rates set forth in Exhibit B.
- 6.1.1.3 Wages and salaries of the Construction Manager'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 Construction Manager 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 Work under Sections 6.1.1.1 through 6.1.1.4.

6.1.2 Subcontract Costs

Payments made by the Construction Manager to Subcontractor in accordance with the requirements of the subcontracts or to a consultant in accordance with the requirements of the consulting agreement.

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 Construction Manager; 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 Construction Manager at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager.

Cost for items previously used by the Construction Manager 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 Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates of Construction Manager-owned equipment shall be subject to Construction Manager's rate schedule, which shall be made available to the City prior to the start of construction. Such rates shall not exceed ninety percent (90%) of the local market rate of any comparable item.
 - 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 Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work shall be subject to the City's prior approval.
- 6.1.5 Miscellaneous Costs
- 6.1.5.1 Amounts for (1) Construction Manager's insurance coverage program, including but not limited to, General Liability insurance and other insurance at the rate of eighty five hundredths percent (0.85%) of the Contract Sum; (2) Construction Manager's Payment, Performance, and Maintenance Bonds at the rate of one percent (1%) of the Contract Sum, if required; and (3) Premiums for Builders' Risk insurance and deductibles incurred for Builder's Risk claims, if applicable.
 - 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 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the City set forth in this Agreement.
 - 6.1.5.5 Legal costs, other than those arising from disputes between the City and the Construction Manager, reasonably incurred by the Construction Manager 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 Work shall also include costs which are incurred by the Construction Manager:

- 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 Construction Manager or the Construction Manager'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 Construction Manager or the Construction Manager'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 Construction Manager from insurance, Subcontractors or suppliers.

6.2 Costs Not To Be Reimbursed

6.2.1 The Cost of Work shall not include:

- 6.2.1.1 Salaries, expenses, and other compensation of the Construction Manager's personnel stationed at the Construction Manager'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 Construction Manager'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 Construction Manager's capital expenses, including interest on the Construction Manager'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 Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to the City set forth in this Agreement.
- 6.2.1.7 Costs incurred in the performance of 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 Construction Manager shall accrue to the City if before making payment the Construction Manager included them in an Application for Payment and received payment therefore from the City otherwise cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the City (other than those from Construction Manager's related parties with respect to insurance and bonds), and the Construction Manager 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 the Work.

6.4 Accounting Records

The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement; the accounting and control systems shall be satisfactory to the City. The City and the City's accountants shall be afforded access to the Construction Manager's records, books,

correspondence, instructions, Drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to this Project, and the Construction Manager 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 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

7.1 Payments

- 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and certificates for payment issued by the Architect, the City shall make payments on account of the Agreement sum to the Construction Manager 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 the City and Construction Manager.
- 7.1.3 Construction Manager shall provide one Application for Payment for each monthly pay cycle for the Project.
- 7.1.4 Before the first Application for Payment, the Construction Manager shall submit to the Architect and 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 Architect and the City may require. This schedule, unless objected to by the Architect or the City, shall be used only as a basis for the Construction Manager's Applications for Payment and does not constitute approval by the Architect or the City of the method or performance by the Construction Manager.
- 7.1.5 Payment will be made to Construction Manager monthly from funds available on the basis of a duly certified estimate of the value of all labor and materials delivered on the site and accepted by the Architect and the City during the preceding month, calculated in proportion to the GMP, but to ensure the proper performance of the Agreement, five percent (5%) of the amount of each estimate will be retained until Substantial Completion and acceptance of Work covered by this Agreement.
- 7.1.6 Each payment made to the Construction Manager shall be on account of the total amount payable to the Construction Manager 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 Construction Manager 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 Architect or the City, all calculated in proportion to the GMP.
- 7.1.7 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.
- 7.1.8 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.

- 7.1.9 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 Construction Manager furnish the City with written acknowledgments by all Subcontractors 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 Construction Manager for such Work or labor done or materials furnished by them to the extent covered by payments previously made by the City. Construction Manager's failure to furnish said list or to include all such Subcontractors and vendors shall not relieve Construction Manager or its surety of any obligation assumed under this Agreement, nor shall the City's request for such list create any obligation on the City's part to verify accuracy. The City may require, at its option, lien waivers on mutually acceptable forms supplied by the City or Construction Manager.
- 7.1.10 The Construction Manager 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 Architect and the City for approval. Applications for Payment shall reflect any such credits, and the Cost of the Work 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 Construction Manager's expense.
- 7.1.11 The acceptance by the Construction Manager of final payment shall be and shall operate as a release to the City of all claims and all liability to the Construction Manager other than written claims in stated amounts as may be specifically excepted by the Construction Manager for all things done or furnished in connection with this Agreement and for every act and neglect of the City relating to or arising out of this Agreement. Any payment, however, final or otherwise, shall not release the Construction Manager or its sureties from any obligations under the Contract Documents, the bonds, or insurance coverages.
- 7.2 Payments Withheld
The 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 the City from any loss including loss on account of:
 - 7.2.1 incomplete Work or Defective Work not remedied;
 - 7.2.2 a reasonable doubt that the Work can be completed for the balance of the GMP then unpaid;
 - 7.2.3 damage to the City; or
 - 7.2.4 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, the City with the assistance of the Architect will promptly make such inspection. Upon receipt from the Architect of the Final Certificate for Payment, the City will process the final payment. The Architect's Final Certificate for Payment will constitute a further representation that conditions listed in Section 7.3.2, below, as precedent to the Construction Manager's being entitled to final payment have been fulfilled.
 - 7.3.2 Final payment shall not become due until the Construction Manager submits to the Architect and the City (1) 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 the City) have been paid or otherwise satisfied or will be paid out of the proceeds of the final payment, (2) 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, (3) a written agreement that the Construction Manager knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety to final payment and (5) 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 Agreement, 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 Construction Manager 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 Construction Manager 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. Within 30 days of Contractor's receipt of final payment from the City, Contractor shall provide the City with unconditional final lien waivers from each of Contractor's Subcontractors.

- 7.3.3 If after Substantial Completion of the Work, final completion is materially delayed through no fault of the Construction Manager or by issuance of Change Orders affecting final completion, and the Architect and the City so confirms, the City shall, upon application by the Construction Manager and certification by the Architect, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully 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 Construction Manager to the Architect and 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 Agreement and unsettled;
 - 7.3.3.2 failure of the Work to comply with the requirements of the Contract Documents;
 - or
 - 7.3.3.3 terms of special warranties required by the Contract Documents.
- 7.3.4 Acceptance of final payment by the Construction Manager, 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 GENERAL CONDITIONS

8.1 Extent of Contract

This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated Agreement between the City and the Construction Manager 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 Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

8.2 Assignment

The City and Construction Manager 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 Contract shall assign the Contract 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 Contract.

8.3 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) to be submitted with Change Order No. 1.

8.4 Non-Discrimination, Affirmative Action, and Sexual Harassment

8.4.1 The Construction Manager agrees that:

8.4.1.1 The Construction Manager 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 Agreement because of race, religion, color, sex, disability, national origin, ancestry or age;

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

8.4.1.3 If the Construction Manager fails to comply with the manner in which the Construction Manager reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Construction Manager shall be deemed to have breached the present Agreement and it may be cancelled, terminated or suspended, in whole or in part, by the City;

8.4.1.4 If the Construction Manager 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 Construction Manager shall be deemed to have breached the present Agreement and it may be cancelled, terminated or suspended, in whole or in part, by the City; and

8.4.1.5 The Construction Manager shall include the provisions of Subsections 8.4.1.1 through 8.4.1.4 in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.

8.4.2 The provisions of this Section shall not apply to a contract entered into by a Construction Manager: (1) who employs fewer than four (4) employees during the term of such contract; or (2) whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.

8.4.3 The Construction Manager 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.

8.5 Insurance

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

8.6 Notice of Claim Reduction of Policy Limits

The Construction Manager, 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 Construction Manager 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 Construction Manager’s limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Construction Manager shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

8.7 Minimum Requirements Commercial General Liability Policy Limits –

General Aggregate:	\$4,000,000
Products / Completed Operations Aggregate:	\$4,000,000
Personal & Advertising Injury:	\$1,000,000
Each Occurrence:	\$2,000,000

Policy MUST include the following conditions:

- 8.7.1 Commercial General Form
- 8.7.2 Explosion, Collapse & Underground
- 8.7.3 Broad Form Contractual / Contractually Assumed Liability
- 8.7.4 Independent Construction Managers
- 8.7.5 Broad Form Property Damage
- 8.7.6 Not Used

8.7.7 NAME CITY OF OVERLAND PARK AS “ADDITIONAL INSURED”

8.8 Automobile Liability

Policy shall protect the Construction Manager 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”

8.9 Umbrella Liability

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

Limits –	
Each Occurrence	\$5,000,000
General Aggregate	\$5,000,000

8.10 Workers' Compensation

This insurance shall protect the Construction Manager against all claims under applicable state workers' compensation laws. The Construction Manager 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

8.11 Not used.

8.12 Industry Ratings

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

- 8.12.1 is licensed to do business in the State of Kansas;
- 8.12.2 carries a Best's policy holder rating of A- or better; and
- 8.12.3 carries at least a Class VIII financial rating, or
- 8.12.4 is a company mutually agreed upon by the City and Construction Manager.

8.13 Subcontractor's Insurance

If a part of the Agreement is to be sublet, the Construction Manager shall either:

- 8.13.1 cover all Subcontractor's in its insurance policies, or
- 8.13.2 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.

8.14 Construction Manager Property Insurance ("Builder's Risk", to be submitted with Change Order No. 1)

8.14.1 Unless otherwise provided in the Contract Documents, Construction Manager 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 Construction Manager shall include as additional insured's the interests of the City, Construction Manager, 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 Construction Manager's Application for Payment and approved by the City. All deductibles are the responsibility of the Construction Manager.

8.14.2 Not used.

8.14.3 Prior to commencing any Work, Construction Manager shall provide the City with

certificates evidencing that (1) all Construction Manager's insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Construction Manager has completed all of the Work and has received final payment from the City and (2) no insurance coverage will be canceled unless at least thirty (30) days prior written notice is given to the City via e-mail. Construction Manager's property insurance shall not lapse or be canceled if the City occupies a portion of the Work. Construction Manager shall provide the City with the necessary endorsements from the insurance company prior to occupying a portion of the Work.

8.14.4 Any loss covered under Construction Manager's property insurance shall be adjusted by Construction Manager and made payable to the Construction Manager as trustee for the insureds as their interests may appear. All insurance proceeds received as a result of any loss will be distributed by Construction Manager.

8.14.5 The City and Construction Manager waive against each other and the City's separate Construction Managers, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein or other property insurance of the City applicable to property at or adjacent to the Project site, except such rights as they may have to the proceeds of such insurance. Construction Manager and the City shall, where appropriate, require similar waivers of subrogation from the City's separate Construction Managers, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts.

8.15 Bonds and Other Performance Security

Construction Manager shall provide a Performance Bond, Maintenance Bond and a Statutory Bond or Labor and Material Payment Bond (forms attached) to be submitted with Change Order No. 1, in the amount of one hundred percent (100%) of the Agreement price to cover the entire scope of Work including planning, Value Engineering, 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.

8.16 Indemnity

8.16.1 Definitions

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

8.16.1.1 "Construction Manager" means and includes Construction Manager, its Subcontractors and materialmen and their respective servants, agents and employees.

8.16.1.2 "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 property (other than the Work itself) 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.

8.16.2 The Indemnity

8.16.2.1 For purposes of this Agreement, and without in any way limiting indemnification obligations that may be set forth elsewhere in the Contract Documents, Construction Manager hereby agrees to indemnify, defend and hold harmless the City from any and all Loss but only to the extent such Loss is caused or incurred or alleged to be caused or incurred as a result of the negligence, recklessness, or intentional tortious conduct of the Construction Manager, its employees, agents, subcontractors, and suppliers.

8.16.2.2 It is agreed as a specific element of consideration of this Agreement that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party and, further, notwithstanding any theory of law including, but not limited to, a characterization of the City's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature.

8.16.3 General Limitation

Nothing in this Section shall be deemed to impose liability on the Construction Manager to indemnify the City for Loss to the extent the City's negligence or other actionable fault is the cause of such Loss.

8.16.4 Not used.

8.17 Contract Documents/Agreement for Construction

8.17.1 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.

8.17.2 If there is any conflict or discrepancy between the Agreement between the City and the Construction Manager and any other of the Contract Documents, the Agreement between the City and Construction Manager 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.

8.17.3 The Contract Documents as enumerated herein form the Agreement for construction. 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.

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

8.18 Defects in the Contract Documents

If Construction Manager knows 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, Construction Manager shall notify the Architect in writing of such Defects. The Contract Documents shall be appended to all agreements between the Construction Manager and any Subcontractor or any more remote tier Subcontractor, and such Subcontractors and remote tier Subcontractors shall, likewise,

notify the Construction Manager in writing of any Defects therein. The Construction Manager will not be permitted to take advantage of any such Defect.

8.19 Copies of the Agreement

Unless otherwise provided in the Contract Documents, the Construction Manager shall be furnished, a maximum of five (5) copies of the Contract Documents, Drawings and Specifications as are reasonably necessary for execution of the Work. Construction Manager shall keep at the Project site and make available to the City and Architect, one copy of all Contract Documents for the Work, in good order and legibly marked to reflect actual construction. Construction Manager 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 the City. Contract Documents are the property of the City, and none of the Contract Documents are to be used on other work by Construction Manager. At the City's request, all Contract Documents shall be returned to the City with the exceptions of one record set for Construction Manager. All models and calculations are the property of the City.

8.20 Scope, Nature and Intent of Drawings and Specifications

8.20.1 The Drawings and Specifications are intended to complement, but not necessarily duplicate each other. Together they shall constitute one complete set of the Drawings and Specifications, and any Work exhibited in one but not the other shall be executed just as if it had been set forth in both in order that the Work shall be completed according to the complete design or designs as decided and determined by the Architect and/or the City.

8.20.2 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 Construction Manager to secure in written instructions from the Architect and the City before proceeding with the construction affected by such omissions, discrepancies or silence. Construction Manager's failure to bring any such matter to the attention of the Architect and the City shall be at the Construction Manager's peril, and there shall be no compensation for extra work necessitated thereby.

8.20.3 It is recognized that the Construction Manager's review is made in the Construction Managers capacity as a contractor and not as a licensed design professional. The Construction Manager is not required to ascertain that the Contract Documents are in accordance with Applicable Laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Construction Manager shall be reported promptly to the Architect and the City. If Construction Manager believes that additional cost or time is involved because of clarifications or instructions issued by the Architect and the City in response to the Construction Manager's notice or requests for information the Construction Manager may request a Change Order. The Construction Manager shall not be liable to the City or Architect for damages resulting from errors, inconsistencies, or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Construction Manager recognized such error, inconsistency, omissions, or differences and knowingly failed to report it to the Architect and the City.

8.20.4 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 Architect and the City. Construction Manager 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.

- 8.20.5 All Work performed under this Contract shall be done to the lines, grades, and elevations shown on the Drawings. The Construction Manager shall keep the Architect and 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 Architect, the City, and Construction Manager. 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 Construction Manager's cost and expense.
- 8.20.6 Construction Manager, together with its Subcontractors, shall carefully examine the Drawings and Specifications for any interference with the Work and clearances that may be required. Construction Manager shall be responsible for the proper fitting of materials and equipment without substantial alterations. If departures from the Drawings and Specifications, or other Contract Documents, are deemed necessary by Construction Manager, details of such discrepancies and reasons therefore shall be submitted to Architect and the City, with Drawings (if Architect and the City determine that Drawings are necessary), for approval as soon as practical. No such departure shall be made except at the peril of the Construction Manager without the prior written approval of the Architect and the City.

8.21 Shop Drawings

- 8.21.1 Construction Manager shall review, and submit, with such promptness as to cause no delay in its own Work or in that of any Subcontractor or other contractor, three (3) copies of all shop, fabrication, assembly, foundation and other drawings and schedules required by the Specifications, including, but not limited to: (1) drawings of equipment and devices offered by the Construction Manager for approval of the Architect and the City in sufficient detail to adequately show the construction and operation thereof; (2) drawings showing essential details of any change in design of construction proposed, for consideration by the Architect and the City by the Construction Manager in lieu of the design or arrangement required by the Contract Documents, or any item of extra Work there under; (3) all required wiring and piping layouts; and (4) structural and reinforcing fabrication drawings. All submittals, regardless of origin, shall be stamped by the Construction Manager and identified with the name and number of this Contract; Construction Manager's name and references to applicable Drawings and Specification paragraphs. Each submittal shall indicate the intended use of the item in the Work. Construction Manager's stamp is representation to the Architect and the City, that the Construction Manager 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 Construction Manager's letter of transmittal. Such submittals shall, as pertinent to the deviation, indicate essential details of all changes proposed by Construction Manager (including modifications to other facilities that may be a result of each deviation).

8.21.2 The Architect and 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 Construction Manager is not relieved of responsibility for any deviation from the requirements of the Contract Documents by the Architect's and the City's approval of the Shop Drawings, product data, or samples. The Construction Manager is not relieved from responsibility for errors or omissions in Shop Drawings by the Architect's and the City's review thereof. The Architect and the City shall respond to, accept or reject such submissions within a reasonable time after receipt thereof. Construction Manager shall make such revisions as deemed necessary. On final acceptance, the Architect and 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 Construction Manager or its Subcontractors be purchased, until the drawing or drawings therefore have been approved as stipulated, except at the Construction Manager's own risk and responsibility.

8.22 Construction Manager's Responsibilities as to Ambiguities

If there is any ambiguity in the Architect's Drawings or instruction, Construction Manager shall ask the Architect for clarification. Upon written request of Construction Manager, the Architect shall furnish, with reasonable promptness, additional instructions by means of Drawings, Specifications, or other information necessary for the proper execution of the Work. The Work shall be executed in conformity therewith, and, in accordance with Section 8.18, Construction Manager shall do no Work without proper instructions except at its peril. Nothing herein to the contrary shall affect Construction Manager's responsibilities with regard to defects as set forth in Section 8.18.

8.23 Concealed Conditions

Construction Manager 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 Agreement, 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 Construction Manager cannot agree on an adjustment in the contract sum or contract time, the Parties will follow the process outlined in Section 8.47 for Dispute Resolution.

8.24 Permits, Fees, and Notices

8.24.1 Unless otherwise provided in the Contract Documents, the Construction Manager 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.

8.24.2 If Construction Manager performs Work knowing it is contrary to Applicable Laws without

providing notice to the Architect and the City, the Construction Manager shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

- 8.24.3 Construction Manager 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.
- 8.24.4 Construction Manager 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.
- 8.25 General Administration of the Contract
The Construction Manager shall supervise and direct the Work, using the Construction Manager's best skill and attention.
 - 8.25.1 Unless otherwise stipulated, Construction Manager 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.
 - 8.25.2 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. Construction Manager shall, if required, furnish satisfactory evidence as to the kind and quality of the Work.
 - 8.25.3 The Construction Manager 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 Construction Manager, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.
 - 8.25.4 The Construction Manager shall, in addition to the schedule required by Section 8.48, give to the Architect 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 Construction Manager's plant or equipment or any of its methods of executing the Work, appear to the Architect to be unsafe, inefficient or inadequate to ensure the required quality or rate of progress of Work, the Architect may order the Construction Manager to increase or improve its facilities or methods, and the Construction Manager shall promptly comply with such orders; but neither compliance with such orders nor failure of the Architect to issue such orders shall relieve the Construction Manager from its obligation to secure the degree of safety, the quality of Work and the rate of progress required by the Agreement.
 - 8.25.5 The approval by the Architect of any plan, schedule, or method of Work proposed by the Construction Manager shall not relieve the Construction Manager of any responsibility therefore, and such approval shall not be considered as an assumption by the City, or any officer, agent or employee thereof, of any risk or liability, and the Construction Manager shall have no claim under this Agreement on account of the failure or inefficiency of any plan or method so approved. Such approval shall be considered and shall mean that the Architect has no objection to the Construction Manager's use or adoption at the Construction Manager's own risk and responsibility, of the plan or method so proposed by the Construction Manager.

- 8.25.6 Any plan or method of Work suggested by the Architect or the City, to the Construction Manager, but not specified or required, if adopted or followed by the Construction Manager in whole or in part, shall be used at the risk and responsibility of the Construction Manager, and the Architect and the City will assume no responsibility therefore.
- 8.25.7 Construction Manager shall be responsible to the City for acts and omissions of the Construction Manager's employees, Subcontractors, and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Construction Manager of any of its Subcontractors.
- 8.25.8 The Construction Manager shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.
- 8.26 Construction Manager's Employees
- 8.26.1 Construction Manager 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.
- 8.26.2 Construction Manager 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.
- 8.27 Samples
Construction Manager shall furnish, for approval, samples if directed by the Architect or the Contract Documents. The Work shall be in accordance with approved samples.
- 8.28 Protection of Work and Property
- 8.28.1 Construction Manager 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, the City's property and adjacent property.
- 8.28.2 Construction Manager shall comply with any and all instructions from the Architect 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".
- 8.28.3 Construction Manager 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 Architect by Construction Manager.
- 8.28.4 In an emergency affecting the safety of life, the Work, the City's property or of adjoining property, Construction Manager, without special instruction or authorization from the Architect, is hereby permitted to act, at its discretion, to prevent such threatened injury or

loss. Any compensation claimed by Construction Manager on account of emergency Work shall be determined by mutual agreement of the City and Construction Manager.

8.28.5 Construction Manager 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. Construction Manager shall be fully responsible for the contents of and procedures outlined in said plan, including deficiencies therein, whether or not the City shall have reviewed said plan.

8.28.6 Not used.

8.29 Protection of Property/Liability

8.29.1 Without in any manner limiting Construction Manager's responsibilities as provided elsewhere in the Contract Documents, the Construction Manager 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 Construction Manager will be held responsible for all accidents to persons or property resulting from the negligent, reckless, or intentional tortious acts of Construction Manager or its employees.

8.29.2 The Construction Manager 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.

8.29.3 The Construction Manager shall satisfactorily shore, support, and protect any and all structures and all pipes, sewers, drains, conduits, and other facilities.

8.30 Tests and Inspections

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

8.30.2 Not used.

8.30.3 Architect and the City reserve the right to inspect any and all Work before it is covered up; and, accordingly, Construction Manager must notify Architect and the City before covering any Work which the City has specifically requested to inspect. Architect and the City shall be given a reasonable time to make its inspection. Construction Manager shall not cover such Work prior to Architect and the City having a reasonable time to inspect. If Work to be covered does not conform to the Contract Documents, Architect and the City can withhold its consent to covering up Work until such Work is made to conform at Construction Manager's expense.

- 8.30.4 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, Construction Manager shall, if requested by Architect or the City, uncover such work and at Construction Manager'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.
- 8.30.5 If any labor, supplies, materials or equipment are found not to be in accordance with the Contract Documents, Construction Manager 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.
- 8.30.6 The City, the Architect 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 Construction Manager or by any of its employees shall be sufficient reason, if the City so desires, to terminate the contract.
- 8.30.7 Any inspection, by whosoever conducted, shall not relieve the Construction Manager 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 Construction Manager at its own expense.
- 8.31 Superintendence and Supervision
- 8.31.1 Construction Manager 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 Architect and the City. The superintendent shall not be changed except with the consent of the Architect and the City unless the superintendent proves to be unsatisfactory to the Construction Manager and/or ceases to be in its employ; provided however, that the Architect and the City retain the right to require that the Construction Manager replace the superintendent at any time, such right not to be arbitrarily exercised.
- 8.31.2 The superintendent shall be fully authorized to act for the Construction Manager and receive whatever orders as may be given for the proper prosecution of the Work or notices in connection therewith.
- 8.31.3 Use of Subcontractors on portions of the Work shall not relieve the Construction Manager of its obligation to have a competent superintendent directly employed by the Construction Manager on the Work at all times.
- 8.32 Construction Manager's Office at Site of Work
During the performance of this Agreement, the Construction Manager 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 Architect, and any such communication given to said superintendent or delivered at the Construction Manager's office at the site of Work in his/her absence shall be deemed to have been given to the Construction Manager.
- 8.33 Not used.
- 8.34 Patent Liability Clause

8.34.1 Construction Manager agrees to defend any claim, action or suit that may be brought against the City for infringement of any Letters Patent of the United States arising out of the performance of this Agreement or out of the use or disposal by or for the account of the City of supplies furnished or construction Work performed hereunder, and also to indemnify and hold harmless the City 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, provided the Construction Manager shall not be responsible for such defense, loss, or damages when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents.

8.34.2 It is understood that all royalties and fees for and in connection with patents for materials, articles, apparatus, devices or equipment used in or furnished for the Work shall be included in the GMP.

8.35 Independent Contractor

The right of general supervision of the City and/or the Architect shall not make the Construction Manager an agent of the City, and the liability of the Construction Manager for all damages to persons, firms, and corporations arising from the Construction Manager'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 Construction Manager herein is an independent contractor in respect to the Work.

8.36 Separate Contracts

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

8.36.2 If any part of Construction Manager's Work depends upon the Work of the City or others, Construction Manager shall inspect and promptly report to the 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.

8.37 Relations with other Contractors

8.37.1 The Construction Manager 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. Construction Manager 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 Construction Manager'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 Construction Manager and other contractors, or between the Construction Manager and the workers of the City or any other entity, in regard to their work, shall be adjusted and determined by the Architect and the City. If the Work of the Construction Manager is delayed or damaged because of any acts or omissions of any other contractor or contractors, over which the Construction Manager has no control and which is not a result of the Construction

Manager'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.

- 8.37.2 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 Architect and the City shall decide which Contractor or Construction Manager 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.
- 8.37.3 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 Architect and the City to the Contractor or Construction Manager so desiring to the extent which may be reasonably necessary.
- 8.37.4 In the event that Construction Manager is performing Work at a site or on a project involving the City and one or more other private or governmental entities, which have their own contractors on site as well, Construction Manager shall advise Architect and the City when it anticipates there may be interference with the Construction Manager's Work or with the Work of any other contractor. Architect and the City shall, to the best of its ability, with input from Construction Manager 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 Construction Manager experiences a delay or damage to Construction Manager'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.
- 8.38 Provision for Emergencies
Whenever, in the opinion of the Architect and the City, the Construction Manager 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 Architect and 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 Architect and the City, with or without notice to the Construction Manager, shall provide suitable protection to the said interests by causing such work to be done and materials to be furnished at places as the Architect and the City may consider necessary and adequate. The cost and expense of such work and material so furnished shall be borne by the Construction Manager 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 Construction Manager. The performance of such emergency work shall in no way relieve the Construction Manager of responsibility for damages which may occur during or after such precaution has been duly taken.
- 8.39 Assignment and Subletting of Contract
- 8.39.1 In case the Construction Manager 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 Contractor 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 Contractor by the City until such time as the Contractor 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.

- 8.39.2 Should any Subcontractor fail to perform in a satisfactory manner, the Work undertaken by such Subcontractor shall be immediately terminated by the Construction Manager. The Construction Manager 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 Construction Manager 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 Construction Manager shall not make any substitution for any Subcontractor accepted by the City unless the City so agrees in writing.
- 8.39.3 The Construction Manager shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Construction Manager by the terms of the Contract Documents insofar as applicable to the Work of the Subcontractor and to give the Construction Manager the same power to terminate any subcontract as the City has to terminate the Construction Manager under any provisions of the Contract Documents.
- 8.39.4 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.
- 8.39.5 Prior to the City's approval of the GMP the Construction Manager 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.
- 8.39.6 The Construction Manager 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 delay damages.
- 8.40 Authority and Duty of the Architect
Unless the City acts as its own Architect, the Architect is an independent contractor. It is mutually agreed between the parties to the Agreement that the Architect shall observe and inspect all Work included herein (provided, however, that any such observations and inspections shall not alter the rights, responsibilities and obligations of the parties). Anything in the Contract Documents to the contrary notwithstanding, in order to prevent delays and disputes and to discourage litigation, it is further agreed by and between the parties of this Agreement that the Architect shall in all cases determine the amount and quantities of the several kinds of Work which are to be paid for under this Agreement; that Architect shall determine all questions relating to the plans and Specifications for the Project; that Architect shall issue promptly any written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) which Architect may determine are necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents; that Architect's decisions and findings shall be a condition precedent to the right of the Construction Manager to submit

any disputed matter and to any rights of the Construction Manager to receive any money under this Agreement; provided, however, that should the Architect render any decision or give any direction which, in the opinion of either party hereto, is not in accordance with the meaning and intent of this Agreement, either party may file with the other, within twenty (20) days a written objection to the decision or direction so rendered and, by such action, may reserve the right to submit the question so raised as herein provided, except as otherwise provided in Section 8.47. It is the intent of the Agreement that there shall be no delay in the execution of the Work, and the decisions or directions of the Architect as rendered shall be promptly carried out.

8.41 Substantial Completion

8.41.1 When Construction Manager considers the Work, or a portion thereof which the City agrees to accept separately, is Substantially Complete, the Construction Manager shall prepare and submit to the Architect and 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 Construction Manager to complete all Work in accordance with the Contract Documents.

8.41.2 Upon receipt of the Construction Manager's list, the Architect and the City will make an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If the Architect and the City's inspection discloses any item, whether or not included on the Construction Manager's list, which is not sufficiently complete in accordance with the Contract Documents so the City can occupy or utilize the Work or designated portion thereof for its intended use, the Construction Manager shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect and the City. In such case, the Construction Manager shall then submit a request for another inspection by the Architect and the City to determine Substantial Completion.

8.41.3 When the Work or designated portion thereof is Substantially Complete, the Architect 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.

8.41.4 The Certificate of Substantial Completion shall be submitted to the City and Construction Manager 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.

8.42 Liquidated Damages

8.42.1 It is mutually understood and agreed by and between the parties to this Agreement that time is of the essence of this Agreement, and that in the event that the Construction Manager 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 Construction Manager shall pay to the City, as stipulated liquidated damages and not as a penalty, the sum stipulated herein for each and every day that the Construction Manager shall be in default.

8.42.2 In the case of joint responsibility for any delay in the Substantial 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 Substantial 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.

8.42.3 In case of failure on the part of the Construction Manager to effect completion within the time specified, the City shall have the right to deduct from the total compensation otherwise due the Construction Manager 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>Agreement 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.)**

8.43 Partial Occupancy or Use

8.43.1 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 Construction Manager, 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 Construction Manager 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 Construction Manager considers a portion Substantially Complete, the Construction Manager shall prepare and submit a list to the Architect and the City, per Section 8.40. Consent of the Construction Manager 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 Construction Manager or, if no such agreement is reached, by authority having jurisdiction.

- 8.43.2 Immediately prior to such partial occupancy or use, the City, Construction Manager, and Architect 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.
- 8.43.3 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.
- 8.44 Correction of Labor, etc. – Before or After Substantial Completion
At Architect and/or the City's request, Construction Manager shall, at Construction Manager's expense, promptly remove from the job site all labor, supplies, materials, equipment and/or other facilities condemned by Architect and the City as not in accordance with the Contract Documents, whether incorporated or not; and the Construction Manager shall, at Construction Manager's expense, promptly replace and re-execute all labor, supplies, materials, equipment and/or other facilities in accordance therewith and, at Construction Manager's expense, restore all work of other contractors and Subcontractors destroyed or damaged as a result of such removal, replacement and re-execution.
- 8.45 Correction of Labor, etc. – After Substantial Completion
- 8.45.1 Construction Manager guarantees to the 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 Construction Manager, Construction Manager shall promptly execute same in writing and shall promptly deliver same to the City.
- 8.45.2 Construction Manager 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 full (2) years from the date of Substantial Completion and shall promptly deliver same to the 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, Construction Manager shall promptly procure same in writing from the appropriate Subcontractor and shall promptly deliver same to the City.
- 8.45.3 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 Construction Manager 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 the City.
- 8.45.4 The furnishing of guarantees by Subcontractors and materialmen shall not relieve Construction Manager of its obligations under guarantees required of Contractor under the Contract Documents. In addition to the above guarantees, Construction Manager shall (1) obtain and assign to the City all available manufacturers and suppliers warranties; and (2) at the City's sole option, assign to the City any rights Construction Manager may have against any Subcontractor and/or supplier for Defective Work, materials or equipment.
- 8.45.5 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.

- 8.45.6 Neither the issuance of the Final Certificate for payment nor any provision in the Contract Documents shall relieve the Construction Manager of responsibility for Work determined by the 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 the City to be defective or not in conformance with the Contract Documents then, at the City's request, Construction Manager shall, at Construction Manager'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 Construction Manager shall, at Construction Manager's expense, promptly replace and re-execute all Work in accordance therewith and, at Construction Manager's expense, restore all Subcontractors' work and work of other contractors and Subcontractors damaged as a result of such removal, replacement and re-execution. The City shall with reasonable promptness give notice of any Work condemned by the City as not in accordance with the Contract Documents. If, within ten (10) days after the mailing of such notice, the Construction Manager shall fail or neglect to make, or undertake to make, with due diligence any required repairs or corrections, the City shall make such repairs at Construction Manager's expense; provided, however, that, in case of an emergency which, in the judgment of the City, would cause serious loss, hazard or damage if not corrected immediately, such repairs may be made without prior notice being sent to the Construction Manager, and Construction Manager shall nevertheless be liable to the City for the cost thereof.
- 8.46 **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.
- 8.47 **Dispute Resolution**
The City and Construction Manager 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, and provided the City has made payment of amounts not in dispute in accordance with the Contract Documents, Construction Manager 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.
- 8.48 **Beginning, Progress, and Time of Completion of Work**
Construction Manager 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 Agreement; and the rate of progress shall be such that the Work shall have been completed in accordance with the terms of the Agreement 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 Construction Manager shall furnish the Architect and 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.
- 8.49 **Construction Schedules**

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

8.49.1 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.

8.49.2 Schedule Requirements

8.49.2.1 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.

8.49.2.2 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.

8.49.2.3 Construction Manager 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 Agreement. Allow five (5) days for the City to review. Construction Manager shall submit the schedule of submittal activities extracted from the master schedule within ten (10) days after receipt of Notice to Proceed. During the preparation period, Construction Manager shall review this information with the City.

8.49.2.4 Submittals to the City of initial and monthly CPM schedule charts shall include three (3) sets of all reports as outlined below. Plots shall be color, blueline, printed or photocopied prints and, if segmentally generated, fully assembled. Highlight the critical path when the critical path is not clearly defined.

8.49.2.5 The Construction Manager will participate in the City'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. Construction Manager and major Subcontractors shall review the network CPM schedule before final submittal.

8.49.3 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:

8.49.3.1 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.

8.49.3.2 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:

8.49.3.3 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.

8.49.3.4 On each page include a title block containing at a minimum the following information:

- a. Project Title
- b. Project Number
- c. Contractor's Business Name
- d. 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)
- e. Submit a separate Legend Page of Symbols and Abbreviations as applicable.

8.49.3.5 Prepare and submit to the City upon request additional charts, reports, and current copy on disk of Project program.

8.49.4 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 Construction Manager or to the City Engineer, and may be utilized by both parties.

8.49.5 Schedule Changes and Updates

8.49.5.1 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. Monthly submittal of the CPM schedule and approval by the City 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'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.

8.49.5.2 Once the CPM schedule is submitted and approved, the City shall identify any modifications to activity durations, logic, values, or descriptions required to resubmit for approval. Such adjustments shall not impact the contracted completion date. Requests for time extensions are addressed in Article 5 Compensation for Construction Phase Services Section 5.4 Change Orders.

8.50 Delays and Extensions of Time

8.50.1 If Construction Manager shall be delayed at any time in the progress of the Work by an act or omission of the City or by any separate contractor employed by the City and over which Construction Manager has no control and which is not a result of the Construction Manager's acts or the acts of any of its employees, Subcontractor or suppliers, negligent or otherwise, then the time of completion shall be extended for such reasonable time as the Architect and the City shall decide and the Contract Sum shall be increased for Construction Manager's costs resulting from such delay.

8.50.2 No such extension or increase in the Contract Sum shall be made for delay unless Construction Manager provides written notice to Architect and 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.

8.50.3 In executing the Agreement, the Construction Manager 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 hindrances and delays incident to such Work, provided that Contractor may seek an extension of the Contract Time if it is delayed in the commencement or progress of the Work by an act or neglect of the Owner or any entity for which Owner is responsible, changes ordered in the Work, labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond Contractor's control. No charge shall be made by the Construction Manager for hindrances or delays from any cause during the progress of the Work, or any portion thereof, included in this Agreement, except as provided in Sections 8.50.1 and 8.50.4.

8.50.4 The Construction Manager shall delay or suspend the progress of the Work or any part thereof, whenever it shall be so required by written order of the Architect or the City, and for such periods of time as the Architect or 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 Architect or the City shall not otherwise modify or invalidate in any way, any of the provisions of this Agreement. In the event that the Work shall be stopped by order of the Architect or the City, through no fault of the Construction Manager, its employees, Subcontractors or

suppliers, any incidental expenses which, in the opinion and judgment of the Architect and the City, are caused thereby shall be paid by the City to the Construction Manager.

8.51 Termination

- 8.51.1 Without in any manner limiting the right of the City to terminate the Agreement or declare the Construction Manager 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 Construction Manager; or if this Agreement shall be assigned by Construction Manager otherwise than as herein provided; or if the Construction Manager 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 Construction Manager or any of its property; or if at any time the Architect shall certify in writing to the City that the performance of the Work under this Agreement is being unnecessarily delayed, that the Construction Manager 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, serve written notice upon the Construction Manager and its surety of the City's intention to terminate this Agreement and, unless within five (5) days after the serving of such notice upon the Construction Manager, 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 Construction Manager, 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 Construction Manager, and the Construction Manager 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 Construction Manager's services have been so terminated, such termination shall not affect any rights or remedies of the City against Construction Manager then existing or which may later accrue. Similarly, any retention or payment of monies due Construction Manager shall not release Construction Manager from liability in excess of the amounts retained by the City.
- 8.51.2 The City reserves the right, in its sole discretion and for its convenience and without cause or default on the part of Construction Manager, to terminate this Agreement in whole or in part by providing written notice of such termination to Construction Manager. Upon receipt of such notice from the City, Construction Manager shall: (1) immediately cease all Work; or (2) meet with the City and, subject to the City's approval, determine what Work shall be required of Construction Manager in order to bring the Project to a reasonable termination in accordance with the request of the City.
- 8.51.3 If the City shall terminate for its convenience as herein provided, the City shall compensate Construction Manager for all purchased materials and actual Cost of Work satisfactorily completed to date of termination, the percentage of the Construction Manager's Fee that represents the percentage of the Cost of Work completed to date of termination, and costs incurred by Construction Manager by reason of such termination.

Any termination of the Agreement for alleged default by Construction Manager that is ultimately determined to be unjustified shall automatically be deemed a termination for convenience of the City.

8.51.4 No compensation paid to Construction Manager under this Section shall include anticipated profits or consequential damages, neither of which shall be allowed.

8.52 Use of Premises

8.52.1 Construction Manager shall confine its operations to limits indicated by law, ordinances, rules, regulations, permits of the City and directions of Architect or the City and shall not unreasonably encumber the premises and/or site.

8.52.2 Construction Manager 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.

8.52.3 Construction Manager shall comply with federal, state, and local laws ordinances, as well as any specific instructions regarding signs, advertisements, fires, and smoking from Architect and the City.

8.52.4 A laydown area or staging area will be provided at the site and shall be chosen by Architect and the City. Construction Manager shall furnish its own weather protection if required.

8.52.5 No City equipment will be taken out of service or put into service without approval of the City.

8.53 Allowances

Construction Manager agrees that the GMP includes all allowances required by the Contract Documents. Construction Manager 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.

8.54 Cutting, Patching, and Digging

Construction Manager 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. Construction Manager shall not endanger any property of the 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 the City. Construction Manager shall assume responsibility for the patching or repairs, by the proper trade, of damages caused by the Work under this Contract. Construction Manager shall comply with all local ordinances dealing with cutting, patching, and digging and shall obtain all necessary permits.

8.55 Cleaning Up

Construction Manager 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, the City may remove the rubbish and charge the cost to Construction Manager.

8.56 Temporary Facilities

- 8.56.1 Except where special permission has been granted by the City to use existing toilet facilities belonging to the City, Construction Manager shall provide and maintain sanitary temporary toilet facilities located where directed by Architect 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, Construction Manager shall remove the temporary toilet facilities from the City's premises and disinfect and fill any vaults. All temporary toilet facilities shall comply with this Section.
- 8.56.2 Construction Manager 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 Architect. Upon completion of Work or when requested by Architect, Construction Manager shall remove same from the City's premises and leave the area in a clean and orderly condition.
- 8.56.3 Construction Manager 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 Architect.
- 8.56.4 Unless otherwise specified in the Contract Documents, Construction Manager shall provide temporary power, wiring and lights from the City's provided source as may be required for its operations.

8.57 Sanitary Regulations and Water

The operations of the Construction Manager shall be in full conformity with all of the rules and regulations of boards and bodies having jurisdiction with respect to sanitation. The Construction Manager shall supply safe and sufficient drinking water to all of its employees. The Construction Manager 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.

8.58 Unfavorable Construction Conditions

During unfavorable weather, or other unfavorable conditions for construction operations, the Construction Manager 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 Architect, the Construction Manager shall be able to perform the Work in a proper and satisfactory manner.

8.59 Construction Manager's Risk

The Construction Manager 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 substantially completed and the City has issued a Certificate of Substantial Completion with respect to such Work.

8.60 Safety Precautions and Programs

The Construction Manager shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of this Agreement.

8.60.1 Safety of Persons and Property

- 8.60.1.1 The Construction Manager 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 Construction Manager or the Construction Manager'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.
- 8.60.1.2 The Construction Manager shall give notices and comply with Applicable Laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
- 8.60.1.3 The Construction Manager 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.
- 8.60.1.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Construction Manager shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.
- 8.60.1.5 The Construction Manager 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 8.60.1.1 B and C caused in whole or part by the Construction Manager, 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 Construction Manager is responsible under Section 8.60.1.1 B and C, except damage or loss attributable to acts or omissions of the City or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Construction Manager. The foregoing obligations of the Construction Manager are in addition to the Construction Manager's obligations under Section 8.16.
- 8.60.1.6 The Construction Manager shall designate a responsible member of the Construction Manager's organization at the site whose duty shall be the prevention of accidents. This person shall be the Construction Manager's superintendent unless otherwise designated by the Construction Manager in writing to the City and Architect.
- 8.60.1.7 The Construction Manager shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

8.60.2 Safety Program

8.60.2.1 Construction Manager is expected to establish and enforce a comprehensive safety program on this Project for the protection of its personnel, its Subcontractors' personnel, the City's employees and all other persons exposed to hazards resulting from Construction Manager's operations. As a minimum requirement, Construction Manager shall review and discuss the details of its program with Architect and 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.

8.60.2.2 Construction Manager is fully responsible for the safety program and any and all methods and procedures provided for therein whether or not the City or Architect shall have reviewed and/or accepted such program.

8.61 Weekends, Holiday, and Night Work

8.61.1 No Work shall be done between the hours of 6:00 p.m. and 8:00 a.m., or on weekends or the City designated 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.

8.61.2 Night Work may be established by the Construction Manager, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City.

8.62 Approval of Equals

8.62.1 "Approved Equals", where permitted by the Contract Documents or otherwise made feasible by market conditions, shall be approved as follows:

8.62.1.1 Construction Manager shall notify the City in writing if it elects to use an approved equal specifically named in the Contract Documents.

8.62.1.2 If Construction Manager 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. The City has no obligation to approve such request and is

not responsible for any delay or cost incurred caused by Construction Manager's making such request.

8.62.2 The Construction Manager shall be solely responsible for design risks, delays and other claims arising out of any approved alternates.

8.63 Test of Materials Offered by Construction Manager

All specified and required tests for approval of material shall be made by a properly equipped laboratory of established reputation, whose work and testing facilities shall be approved by the Architect and 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 Architect and the City in as many certified counterparts as may be required by the Architect or the City.

8.64 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 Construction Manager. All tests of such completed Work required under this Agreement shall be made under the direction of the Architect and the City.

8.65 Borrow and Waste Areas

8.65.1 All borrow materials shall be obtained by the Construction Manager. The borrow area and materials shall be approved by the Architect and shall be friable material suitable for compaction.

8.65.2 All waste areas shall be located off the site and arrangements for use of such areas shall be the sole responsibility of the Construction Manager. All waste disposal shall be in compliance with federal, state, and local laws, ordinances and regulations.

8.66 Street Signs and Traffic Aids

The Construction Manager 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 Construction Manager 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.

8.67 Federal Lobbying Activities

8.67.1 31 USCS Section 1352 (the "Code) requires all subgrantees, contractors, subcontractors, and consultants/architects 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.

8.67.2 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.

- 8.67.3 Necessary forms are available from the City and must be returned to the City with other Contract Documents. It is the responsibility of the general contractor to obtain executed forms from any Subcontractors who fall within the provisions of the Code and to provide the City with the same.
- 8.68 **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.
- 8.69 **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.
- 8.70 **Final Payment**
Final payment will not be made to the Construction Manager until the City has received a Consent of Surety Company to Final Payment. All invoices must be retained by the Construction Manager for a period of five (5) years and are subject to audit by the Kansas Department of Revenue.
- 8.71 **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 Construction Manager 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.
- 8.72 **Venue**
Venue of any litigation arising in connection with this Agreement shall be the State courts of Johnson County, Kansas.
- 8.73 **Warranty**
The Construction Manager warrants to the City and Architect that materials and equipment furnished under the Agreement 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 Construction Manager's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Construction Manager, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect and/or

the City, the Construction Manager shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

8.74 Access to Work

Construction Manager shall provide the City and Architect access to the Work in preparation and progress wherever located.

8.75 Professional Services

The Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Construction Manager needs to provide such services in order to carry out the Construction Manager's responsibilities for construction means, methods, techniques, sequences, and procedures. The Construction Manager shall not be required to provide professional services in violation of Applicable Law. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Construction Manager by the Contract Documents, the City and the Architect will specify all performance and design criteria that such services must satisfy. The Construction Manager shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all Drawings, calculations, Specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The City and the Architect shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications or approvals performed by such design professionals, provided the City and Architect have specified to the Construction Manager all performance and design criteria that such services must satisfy. The Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Construction Manager shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

8.76 Hazardous Materials

8.76.1 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 Construction Manager, the Construction Manager shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the City and Architect in writing.

8.76.2 The City shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Construction Manager 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 Construction Manager and Architect 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 Construction Manager and the Architect 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 either the Construction Manager or Architect has an objection to a person or entity proposed by the City, the City shall propose another to whom the Construction Manager and the Architect have 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 Construction Manager. The contract time shall be extended appropriately and the GMP shall be increased in the amount of the Construction Manager's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Section 5.4, herein.

8.76.3 If, without negligence on the part of the Construction Manager, the Construction Manager 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 Construction Manager for all cost and expense thereby incurred.

8.77 Order of Precedence

If any conflict exists between the provisions of these General Conditions (Article 8) and any other provision of this Agreement, the provision of the General Conditions shall govern.

8.78 Mutual Waiver of Consequential Damages

The Construction Manager and the City waive Claims against each other for consequential damages arising out of or relating to this Agreement. This mutual waiver includes:

8.78.1 damages incurred by the City for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

8.78.2 damages incurred by the Construction Manager for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination pursuant to the terms of this Agreement. Nothing contained in this Section 8.78 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

8.79 The City, in order to take advantage of its tax exemption, shall execute and deliver to the Construction Manager an original Project Exemption Certificate for use by Construction Manager, subcontractors, and suppliers in the purchase of materials, equipment and other property for the Project. The sales and/or use tax saved by use of City's Tax Exemption will not be included in the GMP established under this Agreement.

8.80 Nothing in this Agreement shall require the City to perform any act in violation of the Kansas Cash-Basis Law (K.S.A. 10-1101 to 10-1122).

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ARTICLE 9 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 Construction Manager has executed **three (3)** counterparts of this Contract in the prescribed form and manner, the day and year first above written.

CITY OF OVERLAND PARK, KANSAS

ATTEST:

By _____
Carl Gerlach
Mayor

Marian Cook
City Clerk

APPROVED AS TO FORM:

Tammy M. Owens
Deputy City Attorney

J.E. DUNN CONSTRUCTION COMPANY

Construction Manager

(SEAL)

By _____
Title President

(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 the City a current certificate of good standing, dated within ten (10) days of the date of this Contract.)

Exhibit A

PRECONSTRUCTION SERVICES

1. Provide preliminary evaluation of the program and Project budget requirements, each in terms of the other. With the Architect's assistance, prepare preliminary estimates of Construction Cost for early schematic designs based on area, volume or other standards. Assist the Owner and the Architect in achieving mutually agreed upon program and Project budget requirements and other design parameters. Provide cost evaluations of alternative materials and systems.
2. Review designs during their development. Advise on site use and improvements, selection of materials, building systems and equipment and methods of Project delivery. Provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to cost including, but not limited to, costs of alternative designs or materials, preliminary budgets and possible economies.
3. Provide for the Architect's and the Owner's review and acceptance, and periodically update, a Project Schedule that coordinates and integrates the Construction Manager's services, the Architect's services and the Owner's responsibilities with anticipated construction schedules.
4. Prepare for the Owner's approval a more detailed estimate of Construction Cost, developed by using estimating techniques which anticipate the various elements of the Project, and based on Schematic Design Documents prepared by the Architect. Update and refine this estimate periodically as the Architect prepares Design Development and Construction Documents. Advise the Owner and the Architect if it appears that the Construction Cost may exceed the Project budget. Make recommendations for corrective action.
5. Coordinate Contract Documents by consulting with the Owner and the Architect regarding Drawings and Specifications as they are being prepared, and recommending alternative solutions whenever design details affect construction feasibility, cost or schedules.
6. Develop a Project Construction Schedule providing for all major elements such as phasing of construction and times of commencement and completion required of each separate Contractor. Provide the Project Construction Schedule for each set of Bidding Documents.
7. Investigate and recommend a schedule for the Owner's purchase of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Contract Documents by the Architect. Expedite and coordinate delivery of these purchases.
8. Prequalify Bidders and develop Bidders' interest in the Project. Establish bidding schedules. With the assistance of the Architect, issue Bidding Documents to Bidders. Conduct pre-bid conferences to familiarize Bidders with the Bidding Documents and with any special systems, materials or methods. Assist the Architect with the receipt of questions from Bidders, and with the issuance of Addenda.
9. Receive Bids and prepare bid analysis.

End of Exhibit A

Exhibit B

JE Dunn Construction Company Rates/Fees Overland Park 9/11 Memorial

Project Executive *	\$133 / hour
Senior Project Manager*	\$104 / hour
Project Manager *	\$75 / hour
General Superintendent	\$130 / hour
Superintendent	\$83 / hour
Senior Project Coordinator	\$32 / hour

The above rates are the hourly rates current as of the date of the Agreement and will be adjusted periodically.

Each identified position (*) shall be charged at the rate shown plus \$5.15 per hour for office support. Such office support includes the following departments: logistics, purchasing, and payments.

End of Exhibit B