

## ARCHITECTURAL SERVICES AGREEMENT

THIS AGREEMENT is made in Johnson County, Kansas, by and between the City of Overland Park, Kansas, hereinafter "City," and NEVIUS, SERIG, PALMER ARCHITECTURE, hereinafter "Consulting Architect." City intends to construct an improvement project (hereinafter called the Project) in Overland Park, Kansas, described as follows:

### THE DEANNA ROSE CHILDREN'S FARMSTEAD ENTRY BUILDING 13800 Switzer, Overland Park, Kansas

City hereby contracts with Consulting Architect for the furnishing of professional Architectural services in connection with the Project, for the furnishing of such Architectural services more particularly described herein in consideration of these premises and of the mutual covenants herein set forth. By executing this Agreement, the Consulting Architect represents to City that Consulting Architect is professionally qualified to do this Project and is licensed to practice Architecture by all public entities having jurisdiction over Consulting Architect and the Project.

### SECTION I - DEFINITIONS

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

"City" means the City of Overland Park, Kansas.

"Consulting Architect" means the company or individual identified on pg. 1. Consulting Architect shall employ for the services rendered, engineers, architects, landscape architects, and surveyors licensed by the Kansas State Board of Technical Professions.

"Construction Cost" means and includes the cost of the entire construction of the Project,

including all supervision, materials, supplies, labor, tools, equipment, transportation and/or other facilities furnished, used or consumed, without deduction on account of penalties, liquidated damages or other amounts withheld from payment to the contractor or contractors, but such cost shall not include the Consulting Architect's fee, or other payments to the Consulting Architect and shall not include cost of land or rights-of-way and easement acquisition.

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

"Architectural Documents" means all documents required or reasonably implied by the nature of the Project, including, but not limited to, plans, specifications, drawings, tracings, designs, calculations, sketches, models and reports.

"Architectural Services" means the professional services, labor, materials, supplies, testing, title work, inspection, if applicable, and all other acts, duties, and services required of Consulting Architect under this Agreement together with such other services as City may require pursuant to the terms of this Agreement.

"Project" is as above described.

"Project Manager" means the person employed by City and designated to act as the City's representative for the Project.

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

"Subsurface Borings and Testing" means borings, probings and subsurface explorations,

laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all the foregoing.

"Traffic Control Plan" means a specific plan that includes but is not limited to signing; application and removal of pavement markings; construction sequencing and scheduling; methods and devices for delineation and channelization; placement and maintenance of devices; traffic regulation; and inspection.

**SECTION II - COMPENSATION**

Total Fee: City agrees to pay Consulting Architect a fixed amount of \_\_\_\_\_  
One hundred fifteen thousand dollars and 00/100 (\$ 115,000.000 ), including reimbursables. The fixed fee is based on the performance of the scope of services outlined in this Agreement, plans and specifications, required to be completed on or before September 1, 2007. Payment to Consulting Architect shall not exceed the following percentages in each phase of the Project without prior written consent of City:

Schematic Design Phase	( 15 %)	Completed by June 1, 2007
Preliminary Design Phase	( 25 %)	Completed by July 1, 2007
Final Design Phase	( 45 %)	Completed by September 1, 2007
Bidding Phase	( 5 %)	Completed by October 1, 2007
Construction Phase	<u>( 10 %)</u>	Project Complete by April 1, 2008
TOTAL	100 %	

2. Reimbursable Expenses: The Consulting Architect shall be reimbursed at the actual cost, not to exceed a total expense of zero dollars and 00/100 (\$ 0.00 ) for the following expenses: (a) expense of transportation in connection with the Project; (b) expenses in connection with authorized out-of-town travel; (c) long-distance communications; (d) expenses of printing and reproductions; (e) postage and facsimile transmissions; (f) expenses of renderings and models requested by City, and (g) other costs as authorized by City. The City will pay for printing and reproduction cost for plans and specifications directly.
3. Additional Services: Consulting Architect shall provide, with City's concurrence, services in addition to those listed in Section III when such services are requested or authorized in writing by City. Prior to commencing any additional services, Consulting Architect must submit a proposal outlining the additional services to be provided, estimation of total hours, completion date, and a maximum fee based upon the hourly rate schedule attached hereto as Exhibit B. Such services may include, but are not limited to, making computations and determinations of special assessments, making special trips requested by City other than those required by Section III, preparing changes in plans ordered by City or made necessary by causes beyond the control of Consulting Architect, providing services necessitated in the event the Architectural Services shall be suspended or abandoned, if such suspension or abandonment is not the result of a breach of this Agreement by the Consulting Architect, and providing any other special services not otherwise covered by this Agreement which may be requested by City. Payment to Consulting Architect, as compensation for these services, shall be in accordance with the hourly rate schedule attached as Exhibit B. Reimbursable expenses incurred in conjunction with additional services shall be paid separately and those reimbursable expenses shall be paid at actual cost. Records of reimbursable expenses and

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

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

for payment to Consulting Architect as in Exhibit C.

8. Change in Scope: For substantial modifications in authorized Project scope, and/or substantial modifications of drawings and/or specifications previously accepted by City, when requested by City and through no fault of Consulting Architect, the Consulting Architect shall be compensated for time and expense required to incorporate such modifications at Consulting Architect's standard hourly rates per Exhibit B; provided, however, that any increase in Contract Price or Contract Time must be approved through a written Change Order. Consulting Architect shall correct or revise any errors or deficiencies in its designs, drawings or specifications without additional compensation when due to Consulting Architect's negligence or other actionable fault.
9. Change Orders: This Agreement may be amended to provide for additions, deletions and revisions in the Architectural Services or to modify the terms and conditions thereof by either written amendment or by Change Order. The Contract Price and Contract Time may only be changed by a written Change Order approved by City, unless it is the result of an emergency situation in which case the Project Manager may give written approval to be followed by a written and approved Change Order. If notice of any change affecting the general scope of the Architectural Services or provisions of this Agreement, including but not limited to, Contract Price or Contract Time, is a requirement of any insurance policy held by Consulting Architect as a requirement of this Agreement, the giving of such notice shall be the Consulting Architect's responsibility.

### **SECTION III - RESPONSIBILITIES OF CONSULTING ARCHITECT**

Consulting Architect shall furnish and perform the various professional duties and services in

all phases of the Project to which this Agreement applies as herein provided and which are required for the construction of the Project which services shall include:

**A. SCHEMATIC DESIGN PHASE**

1. Services: The services to be provided during this phase are set out in Exhibit A attached hereto and incorporated by reference.
2. Schematic Design Documents: Consulting Architect shall meet with city staff to identify all programming needs and then develop a minimum of three different design concepts, unless otherwise noted in Exhibit A.
3. Preliminary Cost Estimate: Consulting Architect shall furnish City an estimate of probable Construction Cost based on the Schematic Design. Consulting Architect's estimate of probable Construction Cost is to be made on the basis of Consulting Architect's experience and qualifications and represent Consulting Architect's best judgment as an experienced and qualified design professional, familiar with the construction industry.
4. Budget: Consulting Architect shall advise City if, in its opinion, the amount budgeted for construction is not sufficient to adequately design and construct the improvement as requested.

**B. PRELIMINARY DESIGN PHASE**

1. Services: The services to be provided during this phase are set out in Exhibit A attached hereto and incorporated by reference.
2. Preliminary Design Documents: Consulting Architect shall furnish the City six (6) copies of the above preliminary design documents, unless otherwise noted in Exhibit A.

3. Preliminary Cost Estimate: Consulting Architect shall furnish City an estimate of probable Construction Cost based on the Schematic Design. Consulting Architect's estimate of probable Construction Cost is to be made on the basis of Consulting Architect's experience and qualifications and represent Consulting Architect's best judgment as an experienced and qualified design professional, familiar with the construction industry.
4. Budget: Consulting Architect shall advise City if, in its opinion, the amount budgeted for construction is not sufficient to adequately design and construct the improvement as requested.

#### C. FINAL DESIGN PHASE

1. Services: The services to be provided during this phase are set out in Exhibit A attached hereto and incorporated by reference.
2. Final Design Documents: Consulting Architect shall furnish City six (6) copies, unless otherwise noted in Exhibit A, of the above final design plans and shall also prepare the necessary plans and applications for permits for submission to and approval of local, county, state and federal authorities having proper jurisdiction as may be required for initiation, prosecution and construction of the Project.
3. Contract Documents: Consulting Architect shall prepare for City, contract agreement forms, final design plans, general conditions and supplementary conditions, bid forms, invitations to bid and instructions to bidders and assist in the preparation of other related documents, unless such documents are provided by City.
4. Final Cost Estimate: Consulting Architect shall furnish City an estimate of probable

Construction Cost based on final design. This estimate is commonly known as the "Architect's Estimate" and will be used as the basis for construction contract award.

5. Budget: Consulting Architect shall advise City if, in its opinion, the amount budgeted for the Project is not sufficient to cover all Project costs, including but not limited to, construction, right-of-way and easement acquisition, inspection and testing.

#### D. BIDDING PHASE

1. Services: The services to be provided during this phase are set out in Exhibit A attached hereto and incorporated by reference.
2. Bids Exceeding Cost Estimate: If all bids exceed Consulting Architect's Final Cost Estimate, Consulting Architect, at the request of City and for no additional cost, will prepare a report for City identifying why all the bids exceed the estimate. The City has four (4) options if all bids exceed Consulting Architect's estimate. The City may: (1) give written approval of an increase in the project cost up to a maximum of 7% of the authorized total; (2) authorize rebidding of the project; (3) terminate the project and this Agreement; or (4) cooperate in revising the Project scope or specifications, or both, as necessary to reduce the construction cost. In the case of (4), Consulting Architect, without additional charge to City, shall consult with City and shall revise and modify the drawings and specifications as necessary to achieve compliance with the Consulting Architect's estimate.

#### E. CONSTRUCTION PHASE

1. Inspection and Construction: The Consulting Architect shall inspect and observe the execution of the construction work performed under the construction contract to see that the work is constructed in accordance with plans and specifications.

Consulting Architect shall report promptly to the City if satisfactory progress is not being made. The Consulting Architect shall re-inspect the project prior to expiration of the contractor's maintenance time period, inform the contractor of the work to be performed, if any, and advise the City accordingly. The Consulting Architect agrees that the Project Manager shall have the right to require removal and the Project of any inspector who in the opinion of the Project Manger is not performing his/her duties satisfactorily.

2. Services: The services provided during this phase are set out in Exhibit A attached hereto and incorporated herein.
3. Additional Drawings: If during construction, situations arise which require additional drawings or details, Consulting Architect agrees to provide such additional drawings or details at no cost to City when the additional drawings or details are required to correct Consulting Architect's errors or omissions or clarify Consulting Architect's intent in the original design and preparation of construction drawings. If such situations occur through no fault of Consulting Architect, or are beyond his/her control, both parties agree to negotiate an equitable payment to Consulting Architect for his/her services rendered, which shall be accomplished through a Change Order.
4. Staking: Unless otherwise provided, staking shall be included in the bid specifications to be performed by the construction contractor.
5. Notice of Defects: If, based on Consulting Architect's involvement during the construction phase, Consulting Architect observes or otherwise becomes aware of any defect in the work, he shall give prompt written notice to City of such defects and their approximate location on the Project. However, Consulting Architect shall not have

control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions, inspections and programs in connection with the work, since these are solely the Contractor's responsibility under the contract for construction. Consulting Architect shall not be responsible for the Contractor's schedules or failure to carry out the work in accordance with the Contract Documents. Consulting Architect shall not have control over or charge of acts or omissions of the Contractor, Contractor's subcontractors, or their agents or employees.

6. Shop Drawings: Consulting Architect shall review and take appropriate action on Contractor's shop drawings and samples, and the results of tests and inspections and other data which each contractor is required to submit for the purposes of checking for compliance with the design concept and conformance with the requirements of the Contract Documents. Such review shall not extend to means, methods, sequences, techniques or procedures of construction, or to safety precautions and programs incident thereto, unless an obvious deficiency exists wherein Consulting Architect will advise City of such defect or deficiency so the same can be prevented.
7. As Constructed Plans: The Consulting Architect shall prepare final plan drawings which reflect change orders, minor design changes and which include changes made in the field and which are marked on the construction plan set. Because some of the data contained on the "As Constructed Plans" may be based on unverified information provided by others, the Consulting Architect does not warrant the accuracy of information provided by others.

**E. GENERAL DUTIES AND RESPONSIBILITIES**

1. Responsibilities under the General Conditions of the Contract for Construction: In addition to the responsibilities herein set forth, Consulting Architect agrees to be responsible for those matters identified in the General Conditions as being responsibilities of the Consulting Architect. Consulting Architect specifically acknowledges receipt of a copy of the General Conditions and acceptance of the responsibilities as set forth therein.
  
2. Personnel: Consulting Architect shall assign only qualified personnel to perform any service concerning the Project. At the time of execution of this Agreement, the parties anticipate that the following individual will perform as the principal on this Project:  
Steve Palmer, AIA. As principal on this Project, this person shall be the primary contact with the City's Project Manager and shall have authority to bind Consulting Architect. So long as the individual named above remains actively employed or retained by Consulting Architect, he/she shall perform the function of principal on this Project.
  
3. Subsurface Borings & Material Testing: If tests, additional to those provided for in Exhibit A, are required for design, Consulting Architect shall prepare specifications for the taking of the additional borings. Such subsurface borings and testing, as defined herein, shall be provided by Consulting Architect or its subcontractors and compensated as an Additional Service.
  
4. Service By and Payment to Others: Any work authorized in writing by City and performed by anyone other than Consulting Architect or its subcontractors in connection with the proposed Project shall be contracted for and paid for by City

directly to the third party or parties. In addition to payments for professional services, this may also include necessary permits, licenses, ownership certifications, materials testing, advertising costs, and other special tests or other work required or requested by City or Consulting Architect which is not defined within the scope of services of Consulting Architect. Fees for such extra work shall be subject to negotiation between City and the third party. Fees shall be approved prior to the execution of any extra work. Although Consulting Architect may assist City in procuring such services of third parties, Consulting Architect shall in no way be liable to either City or such third parties in any manner whatsoever for such services or for payment thereof.

5. Subcontracting of Service: Consulting Architect shall not subcontract or assign any of the Architectural Services to be performed under this Agreement without first obtaining the written approval of City regarding the Architectural Services to be subcontracted or assigned and the consulting firm or person proposed to accomplish the subcontracted/assigned portion of the Project. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Any person or firm proposed for subcontracting Architectural Services under this Agreement shall maintain throughout the duration of the Agreement, insurance as provided in Section V. D. (8) herein, and shall additionally maintain Professional Liability insurance in a minimum amount of \$1,000,000 and provide the City with certification thereof.

6. Endorsement: Consulting Architect shall sign and seal all final plans, specifications, estimates and engineering data prepared by him/her. Any review or approval by City

of any documents prepared by the Consulting Architect, including but not limited to the plans and specifications, shall be solely for the purpose of determining whether such documents are consistent with City's construction program and intent and shall not be construed as approval of same by City. No review of such documents shall relieve Consulting Architect of its responsibility for the accuracy, adequacy, fitness, suitability and coordination of its work product.

7. Inspection of Documents: Consulting Architect shall maintain all project records for inspection by City during the contract period and for three (3) years from the date of final payment.

#### **SECTION IV - CITY OF OVERLAND PARK'S RESPONSIBILITIES**

1. Communication: City shall provide to Consulting Architect information and criteria regarding City's requirements for the Project; examine and timely respond to Consulting Architect's submissions; and give written notice to Consulting Architect, who shall respond promptly, whenever City observes or otherwise becomes aware of any defect in the Architectural Services.
2. Access: City will provide access for Consulting Architect to enter public and private property.
3. Duties: City shall furnish and perform the various duties and services in all phases of the Project which are outlined and designated in Exhibit A as City's responsibility.
4. Program and Budget: City shall provide full information, including a program which shall set forth City's objectives, schedule, constraints, budget with reasonable contingencies, and other necessary design criteria.
5. Legal, Insurance, Audit: City shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project. City shall furnish all bond forms

required for the Project.

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

## SECTION V - GENERAL PROVISIONS

### A. TERMINATION

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

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

2. Termination for Cause: If this Agreement is terminated for cause, after notice to Consulting Architect, City may take over the Architectural Services and prosecute same to completion, by contract or otherwise, for the amount and at the expense of the Consulting Architect, and the Consulting Architect shall be liable to the City for any and all excess cost sustained by the City by reason of such prosecution and

completion. When Consulting Architect's services have been so terminated, such termination shall not affect any rights or remedies of the City against Consulting Architect then existing or which may later accrue. Similarly, any retention or payment of monies due Consulting Architect shall not release Consulting Architect from liability.

3. Compensation for Convenience Termination: If City shall terminate for its convenience as herein provided, City shall compensate Consulting Architect for all Architectural Services completed to date of its receipt of the termination notice and any additional Architectural Services requested by City to bring the Project to reasonable termination. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.
4. Compensation for Cause Termination: If City shall terminate for cause or default on the part of Consulting Architect, City shall compensate Consulting Architect for the reasonable cost of Architectural Services completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed. City also retains all its rights and remedies against Consulting Architect including but not limited to its rights to sue for damages, interest and attorney fees.
5. Incomplete Documents: Neither Consulting Architect nor its subcontractors shall be responsible for errors or omissions in documents which are incomplete as a result of an early termination under this Section; Consulting Architect having been deprived of the opportunity to complete such documents and certify them as ready for construction.

## **B. DISPUTE RESOLUTION**

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

## **C. OWNERSHIP OF ARCHITECTURAL DOCUMENTS**

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

## D. INSURANCE

### 1. General

The Consulting Architect shall maintain, throughout the duration of this Contract, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Professional Liability may be written on a "claims made" basis. Consulting Architect shall provide certificates of insurance and renewals thereof on forms provided by the City or on forms acceptable to the City. The City shall be notified by receipt of written notice from the insurer or the Consulting Architect at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

### 2. Notice of Claim Reduction of Policy Limits

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

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

In the event the City shall determine that the Consulting Architect's aggregate limits of protection shall have been impaired or reduced to such extent that the City shall determine such limits inadequate for the balance of the project, the Consulting Architect shall, upon notice from the City, promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

3. Commercial General Liability

Limits -

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

Policy MUST include the following conditions:

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

**Name City of Overland Park as "Additional Insured"**

4. Automobile Liability

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

Any Auto

Or

All Owned Autos;  
Hired Autos; and  
Non-Owned Autos

Limits -

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

Same as General Liability

Policy MUST include the following condition:

**Name City of Overland Park as "Additional Insured"**

5. Workers' Compensation

This insurance shall protect the Consulting Architect against all claims under

applicable state workers' compensation laws. The Consulting Architect shall also be protected against claims for injury, disease or death of employees for which, for any reason, may not fall within the provisions of workers' compensation law. The policy limits shall not be less than the following:

Workers' Compensation: Statutory

Employers Liability -

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

6. Professional Liability

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

7. Industry Ratings

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

- a) Is licensed to do business in the State of Kansas;
- b) Carries a Best's policyholder rating of B+ or better; and
- c) Carries at least a Class X financial rating.

OR

Is a company mutually agreed upon by the City and Consulting Architect.

8. Subcontractors' Insurance

If a part of the Agreement is to be sublet, the Consulting Architect shall either:

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

the minimum amounts designated.

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

9. Railroad Protective Liability

(Additional requirement applicable when working on railroad property.)

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

10. Aircraft Liability

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

Limits- Single Limit Bodily Injury; Including Passengers; and Property Damage:

\$ 1,000,000 Each Occurrence

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

Policy MUST include the following condition:

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

**E. INDEMNITY**

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

"Loss" means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim for injury, including death, to any person or persons or

damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of this Agreement whether arising before or after the completion of the Architectural Services required hereunder.

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

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

In the case of any claims against the City, its employees or agents indemnified under this Agreement, by an employee of the Consulting Architect, its affiliates, subsidiaries, or subcontractor/assignees, the indemnification obligation contained in this Agreement shall not be limited by any limitation on amount or type of damages,

compensation or benefits payable by or for the Consulting Architect, its affiliates, subsidiaries, or subcontractor/assignees, under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**F. AFFIRMATIVE ACTION/OTHER LAWS**

1. During the performance of this Agreement, the Consulting Architect agrees that:
  - a. Consulting Architect shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, ancestry or age;
  - b. in all solicitations or advertisements for employees, the Consulting Architect shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the commission;
  - c. if the Consulting Architect fails to comply with the manner in which the Consulting Architect reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Consulting Architect shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency;
  - d. if the Consulting Architect 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 Consulting Architect shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency; and

- e. the Consulting Architect shall include the provisions of subsections (a) through (d) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

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

Architect:

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

#### **G. ENTIRE AGREEMENT**

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

#### **H. APPLICABLE LAW**

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

**I. ASSIGNMENT OF AGREEMENT**

This Agreement shall not be assigned or transferred by Consulting Architect without the written consent of the City.

**J. NO THIRD PARTY BENEFICIARIES**

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

**K. INDEPENDENT CONTRACTOR**

The Consulting Architect is an independent contractor and as such is not an agent or employee of the City.

**L. WORK PRODUCT FORMAT**

1. Project Drawings: Project drawings which are developed by Consulting Architect through the use of a Computer Aided Drafting (CAD) System shall be made available to City by providing a Microsoft compatible compact disc. However, due to the potential that the information set forth on the electronic media (disk) can be modified by City, or City consultants, unintentionally or otherwise, Consulting Architect shall remove all indices of its ownership, professional corporation name, seal, and/or involvement from each electronic display. For documentation purposes, two sets of an original electronic media (disk) and two (11" x 17" size or larger) duplicate hard copy sets will be prepared. One set will be given to City and one set will be retained by Consulting Architect. If City provides such electronic media (disk) to others for any purpose, City shall require the electronic media (disk) to be returned to City upon completion of such use. City recognizes that use of such electronic media (disk) will be at City's sole risk and without any liability risk or legal exposure by Consulting

Architect.

2. Project Documentation: All documentation provided to the City other than project drawings shall be furnished on a Microsoft compatible compact disc.
3. "Record" Drawings: Following construction, City will provide copies of changes and alterations made in the field during construction to Consulting Architect to provide "record" drawings, unless Consulting Architect has provided a floppy disk to City on which City can make changes. Consulting Architect has the right to rely on the information provided by the City in preparing such documents, and shall have no independent duty to verify its accuracy.

**M. COVENANT AGAINST CONTINGENT FEES**

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

**N. COMPLIANCE WITH LAWS**

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

**O. TITLES, SUBHEADS AND CAPITALIZATION**

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

**P. SEVERABILITY CLAUSE**

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

**Q. EXECUTION OF CONTRACT**

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

NEVIUS, SERIG, PALMER ARCHITECTURE

By: \_\_\_\_\_  
STEVE PALMER, AIA  
PRINCIPAL

CITY OF OVERLAND PARK, KANSAS

\_\_\_\_\_  
CARL GERLACH  
MAYOR

ATTEST:

\_\_\_\_\_  
MARIAN COOK  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
BART BUDETTI  
SENIOR ASSISTANT CITY ATTORNEY

## INSURANCE

Certificate of Insurance to be inserted prior to City Council Meeting.

## EXHIBIT A

### CONSULTING ARCHITECT'S SERVICES

#### A. SCHEMATIC DESIGN

1. The Consulting Architect shall meet with the City staff to determine the needs and requirements of the Project and shall arrive at a mutual understanding of such needs and requirements with the City.
2. The Consulting Architect shall develop and review with the City at least three alternative design solutions to meet the needs and requirements for the Project.
3. Based on the mutually agreed-upon program, schedule, and construction budget requirements, the Consulting Architect shall prepare, for approval by the City, Schematic Design documents consisting of drawings and other documents illustrating the scale and relationship of Project components.
4. The Consulting Architect shall submit to the City a preliminary estimate of Construction Cost based on current area, volume, or similar construction estimating techniques.

#### B. PRELIMINARY DESIGN

1. Based on the approved Schematic Design documents and any adjustments authorized by the City in program, schedule, or construction budget, the Consulting Architect shall prepare, for approval by the City, Preliminary Design documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials, and such other elements as may be appropriate.
2. The Consulting Architect shall advise the City of any adjustments to the preliminary estimate of Construction Cost.

#### C. FINAL DESIGN

1. Based on the approved Preliminary Design documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the City, the Consulting Architect shall prepare, for approval by the City, Final Design documents consisting of Drawings and Specifications setting forth in detail the requirements for construction of the Project.
2. The Consulting Architect shall assist the City in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the City and the Contractor.
3. The Consulting Architect shall advise the City of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions.
4. The Consulting Architect shall assist the City in connection with the City's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

#### D. BIDDING PHASE

1. The Consulting Architect, following the City's approval of the Final Design documents and of

the latest preliminary Construction Cost, shall assist the City in obtaining bids and in awarding and preparing contracts for construction.

E. CONSTRUCTION PHASE

1. The Consulting Architect shall provide administration of the Contract for Construction as set forth in the General Conditions of the Contract for Construction.
2. The Consulting Architect shall visit the site at intervals appropriate to the stage of the Contractor's operations or as otherwise agreed by the City and inspect and observe the execution of the construction work performed under the Construction Contract to see that the work is constructed in accordance with plans and specifications. Consulting Architect shall report promptly to the City if satisfactory progress is not being made.

## EXHIBIT B

### 2007 HOURLY BILLING RATES FOR SERVICES

Principal/Project Management	Project Management	\$140/hr
Associate/Project Architect	Design, Document Development	\$100/hr
Architect Level 2	Design, Document Development	\$75/hr
Architect Level 1	Design, Document Development	\$65/hr
Interior Designer	Interior Design, Document Development	\$75/hr

### SERVICE RELATED DIRECT EXPENSES

Mileage	Per IRS allowance
Copies	\$0.10/copy
Plots	\$0.75/sf
All other: (out of house) color copies Color copies, color plots, printing, long distance phone, direct deliveries	cost x 1.1

## EXHIBIT C

### Proposed Time Line;

### THE DEANNA ROSE CHILDREN'S FARMSTEAD ENTRY BUILDING

<u>COMPLETION DATE</u>	<u>PHASES</u>	<u>DAYS</u>
June 1, 2007	Schematic Design Phase	45 days
July 1, 2007	Preliminary Design Phase	30 days
September 1, 2007	Final Design Phase	60 days
October 1, 2007	Bidding Phase	30 days
April 1, 2008	Construction Phase	6 months