

**COOPERATIVE AGREEMENT
KANSAS CITY, MISSOURI AND SPORTING FIELDS NORTHLAND, LLC
NORTHLAND SPORTS COMPLEX**

This Cooperative Agreement (“Agreement”) is made as of the 5th day of May, 2021, by and between the City of Kansas City, Missouri, a constitutional charter city and political subdivision (“City”), and Sporting Fields Northland, LLC, a Missouri Limited Liability Company (“SFN”) each individually referred to as “Party” and collectively referred to as the “Parties”.

RECITALS

A. The City has (or shall have) under its control various property including the lots located at the northwest corner of Platte Purchase Drive and Highway 152, further described and depicted on the site map attached hereto as Exhibit A-1 (the “Northland Sports Complex Land” or “Premises”).

B. The City desires to enter into this Agreement with SFN or assigns to design and construct, and after final completion, for SFN to maintain and operate the Northland Sports Complex Improvements and facilities on the Premises, on behalf, and for the benefit of, the City and SFN in accordance with the terms and conditions contained in this Agreement.

C. All development, construction, operation and use of the Northland Sports Complex Improvements shall be conducted by the City and SFN pursuant to the terms of this Agreement. SFN shall fulfill its obligations under this Agreement pursuant to all applicable ordinances, policies, procedures, statutes, regulations and laws.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

SECTION 1. RIGHT TO ENTER PREMISES

Upon final execution of this Agreement and when the City has ownership of the Premises pursuant to Exhibit F, SFN or assigns is permitted to enter onto the Premises to construct all improvements in connection with the Northland Sports Complex, as more particularly described and depicted on the site map, attached hereto as Exhibit A-2 (the “Northland Sports Complex Improvements”) and Exhibit B (the “Project Budget”).

A. The City shall enter into a Real Estate Sale Contract with BT Residential, LLC (controlled by MD Management, Inc.) to purchase the 76.65 acre Northland Sports Complex Land for \$2,150,000 all as more specifically provided for in Exhibit G, attached hereto and incorporated herein by reference.

SECTION 2. TERM OF LEASE

Unless otherwise terminated by mutual agreement or according to the terms of this Agreement, the Agreement will have an initial term of ten (10) years from the date the Agreement is signed by the City’s City Manager (“Effective Date”) and two (2) additional terms of ten years each. At the conclusion of the initial term or the first renewal term, as the case may be, the

Agreement shall automatically renew for the upcoming renewal term unless the terminating Party provides six (6) months written notice prior to automatic renewal of either renewal term that it elects not to renew the Agreement for the applicable renewal term. If terminated by SFN prior to the completion of the initial term, SFN shall pay the City a termination fee in an amount equivalent to the land acquisition cost of \$2,150,000 during the first year of the term. Thereafter, the termination fee shall decrease by \$215,000 each subsequent year of the term. To illustrate, the termination fee payable in the tenth year shall be \$215,000.

SECTION 3. FUNDING

Subject to appropriation, within 10 business days after May 1, 2021 City shall have available funds in the amount not to exceed \$18,280,000 for the design and construction of the Northland Sports Complex Improvements. Said costs shall include, but not be limited to, both hard costs such as labor and materials and soft costs such as architectural, engineering, design, construction management fees, permit fees, general contracting and legal fees, in connection with drafting this Agreement and related documents, as listed in Exhibit B (the "Project Budget"). City shall provide said funds in the form of progress payments to SFN or its assigns according to the terms and conditions of Exhibit C-3 (the City's "Design-Build General Conditions").

- A. The Parties hereby expressly agree that the Northland Sports Complex Improvements described in Exhibit A-2 or depicted in Exhibit B, describe the major elements of the site and/or the agreed upon budget. SFN or assigns agrees to construct the Sports Complex Improvements as depicted on Exhibit A-2, subject (1) to completion of Exhibit D, (the "TIF Infrastructure Agreement"), which shall provide for the construction of certain public infrastructure improvements that will support the Northland Sports Complex Improvements and Exhibit E (the "CID/TIF Cooperative Agreement"), and (2) City's providing the funds as described above. The City shall execute a Contract for Design-Build Services with SFN or assigns.

SECTION 4. DESIGN AND CONSTRUCTION

- A. Subject to the terms of Section 3 above, SFN or assigns shall contract for the design and construction of the Northland Sports Complex Improvements described or depicted on Exhibit A-2 and Exhibit B, subject to compliance with the City's MBE/WBE and other requirements of Exhibit C, shall have full and complete authority, to select all subcontractors and service providers necessary for fulfillment of its obligations under this Agreement.
- B. SFN and City understand and agree to follow the Design-Build requirements of Exhibit C when entering into agreements with professional service providers, contractors or subcontractors for services related to this Agreement. SFN or assigns will use commercially reasonable contracts and subcontracts. All such contracts shall incorporate the terms and conditions of the City's Contract for Design-Build Services attached in Exhibits C-1, C-2 and C-3.
- C. SFN shall work cooperatively with the City to ensure the contracts with professional service providers, for the design of the Northland Sports Complex Improvements,

and engage legal counsel as necessary to achieve these requirements, the fees of which shall be included in the project costs. SFN shall contractually require any such service providers to comply with the City's requirements applicable to this Agreement, as set forth in this Section 4.

- D. Construction of the Northland Sports Complex Improvements will begin as soon as is reasonable after execution of this Agreement, the City's acquisition of the land described in Exhibit A-1 and completion of that part of the work contemplated in the Infrastructure Agreement necessary to start the work described in Exhibit A-2.
- E. City hereby agrees that materials and equipment necessary for the design, construction and maintenance of the Northland Sports Complex Improvements are exempt from sales taxation. City shall issue all necessary tax-exempt certificates related to the foregoing exemptions.

SECTION 5. TITLE TO PREMISES

Title to the Premises shall at all times remain in the City. Title to the Northland Sports Complex Improvements shall pass to the City upon completion of installation and acceptance of the work by the City. Notwithstanding the foregoing, title and ownership of trade fixtures, athletic equipment and personal property (other than the real property and other appurtenant fixtures to the Premises) belonging to SFN or its subtenants, licensees or occupants shall remain the property of SFN or its subtenants, licensees or occupants at all times.

SECTION 6. LEASE AGREEMENT AND OPERATION OF NORTHLAND SPORTS COMPLEX

- A. Premises. City ("Lessor") hereby leases to SFN ("Lessee"), and Lessee hereby leases from Lessor the Premises as described in Exhibit A-1, attached hereto and incorporated herein by reference. Through operation of this Section, Lessor is granting Lessee a Lease of the Premises, legally described as:

A tract of land in the Southeast Quarter of Section 4, Township 51 North, Range 33 West of the 5th Principal Meridian in Kansas City, Platte County, Missouri being bounded and described as follows: Commencing at the Northwest corner of the Northeast Quarter of said Section 4; thence South 00°21'04" West, on the West line of said Northeast Quarter, 2,522.84 feet to the Northwest corner of said Southeast Quarter; thence South 00°29'01" West, on the West line of said Southeast Quarter, 609.35 feet to a point on the proposed Southerly right-of-way line per McClure Engineering, also being the Point of Beginning of the tract of land to be herein described; thence leaving said West line, South 84°59'48" East, along said proposed Southerly right-of-way line, 90.71 feet; thence Easterly, along said proposed Southerly right-of-way line, along a

curve to the left, being tangent to the last described course with a radius of 1,075.00 feet, a central angle of 28°59'26" and an arc distance of 543.93 feet; thence North 66°00'46" East, along said proposed Southerly right-of-way line, 10.30 feet; thence Easterly, along said proposed Southerly right-of-way line, along a curve to the right, being tangent to the last described course with a radius of 50.00 feet, a central angle of 90°00'00" and an arc distance of 78.54 feet; thence South 23°59'14" East, along said proposed Southerly right-of-way line, 15.00 feet; thence North 66°00'46" East, along said proposed Southerly right-of-way line, 150.00 feet; thence North 23°59'14" West, along said proposed Southerly right-of-way line, 15.00 feet; thence Northerly, along said proposed Southerly right-of-way line, along a curve to the right being tangent to the last described course with a radius of 50.00 feet, a central angle of 90°00'00" and an arc distance of 78.54 feet; thence North 66°00'46" East, along said proposed Southerly right-of-way line, 270.49 feet; thence Easterly, along said proposed Southerly right-of-way line, along a curve to the right being tangent to the last described course with a radius of 713.00 feet, a central angle of 37°12'04" and an arc distance of 462.94 feet; thence South 76°47'11" East, along said proposed Southerly right-of-way line, 323.18 feet; thence leaving said proposed Southerly right-of-way line, South 13°12'49" West, 40.62 feet; thence Southerly, along a curve to the left being tangent to the last described course with a radius of 500.00 feet, a central angle of 12°43'48" and an arc distance of 111.09 feet; thence South 00°29'01" West, 1,562.52 feet to a point on the Existing Northerly right-of-way line Missouri State Highway No. 152, as now established; thence Westerly, on said Existing Northerly right-of-way line, on a curve to the right having an initial tangent bearing of South 69°30'42" West with a radius of 3,669.71 feet, a central angle of 21°17'00" and an arc distance of 1,363.17 feet; thence North 89°12'18" West, on said Existing Northerly right-of-way line, 516.63 feet to a point on said West line of said Southeast Quarter; thence leaving said Existing Northerly right-of-way line, North 00°29'01" East, on said West line, 1,671.31 feet to the Point of Beginning. Containing 3,338,959 square feet or 76.65 acres, more or less. (Also shown on Exhibit A-1.)

- B. Term. The term of this Lease shall be for the duration of the term of the Agreement as provided for in Section 2. The term of this Lease shall automatically renew upon automatic renewal of the term of this Agreement as provided for in Section 2. Such renewal of the Lease term shall mirror the renewed term of the Agreement in

duration. For example, if the Agreement automatically renews for a ten (10) year term, this Lease shall also automatically renew for an identical ten (10) year term.

- C. Consideration. This Lease is granted by Lessor to Lessee in exchange for Lessee's design and construction of the Northland Sports Complex Improvements, as described in Section 4 of this Agreement, and other good and valuable consideration.
- D. Subject to City approval, SFN may assign all or any portion of its duties, rights, and obligations related to the operation of the Northland Sports Complex Improvements. Such approval shall not be unreasonably withheld, conditioned or delayed.
- E. Termination.
 - 1. Lessee may terminate this Lease and Agreement, and all its attendant rights and obligations, at any time for reasonable cause shown, which may include Force Majeure. Upon termination of this Lease by Lessee, Lessee's rights and duties under this Lease shall be null and void; provided, Lessee shall provide Lessor with notice of termination at least ninety (90) days prior to termination of this Lease.
 - 2. Lessor may terminate this Lease and Agreement, and all its attendant rights and obligations, at any time for reasonable cause shown. Upon termination of this Lease by Lessor, Lessor's rights and duties under this Lease shall be null and void; provided, Lessor shall provide Lessee with notice of termination at least ninety (90) days prior to termination of this Lease.
 - 3. Any duty of Lessor to reimburse Lessee for any outstanding costs shall survive termination of this Lease and the Agreement.
- F. Retail, Food and Beverage Sales. SFN is granted the exclusive right to operate the Northland Sports Complex, including rights to sell food and beverage concessions, merchandise, novelties, and other items, throughout the term of this Agreement and Lease. SFN may designate food, beverage, merchandise, and/or novelty sales to an SFN affiliate or third-party partner provided that the third-party partner agrees to be bound by the same terms and conditions as SFN. Failure by the third-party to abide by the terms of this Agreement does not relieve SFN of its obligations.
- G. Revenues. All monies derived from the operation of the Northland Sports Complex, including without limitation any licenses, leases, sponsorships, concessions or user fees, retail sales, tickets and admission fees, shall be retained by SFN and used but not limited to defray Northland Sports Complex operating and maintenance expenses. Notwithstanding the foregoing, provided City has complied with all of its obligations herein, SFN agrees to a net cumulative profit sharing arrangement, whereby SFN shall remit to the City, on an annual basis, ten percent (10%) of all

cumulative net profits, if any, retained by SFN in connection with operating the Northland Sports Complex, after deducting therefrom all costs and expenses incurred by SFN, including, without limitation, operating costs, maintenance expenses, taxes, expenses of funding reserves (including the maintenance capital reserve described herein), provided, however, in the event any amounts to be funded by City hereunder have not been fully appropriated and/or funded by the City, SFN may, in lieu of remitting the foregoing to the City, apply such profits to those unappropriated or unfunded amounts.

- H. Youth Soccer Programs: SFN will work cooperatively with area school districts and community organizations to offer soccer - opportunities inclusive of all, regardless of ability to pay. In some cases, providing access might include transportation or off-site programs. SFN will apply its best efforts to maximize the use of the facility.
- I. Sponsorships. SFN is granted the exclusive right to sell sponsorships, naming rights, advertising and other marketing assets at the Northland Sports Complex. SFN is prohibited from sales of sponsorships in the following categories: gambling, casinos, tobacco products, and alcohol. Revenues derived from sponsorships related to the Northland Sports Complex shall be retained by SFN.
- J. User Fees. SFN is authorized to collect a user fee. SFN will be solely responsible for collecting all facility use fees and using said fees to defray operating and maintenance costs.
- K. Insurance. Any and all obligations of Lessee to obtain operator's insurance in connection with this Lease shall be as described in Section 8 of this Agreement. Lessee shall have no obligation to obtain insurance separate from or in addition to those obligations described in Section 8, and any such additional insurance shall be for Lessee's sole benefit. The Lessee covenants and agrees with the Lessor that at the termination of this Lease the Lessee will peaceably and quietly deliver possession of the Premises to the Lessor in its as-is, where-is condition.
- L. Taxes and Assessments. Lessee shall have no obligation to pay any taxes or assessments related to the Premises and improvements nor any other provision of this Lease, all of which, if any, shall be paid by the City.
- M. Quiet Enjoyment. Upon execution of this Agreement, Lessee shall peacefully and quietly hold and enjoy the Premises for the term hereby demised without hindrance or interference by Lessor or any other person or persons lawfully or equitably claiming by, through or under the Lessor.
- N. Indemnity. Lessee's obligations to indemnify Lessor pursuant to this Lease shall be as described by Section 9 of this Agreement. Lessee shall have no obligations to indemnify Lessor separate from or in addition to those obligations described in Section 9.

- O. Notice of Claim of Suit. Lessee agrees to give notice promptly to Lessor of any claim, action, proceeding or suit instituted or threatened against the Lessor or Lessee by reason of this Lease or Lessee's occupancy of the Premises.
- P. Maintenance. Lessee's maintenance obligations pursuant to this Lease shall be as described by Section 7 of this Agreement. Lessee shall have no obligation to maintain or repair the Premises separate or in addition to those obligations described in Section 7.
- Q. Right of Entry. Lessor or Lessor's agent shall have the right to enter the Premises at all reasonable times for any valid purpose. Lessor agrees to a covenant not to interfere with SFN's business operations. SFN recognizes its business operations are subject to City's police power to regulate business operations for health, welfare and safety reasons.
- R. Partial Invalidity. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such term, covenant or condition to persons or circumstances, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Lease shall be valid and enforced to the fullest extent permitted by law.
- S. Damage. Lessee covenants and agrees with Lessor that damage or destruction to any building or improvements by fire, windstorm or any other casualty shall entitle the Lessee to surrender possession of the Premises in its as-is condition and/or to terminate this Lease and the Agreement, or to repair such damage or destruction, in its sole discretion.
- T. Use of Premises. It is understood and agreed between the Parties hereto that the Premises, during the continuance of this Lease, shall be used and occupied for any legal accessory use, in SFN's sole discretion.
- U. Holding Over. Any holding over after the expiration of any Lease term shall be construed to be a tenancy from month-to-month for the same consideration described herein and shall otherwise be on the terms and conditions herein specified, so far as applicable. The conditions of this Section shall only take effect if the Parties do not elect renewal of the Lease as described in Section 6(B). In the holding over period, six (6) months written notice must be provided prior to termination.
- V. Annual Fundraising Event. SFN shall coordinate and manage an annual event/campaign for the purpose of assisting underprivileged youth's participation in athletics, each year during the Term of this Lease.
- W. Miscellaneous.

1. Force Majeure. In the event that Lessor or Lessee shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of an act of God, an act of the public enemy, lawsuits, injunctions, lightning, fire, explosion or other serious casualty, water damage, strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive government laws or regulations, riots, insurrection, the act, failure to act or default of the other Party, war (whether declared or not) or threats thereof, terrorist attack (or threats thereof), epidemics, pandemic or other public health crisis, blockades, embargoes, condemnation or other taking by the action of any governmental body on behalf of any public, quasi-governmental or private entity, or other reasons beyond their reasonable control (“Force Majeure”), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay, provided the foregoing shall not operate to extend any requirements to make payments or reimbursements hereunder.
2. Covenants Running with Land. All covenants, promises, conditions and obligations herein contained or implied by law are covenants running with the land and shall attach and bind an inure to the benefit of the Lessor and Lessee and their respective heirs, legal representatives, successors and assigns, except as otherwise provided herein. At Lessee’s election, Lessor and Lessee will record a memorandum of this Agreement with the Platte County, Missouri public records.
3. Successors. The provisions, covenants and conditions of this Lease shall bind and inure to the benefit of the several respective heirs, executors, administrators, successors and assigns of the said Parties. All rights shall inure to the benefit of any assignee of Lessee.
4. Entire Lease. This Lease, Agreement, and the exhibits and riders, if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Lessor and Lessee concerning this Lease of the Premises, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them, other than those herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Lessor or Lessee, unless reduced to writing and signed by each Party.

SECTION 7. MAINTENANCE AND REPAIR

- A. Following construction, SFN shall cause the Sports Complex Improvements to be maintained, preserved and kept in commercially reasonable repair and working order and condition and, subject to Section 6(P) above, will make all commercially reasonable and necessary repairs, renewals, replacements and improvements

thereof so that its operations and business shall at all times be conducted in an efficient and advantageous manner.

- B. SFN shall maintain all utilities necessary for the operation of the Northland Sports Complex which shall be in the City's name. SFN shall make payment for all the utilities required for the operation of the Northland Sports Complex to City and City shall pay the utilities.
- C. City shall fund an initial capital maintenance reserve for Sports Complex Field Replacement in an amount not less than \$13,400,000. This initial reserve will be funded no later than April 30, 2035 as shown in Exhibit F, (the "Capital Reserve Schedule"). The initial capital maintenance reserve will also be funded by the revenue generated by the District that provides that fifty percent (50%) of the CID Sales Tax actually collected, less administrative costs, will be distributed as directed by the City as reimbursable CID costs for Sports Complex capital improvements including, but not limited to, Turf Replacement, replacement of fixed structures and assets set forth in Exhibit A-2 and will be held and maintained by City in a capital reserve fund. City will provide a monthly report to SFN of the available balance of the capital reserve. SFN shall contribute up to \$100,000 per year, non-compounding, for any shortfall in the capital reserve fund during the term of the Lease. SFN's capital maintenance obligations hereunder are expressly conditioned upon sufficient funds being available from the foregoing sources. SFN shall request funds from the City for capital maintenance projects, and if the funds required for the project exceed the funds available in the Capital Reserve Fund, then SFN shall contribute up to \$100,000 per year to complete the project.
- D. Any net revenues derived from operation of the Northland Sports Complex in excess of operating, maintenance, and capital reserve costs as shown on Exhibit G, shall be retained by SFN for any business purpose.

SECTION 8. INSURANCE AND BONDS

- A. SFN or assigns shall procure and maintain in effect throughout the duration of the Agreement insurance coverage not less than the types and amounts specified in this section and the Contract for Design-Build Services. In the event that additional insurance, not specified herein, is required during the term of the Agreement, SFN or assigns shall use commercially reasonable efforts to supply such insurance at City's cost. Policies containing a Self-Insured Retention are unacceptable to City unless approved by the City in writing.
 - 1. Commercial General Liability Insurance: with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:
 - a. Severability of Interests Coverage applying to Additional Insureds.
 - b. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000.

- c. No Contractual Liability Limitation Endorsement.
 - d. Additional Insured Endorsement, ISO form CG20 10, current edition or its equivalent.
2. As applicable, Workers' Compensation Insurance, as required by statute, including Employers Liability with limits of:

Workers' Compensation:	Statutory
Employers' Liability:	\$100,000 accident
With limits of:	\$500,000 disease-policy limit
	\$100,000 disease-each employee
 3. Commercial Automobile Liability Insurance: with a limit of \$1,000,000 per occurrence, covering owned, hired, and non-owned automobiles. Unless otherwise approved in writing by the City, coverage provided shall be on an "any auto" basis and written on an "occurrence" basis. This insurance will be written on a Commercial Business Auto form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Agreement.
 4. As applicable, Professional Liability Insurance with limits per claim and annual aggregate of \$1,000,000.
 5. The Commercial General Liability Insurance specified above shall provide that the City and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under the Agreement. Design-Builder shall provide to City at execution of the Contract for Design-Build Services a certificate of insurance showing all required endorsements and additional insureds. To the extent available, the certificates of insurance will contain a provision stating that should any of the policies described in the certificate be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.
 6. All insurance coverage must be written by companies that have an A.M. Best's rating of "A-V" or better, and are licensed or approved by the State of Missouri to do business in Missouri.
 7. Design-Builder's failure to maintain the required insurance coverage will not relieve them of their contractual obligation to indemnify City pursuant to Section 9. If the coverage afforded is cancelled or changed or its renewal is refused, Design-Builder shall give at least thirty (30) days prior written notice to the City. In the event Design-Builder's failure to maintain the required insurance in effect, the City may order Design-Builder to immediately stop work, and upon ten (10) days' notice and an opportunity to cure, may pursue its remedies for breach of the Agreement as provided herein and by law.

8. In no event shall the language in this Section constitute or be construed as a waiver or limitation of City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.
9. The City shall procure and maintain in effect throughout the duration of the Agreement insurance coverage for the real property and other appurtenant fixtures to the Premises, to be provided by reputable insurers authorized to do business in the jurisdiction in which this Agreement will be performed, with an A.M. Best's rating of "A-V" or better. Such insurance may be provided through primary and umbrella policies. In the event that additional insurance, not specified herein, is required during the term of the Agreement, the City shall use commercially reasonable efforts to supply such insurance at City's cost. In the event of a loss at the facility that results in recovery or reimbursement, the City agrees to use said insurance funds to fund repairs to the facility.
10. SFN or assigns shall furnish Performance and Payment Bonds, each in an amount at least equal to the Contract Price, as set out in the Contract Documents, as security for the faithful performance and payment of all Design-Builder's obligations under the Contract Documents. In the event SFN assigns its rights to receive funding, as provided for in Section 3 hereof, the assignee shall provide the Bonds in connection with the design-build services, as contemplated in RSMo. § 107.170. These Bonds shall remain in effect at least until one (1) year after the date when final payment of the Contract for Design-Build Services, becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents.

SECTION 9. INDEMNITY

- A. SFN or assigns shall contractually require its contractors to defend, indemnify, and hold harmless City and any of their agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorneys' fees, to the extent arising out of or resulting from any acts or omissions in connection with this Agreement, caused in whole or in part by Design-Builder or its contractors, and their respective employees, agents, or subcontractors, or caused by others for whom Design-Builder or its contractors are liable, regardless of whether or not caused in part (but not in whole) by any act or omission of City and its respective officials, officers, employees agents or representatives. The Contract for Design-Build Services may also provide that Design-Builder and its contractors' obligations under this section with respect to indemnification for acts or omissions of City and its officials, officers, employees, agents or representatives shall be limited to the coverage and limits of insurance that Design-Builder and its contractors are required to procure and maintain under the Agreement.

- B. SFN or assigns shall contractually require all contractors and subcontractors to defend, indemnify, and hold harmless City and any of their agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorneys' fees, to the extent caused by any negligent acts, errors, or omissions of any contractor or subcontractor in the performance of professional services under the contract for the design of the Northland Sports Complex Improvements. Contractors and/or subcontractors are not obligated under this Section to indemnify City for the negligent acts of City.

SECTION 10. FINANCIAL REPORTING, RECORDS AND AUDIT

SFN agrees to provide the City with an annual operating and capital expenditures report for the Northland Sports Complex operations in March of each year.

SFN shall maintain all its books, documents, and records relating to this Agreement during the term of the Agreement and for three (3) years after its Term expires.

The Kansas City Auditor, Kansas City's Internal Auditor, the Director of Kansas City's Human Relations Department, the Director of the Kansas City's Finance Department, and the Kansas City department administering this Cooperative Agreement shall have the right to audit this Cooperative Agreement and all books, documents and records relating thereto.

SECTION 11. DELETED.

SECTION 12. INDEPENDENT CONTRACTOR

SFN is an independent contractor with respect to all services performed under this Agreement. Except to the extent reimbursable pursuant to Section 3(B) above, SFN accepts full and exclusive liability for the payment of any and all premiums, contributions or taxes for workers' compensation, Social Security, unemployment benefits, or other employee benefits now or hereinafter imposed under any state or federal law which are measured by the wages, salaries or other remuneration paid to persons employed by SFN on work performed under the terms of this Agreement. SFN shall defend, indemnify and save harmless City from any claims or liability for such contributions or taxes. Nothing contained in this Agreement or any act of City, or SFN, shall be deemed or construed to create any third-party beneficiary or principal and agent SFN or relationship with City. SFN is not City's agent and SFN has no authority to take any action or execute any documents on behalf of City.

SECTION 13. ASSIGNABILITY AND SUBCONTRACTING

Any assignment of SFN's obligations or interests under this Agreement shall be pursuant to Section 6(D) hereof.

SECTION 14. NOTICES

All notices required by this Agreement shall be in writing sent by regular U.S. Mail, postage prepaid, commercial overnight courier, personal delivery or facsimile to the following:

City: City Manager's Office
Attn: Brian Platt
City Hall, 29th Floor
414 E. 12th Street
Kansas City, MO 64106
(816) 513-1408

Copy to: Office of the City Attorney
Attn: Matthew J. Gigliotti
City Hall, 23rd Floor
414 E. 12th Street
Kansas City, MO 64106
(816) 513-3133

SFN: Sporting Fields Northland, LLC
Attn: Alan Dietrich
2020 Baltimore, Fourth Floor
Kansas City, MO 64108
(816) 949-1205

Copy to: James C. Bowers, Jr., Esq.
Rouse Frets White Goss Gentile Rhodes, P.C.
4510 Belleview Avenue, Suite 300
Kansas City, MO 64111
(816) 753-9201

SECTION 15. GOVERNING LAW

This Contract shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. The City and SFN: (1) shall submit exclusively to the jurisdiction of the state and federal courts located in Jackson County, Missouri and no other; (2) shall waive any and all objections to jurisdiction and venue; and (3) shall not raise forum non conveniens as an objection to the location of any litigation.

SECTION 16. COMPLIANCE WITH LAWS

SFN and its contractors shall comply with all applicable federal, state and local laws, ordinances and regulations.

SECTION 17. TAX COMPLIANCE

As a precondition to City making the first payment to SFN, SFN's contractors shall provide proof of compliance with the tax ordinances administered by the Commissioner of Revenue.

SECTION 18. DEFAULT AND REMEDIES

If either Party is held to be in default or breach of any provision of this Agreement, the non-breaching Party may terminate this Agreement or invoke any other legal or equitable remedy after giving the breaching Party sixty (60) days' notice and opportunity to correct such default or breach. However, nothing in this section shall terminate or modify 1) City's obligation to reimburse SFN for any costs incurred by SFN in connection with design or construction of the Sports Complex Improvements.

SECTION 19. WAIVER

Waiver by any Party of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant or condition. No term, covenant, or condition of this Agreement can be waived except by written consent of both Parties, and forbearance or indulgence by either Party in any regard whatsoever shall not constitute a waiver of same to be performed by the Party to which the same may apply and, until complete performance by any party of the term, covenant or condition, the forbearing Party shall be entitled to invoke any remedy available to it under this Agreement or by law despite any such forbearance or indulgence.

SECTION 20. MODIFICATION

Unless stated otherwise in this Agreement, no provision of this Agreement may be waived, modified or amended except in writing signed by all Parties.

SECTION 21. SEVERABILITY OF PROVISIONS

Except as specifically provided in this Agreement, all of the provisions of this Agreement shall be severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds that the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the Parties to this Agreement could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the Parties.

SECTION 22. MERGER

This Agreement, including any referenced attachments, constitutes the entire Agreement between City and SFN with respect to this subject matter, and supersedes all prior agreements between City and SFN with respect to this subject matter, and any such prior agreement shall be void and of no further force or effect as of the date of this Agreement.

SECTION 23. BINDING EFFECT

This Agreement shall be binding upon City and SFN and their successors in interest.

SECTION 24. REPRESENTATIONS AND WARRANTIES

City and SFN each certify that it has the power and authority to execute and deliver this Agreement, to use the funds as contemplated hereby and to perform this Agreement in accordance with its terms.

SECTION 25. HEADINGS; CONSTRUCTION OF AGREEMENT

The headings of each section of this Agreement are for reference only. Unless the context of this Agreement clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender. In the event of any conflict between this Agreement and any incorporated attachments, the provisions of this Agreement shall control.


SECTION 26. COUNTERPARTS/FACSIMILE

This Agreement may be executed in separate counterparts, each of which will be deemed to be an original and all of which, collectively, will be deemed to constitute one and the same Agreement. This Agreement may also be signed by exchanging facsimile or electronic copies of this Agreement, duly executed, in which event the Parties will promptly thereafter exchange original counterpart signed copies hereof.

[Remainder of page intentionally left blank. Signatures on following page.]

THIS AGREEMENT CONTAINS INDEMNIFICATION PROVISIONS AND REQUIRES CITY COUNCIL APPROVAL.

CITY OF KANSAS CITY, MISSOURI

By: 

Printed name: Brian Platt

Title: City Manager

Date: 4/23/21

SPORTING FIELDS NORTHLAND, LLC

By: 

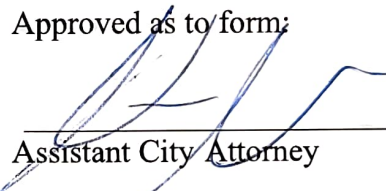
Printed name: Jake Reid

Title: Chief Executive Officer

Date: 4/23/21

Approved by Committee Substitute for Ordinance No. 200986, As Amended, on February 18, 2021, and Ordinance No. 210339, As Amended, on April 22, 2021.

Approved as to form:


Assistant City Attorney

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.


for  5-5-21
Director of Finance
Tammy Queen Date

EXHIBIT LIST

Exhibit A-1 – Northland Sports Complex Land

Exhibit A-2 – Northland Sports Complex Improvements

Exhibit B – Project Budget

Exhibit C – Contract for Design-Build Services

Exhibit D – TIF Infrastructure Agreement

Exhibit E – CID/TIF Cooperative Agreement

Exhibit F – Capital Reserve Schedule

Exhibit G – Real Estate Sales Contract

Exhibit A-1
Northland Sports Complex Land

SINGLE FAMILY RESIDENTIAL

2

PLATTE COUNTY R3 SCHOOL DISTRICT

CIVIC/MEDICAL BUILDING

COMMERCIAL DEVELOPMENT

B+B PLAZA COMMERCIAL DEVELOPMENT

3

4

5

8

MIXED-DENSITY RESIDENTIAL

1

SPORTING KC ATHLETIC COMPLEX

6

7

COMMERCIAL DEVELOPMENT AND MULTI-FAMILY



Exhibit A-2
Northland Sports Complex Improvements

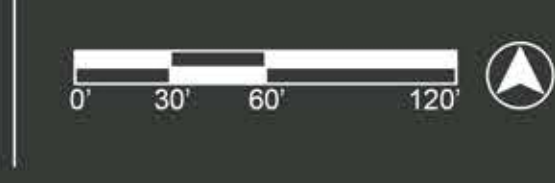


NORTHLAND SPORTING COMPLEX

Kansas City, MO

August 13, 2020 / 020-1613

SITE MASTERPLAN



ochsner hare + hare
the olsson studio

1814 Main Street / Kansas City, MO 64108 | © 2016, 2020, 2021 / olsson.com

Exhibit B
PROJECT BUDGET
(revised February 18, 2021)

NOT COVERED UNDER INFRASTRUCTURE WORK

Hard Costs

Field Lighting	\$	3,050,000
Dugouts	\$	273,600
Fencing & Netting	\$	720,507
Portable Fencing	\$	160,000
Turf	\$	6,492,128
Concession, Field House & Maintenance	\$	4,696,859
Swope Park Soccer Village Parking Lots A & B*	\$	1,000,000
Shade Structures	\$	-
Shade Sails	\$	-
Playground Equipment	\$	200,000
Pedestrian Lighting	\$	96,900
Monument Signage & Directional	\$	50,000
WiFi	\$	166,000
Total Hard Costs	\$	16,905,994

Land	\$	720,000
-------------	-----------	----------------

Soft Costs & Contingencies

Public Works Management Responsibilities	\$	(150,000)
--	----	-----------

TOTAL COSTS	\$	19,850,000
--------------------	-----------	-------------------

*Funds to construct two Swope Park Soccer Village parking lots A & B will be available when \$1M is accumulated in the Capital Maintenance Reserve Fund for the Northland Sports Complex.

Exhibit C-1
Contract for Design Build Services

Contract for Design-Build Services

This **CONTRACT FOR DESIGN-BUILD SERVICES** ("Contract") is made by and among Kansas City, Missouri, a constitutionally chartered municipal corporation ("City" or "Owner"), _____ ("Design-Builder") as principal, and _____ ("Surety") as surety, for design and construction services in connection with the **Project No.** _____ – **Project Title:** _____.

Article 1 **Scope of Work**

1.1 Design-Builder shall perform all design and construction services, and provide all materials, equipment, tools, supervision, labor, and all other items and services necessary to complete the Work described in and reasonably inferable from the Contract Documents as defined in the Contract General Conditions..

Article 2 **Ownership of Deliverables and Other Intellectual Property**

2.1 City's Ownership of Deliverables.

2.1.1 Design-Builder and City agree that all original documents, including, without limitation, plans, drawings, specifications, reports, maps, models, renderings, and other copyrightable work, including electronic media, prepared or obtained by Design-Builder under the terms of this Contract ("Deliverables") are works made for hire. It is agreed that such Deliverables are the exclusive property of City, and City shall own the copyright and other intellectual property rights in them. Design-Builder hereby assigns to City all of Design-Builder's rights in such works, and agrees to cooperate with City in preparing and filing any copyright registration applications associated with such Deliverables.

2.1.2 Design-Builder's basic survey notes, diaries, sketches, charts, computations, and other data shall be made available to City upon request (whether such request is made during the term of this Contract or after its completion or earlier termination) with no restriction or limitation on their use by City.

2.2 City's Use, Re-Use, or Modification of Deliverables.

2.2.1 No legal limitation shall be imposed upon City in its subsequent use of the Deliverables, or any ideas developed in or as a result of the Deliverables, whether such use involve City's occupancy, operation, and maintenance of the Project or otherwise.

2.2.2 In the event any of the Deliverables are re-used or modified by or on behalf of City, the name plates or other identification of Design-Builder shall be removed from the Deliverables.

2.2.3 In the event any of the Deliverables are re-used or modified by or on behalf of City, City shall release Design-Builder and those who worked on the Project by or through Design-Builder,

including the DOR, Lead Architect, and Design Subconsultants of any tier (collectively the "Released Parties"), from liability or legal exposure arising out of or resulting from such re-use or modification.

2.3 Design-Builder's Limited License Upon Performance in Full. Upon Design-Builder's full and proper performance of all obligations imposed by the Contract Documents, City shall be automatically deemed to have granted to Design-Builder a limited, non-exclusive, perpetual, royalty-free license to copy, distribute, and use any of the Deliverables on other projects; provided, however, that Design-Builder may not use the Deliverables to substantially duplicate the Project or any of its significant parts or aspects in any other application or for any other client; and provided further, however, that Design-Builder shall defend, indemnify, and hold harmless City and its Consultants in accordance with the provisions of Article 6 of the General Conditions of Contract from and against liability or legal exposure arising out of or resulting from such copying, distribution or use of any of the Deliverables.

2.4 Rights in Deliverables Upon City's Termination of Design-Builder for Convenience. If City terminates this Contract for its convenience as set forth in Article 14 of the General Conditions of Contract, then upon City's payment to Design-Builder of those amounts due for Work properly performed to date of termination in accordance with the Contract Documents, City may use the Deliverables in the completion of the Project through its employees, agents, or third parties; City may use the Deliverables in and for City's subsequent use, occupancy, operation, and maintenance of the Project; and/or City may re-use or modify the Deliverables in accordance with the terms set forth in Section 2.2 above, without further obligation or liability to Design-Builder; provided, however, that and Design-Builder shall be automatically deemed to have been granted by City a limited, non-exclusive, perpetual, royalty-free license to copy, distribute, and use the Deliverables on other projects in accordance with the terms set forth in Section 2.3 above.

2.5 Rights in Deliverables Upon City's Termination of Design-Builder for Default. If City terminates this Contract due to Design-Builder's default pursuant to Article 14 of the General Conditions of Contract, then upon City's payment to Design-Builder of those amounts due for Work properly performed to date of termination in accordance with the Contract Documents, City may use the Deliverables in the completion of the Project through its employees, agents, or third parties; City may use the Deliverables in and for City's subsequent use, occupancy, operation, and maintenance of the Project; and/or City may re-use or modify the Deliverables in accordance with the terms set forth in Section 2.2 above, without further obligation or liability to Design-Builder.

2.6 City's Rights in Other Intellectual Property. Design-Builder shall on its own behalf and on behalf of its employees and agents promptly communicate and disclose to City all computer programs, documentation, software, and other copyrightable works, and all discoveries, improvements, and inventions conceived, reduced to practice, or made by Design-Builder or its employees or agents, whether solely or jointly with others, during the term of this Contract resulting from or related to any Work that may be performed by Design-Builder or its employees agents. Design-Builder and City agree that all such inventions and copyrightable works are works made for hire and shall be and remain entirely the property of City. Design-Builder hereby assigns to City any rights that Design-Builder may have in such copyrightable or patentable works, and agrees to cooperate with City in registering any copyrights or obtaining any patents on same.

Article 3 **Contract Time**

3.1 General.

3.1.1 The Contract Time(s) shall commence to run on the date indicated in the applicable Notice to Proceed.

3.1.2 Design-Builder shall start to perform the Work on the date(s) when the Contract Time(s) commence to run, but no Work or services shall be performed prior to the date indicated in the applicable Notice to Proceed unless otherwise indicated in the Notice to Proceed. **Further, the professional liability (errors & omissions) insurance provided by Design-Builder under the Contract shall include a retroactive date earlier than the date on which Design-Builder began performing any design services associated with the Project, including, without limitation, the date of submission of Design-Builder's SOQ for this Project.**

3.2 Detailed Design Services.

3.2.1 The parties shall meet as contemplated by the General Conditions of Contract to discuss and implement procedures relating to City's review of Design-Builder's interim design submissions and Construction Documents.

3.2.2 Following such meeting and upon City's satisfaction with the procedures implemented and the information provided by Design-Builder, City shall issue the Design Notice to Proceed, releasing Design-Builder to proceed with the detailed design services for the Work as of the date indicated in the notice.

3.5 Time is of the Essence. City and Design-Builder mutually agree that time is of the essence with respect to the Contract, and that all dates and times set forth in the Contract Documents are material.

Article 4
Contract Price

4.1 Contract Price

4.1.1 In return for satisfaction of all of Design-Builder's obligations under the Contract Documents, including, without limitation, the furnishing of and payment for the Work, all materials, labor of all laborers, Subcontractors, Sub-Subcontractors, teamsters, truck drivers, teams and wagons employed, and owners of equipment used on the Work, City shall pay Design-Builder, in accordance with Article 13 of the General Conditions of Contract, the firm fixed price of _____ (\$_____) ("Contract Price"). The Contract Price shall not be modified except by fully-executed Change Order.

4.1.2 The Contract Price shall be allocated for services as follows and shall be payable for proper performance of services as follows:

4.1.2.1 _____ Dollars (\$_____) for design services (the "Design Contract Price")

4.1.2.2 _____ Dollars (\$ _____) for construction services (the "Construction Contract Price").

4.1.2.3 _____ Dollars (\$_____) for services under Allowances.

4.1.3 The following materials and equipment are specified in the Contract Documents by allowances. In some cases, these allowances include installation. Allowances have been established in lieu of

additional requirements and to defer selection of actual materials and equipment to a later date when additional information is available for evaluation.

4.1.3.1 Allowances:

4.1.3.2 At the earliest practical date after award of the Contract, advise City of the date when final selection and purchase of each product or system described by an allowance must be completed to avoid delaying the Work.

4.1.3.3 Funds will be drawn from the allowance by issuance of document 01210.01 Allowance Authorization.

4.1.3.4 If necessary, additional requirements will be issued by Change Order.

4.1.3.5 At Project closeout, unused amounts remaining in the allowance will be credited to the Owner by Change Order.

Article 5 **Other Provisions**

5.2 Required Authorizations

5.2.1 This Contract is entered into by City subject to authorization by the City Council or the City Manager, or by the Board of Parks and Recreation Commissioners, and shall not be binding until so authorized, and is subject to the federal and state laws and the provisions of the Kansas City Charter and Ordinances in general that may affect same.

5.3 Financial Representations

5.3.1 In executing this Contract, Design-Builder and Surety each individually represents that it has the necessary financial resources to fulfill its obligations under this Contract, and each has the necessary corporate approvals to execute this Contract.

IN WITNESS WHEREOF, the authorized representatives of City, Design-Builder, and Surety have hereunto set their hands and seals respectively, in execution of this Contract.

DESIGN-BUILDER

Legal Name of Design-Builder

Street Address

City, State, Zip Code

E-mail Address

Facsimile Number

I hereby certify that I have authority to execute this document on behalf of Design-Builder.

By: _____

Typed or Printed Name: _____

Title: _____

Date: _____

(Affix corporate seal if applicable)

SURETY

Legal Name of Surety

Street Address

City, State, Zip Code

Facsimile Number

I hereby certify that I have authority to execute this document on behalf of Surety.

By: _____

Typed or Printed Name: _____

Title: _____

Date: _____

(Affix corporate seal and attach original Power of Attorney)

KANSAS CITY, MISSOURI

Name of City Department

Street Address

City, State, Zip Code

Facsimile Number

By: _____

Typed or Printed Name: _____

Title: _____

Date: _____

Approved as to form:

Assistant City Attorney (Date)

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

Director of Finance (Date)

Exhibit C-2
Design-Build Supplementary Conditions



DESIGN-BUILD SUPPLEMENTARY CONDITIONS

Project Number _____

Project Title _____

[Instructions for Supplementary Conditions: Use the format and wording conventions for Supplementary Conditions exactly as they appear below. If you need to include additional modifications to the General Conditions consult with the Law Department. The Law Department must approve any additional modifications to the General Conditions. Be certain to remove this note before your final Contract Document is printed]

These Supplementary Conditions amend or supplement the General Conditions of the Construction Contract and other provisions of the Contract Documents as indicated below. All provisions that are not so amended or supplemented remain in full force and effect.

[Instruction for 2.03 A: Change to this section is not recommended, however, if the number of copies of Drawings and Specifications to be furnished to the Contractor exceeds one (1), insert the number. If not applicable, delete this SC. Be certain to remove this note before your final Contract Document is printed.]

SC-2.03 A. Article 2, Paragraph 2.03, Copies of Documents, is amended by deleting Paragraph 2.03 A and replacing it with the following:

A. CITY shall furnish to DESIGN-BUILDER up to _____ () copies of the Drawings and Specifications, including Addenda.

[Instruction for 4.02 A: List drawings and/or reports including date issued, preparer, title and access location. Identify technical data contained in the drawings and/or reports as stated in 4.02 B. If there are no drawings or reports, utilize the alternate language below. Delete unnecessary language included. Be certain to remove this note before your final Contract Document is printed.]

SC-4.02 Article 4, Paragraph 4.02, Subsurface and Physical Conditions; Subparagraphs A and B are supplemented as follows:

In the preparation of the Contract Documents, the following reports of explorations and tests of subsurface conditions at or contiguous to the Site of the Work were utilized:

1. Report dated _____, prepared by _____; entitled _____, which may be reviewed at **[location]**. The technical data contained in such report upon which DESIGN-BUILDER may rely is _____.

In the preparation of the Contract Documents, the following drawings of physical conditions in or relating to existing surface or subsurface structures (except Underground Facilities) which are at or contiguous to the Site of the Work were utilized:

2. Drawings dated _____, prepared by _____; entitled _____, which may be reviewed at **[location]**. The technical data contained in such drawings upon which DESIGN-BUILDER may rely is _____.

[OR]

In the preparation of the Contract Documents, no reports of explorations and tests of subsurface conditions at or contiguous to the Site of the Work **[choose:]** were utilized **[or]** have been prepared.

In the preparation of the Contract Documents, no drawings of physical conditions in or relating to existing surface or subsurface structures which are at or contiguous to the Site of the Work **[choose:]** were utilized **[or]** are available.

[Instruction for 4.06A: List drawings and/or reports including date issued, preparer, title and access location. Identify technical data contained in the drawings and/or reports as stated in 4.06 B. If there are no reports or drawings, utilize the alternate language below. Delete unnecessary language included. **Be certain to remove this note before your final Contract Document is printed.]**

SC-4.06 Article 4, Paragraph 4.06, Asbestos, Lead-Based Paint, PCBs, Petroleum Waste or Radioactive Material, Subparagraphs A and B are supplemented as follows:

In the preparation of the Contract Documents, the following reports and drawings relating to a Hazardous Environmental Condition identified at the Site of the Work were utilized:

1. Report dated _____, prepared by _____; entitled _____, which may be reviewed at **[location]**. The technical data contained in such report upon which DESIGN-BUILDER may rely is _____.
2. Drawings dated _____, prepared by _____; entitled _____, which may be reviewed at **[location]**. The technical data contained in such drawings upon which DESIGN-BUILDER may rely is _____.

[OR]

In the preparation of the Contract Documents, no reports of explorations and tests of any Hazardous Environmental Condition(s) at the Site of the Work **[choose:]** were utilized. **[or]** have been prepared.

[Instruction for 5.01 A (below): Indicate whether Performance and Maintenance and Payment Bonds must remain in effect longer than one (1) year; identify any other change in length of bond or additional bonding required. Unless the funding source for the project prevents the City from requiring bonds, do not eliminate this requirement or reduce the length of time below one (1) year without consulting with the Law Department and obtaining approval from the City's Risk Manager. If not applicable, delete this SC. **Be certain to remove this note before your final Contract Document is printed.]**

SC- 5.01 A. Article 5, Paragraph 5.01, Performance, Payment and Other Bonds, Subparagraph A, second sentence, is revised as follows:

These Bonds shall remain in effect at least until ____ () **[years] [months]** after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. DESIGN-BUILDER shall furnish the following additional Bonds, which shall remain in effect as stated: _____."

[Instruction for 5.03 A: Time requirement for submission of Insurance Certificates may be changed if needed. **Be certain to remove this note before your final Contract Document is printed.]**

SC-5.03 A. Article 5, Paragraph 5.03 Certificates of Insurance, Subparagraph A is amended by adding the following Subparagraph 1:

1. DESIGN-BUILDER shall obtain evidence that all Subcontractors have in force general, automobile, and employer's and workers' compensation liability insurance in the

amounts required by these Contract Documents, and evidence that each is current on its unemployment insurance payments before Subcontractors begin Work at the Site. DESIGN-BUILDER shall retain such evidence in its files and make available to CITY within ten (10) days after written request.

[Instruction for 5.04 B.1: List any individuals or entities in addition to CITY, DESIGN PROFESSIONAL and Consultant(s) to be included as additional insureds. If not applicable, delete this SC. Be certain to remove this note before your final Contract Document is printed.]

SC-5.04 B.1. Article 5, Paragraph 5.04, DESIGN-BUILDER's Liability Insurance, Subparagraph B.1 is amended as follows:

With respect to insurance required by Paragraphs 5.04 A.3 through 5.04 A.5, the following additional individuals or entities shall be listed as additional insureds:

[Instruction for 5.04 C: Add listed policies of insurance and limits that apply. Adjust limits of insurance if needed. Delete policies of insurance and limits listed in this SC that do not apply. Number any new section(s). Be certain to remove this note and the instructions below before your final Contract Document is printed.]

SC-5.04 C. Article 5, Paragraph 5.04, DESIGN-BUILDER's Liability Insurance, Subparagraph C is amended as follows:

The following additional policies of insurance are required:

[Add listed policies of insurance and limits that apply.]

5. Railroad Protective Liability Insurance. This insurance shall be issued in the name of the Railroad Company specified below and shall protect and defend the railroad against claims arising as a result of the operations of DESIGN-BUILDER. This insurance shall be acceptable to the railroad and shall be maintained in force throughout the period when DESIGN-BUILDER is working on or adjacent to property owned by the railroad. DESIGN-BUILDER shall not enter upon the Railroad Company's premises until this insurance is in effect. The aggregate liability limits per job site for bodily injury and property damage shall be not less than:

\$1,000,000 combined single limit for each occurrence

\$1,000,000 general aggregate

\$1,000,000 personal injury limit

[Add name of railroad company as insured, if applicable.]

Railroad Protective Liability Insurance shall be issued in the name of the following railroad(s): _____.

6. Environmental Liability Insurance. This insurance shall protect DESIGN-BUILDER, and CITY, DESIGN PROFESSIONAL and Consultants as additional insureds, against claims for injuries to members of the public and damage to the property of others resulting from environmental impairment. The liability limits of the environmental policy shall not be less than \$2,000,000.

7. Asbestos Liability Insurance. This insurance shall be an "occurrence" policy and shall protect DESIGN-BUILDER, and CITY, DESIGN PROFESSIONAL and Consultants as additional insureds, against all claims arising from bodily injury, sickness, disease or death of any person other than the DESIGN-BUILDER's employees arising out of any act related to asbestos abatement work. The liability limits for bodily injury and property damage shall be not less than:

\$1,000,000 each occurrence

\$2,000,000 general aggregate.

If DESIGN-BUILDER provides Environmental or Asbestos Liability Insurance through a Subcontractor, DESIGN-BUILDER shall contractually require the Subcontractor to include CITY as additional insured in the Subcontractor's policy. DESIGN-BUILDER shall deliver to CITY, prior to the start of any Work at the Project Site, properly completed certificates of insurance or other evidence that the required insurance is in full force and effect, in a form acceptable to CITY. DESIGN-BUILDER shall contractually require its Subcontractor to defend, indemnify and hold harmless CITY from and against all Claims arising out of or resulting from all acts or omissions in connection with this Contract caused in whole or in part by Subcontractor or Subcontractor's agents, regardless of whether or not caused in part by any act or omission, including negligence, of CITY. DESIGN-BUILDER must provide evidence that this requirement has been complied in accordance with the provisions of Paragraphs 6.01 B and 6.06 G.

8. Long-Shoremen's Insurance.

[Instruction for 5.06 A: Indicate if property insurance coverage on the Work at the Site does not need to be provided by DESIGN-BUILDER. NOTE: See General Conditions Paragraphs 5.10 regarding partial utilization and 14.02 regarding payment for stored materials when considering Property Insurance requirements. If DESIGN-BUILDER is required to provide Property Insurance, the deductible amount may be adjusted. Consult the Risk Manager. Delete unnecessary language. Be certain to remove this note before your final Contract Document is printed.]

SC-5.06 A. Article 5, Paragraph 5.06, Property Insurance, is amended by deleting Subparagraph A and inserting the following:

A. DESIGN-BUILDER shall not be required to purchase and maintain property insurance on the Work at the Site.

[OR]

SC-5.06 A. Article 5, Paragraph 5.06, Property Insurance, Paragraph A, is amended by adding the following after the first sentence:

Property Insurance on the Work at the Site shall be written with a deductible amount not to exceed \$10,000.00.

[Instruction for 6.01 D This paragraph is only applicable to contracts involving specific project schedule requirements. Be certain to remove this note before your final Contract Document is printed.]

SC-6.01 D. Article 6, Design-Builder's Services and Responsibilities, is amended by adding the following to Paragraph D:

D. Additional Requirements.

[Add any specific schedule requirements - suggestions follow.]

[Instruction for 6.04: This paragraph is only applicable to contracts involving specific performance standard requirements. Be certain to remove this note before your final Contract Document is printed.]

SC-6.04 Article 6, Standard of Care for Professional Design Services, Paragraph 6.04, is amended by adding the following Paragraph 6.04 B:

B Performance Standard Requirements

[Enumerate all applicable standard requirements for the project]

[Instruction for 6.07: List the number of copies of approved Construction Documents to be submitted to the City. Be certain to remove this note before your final Contract Document is printed.]

SC-6.07. D. Article 6.07, Detailed Design Services, Paragraph 6.07.D, is amended by adding the following:

Design-Builder shall furnish to City _____ () copies of the approved Construction Documents prior to commencement of construction. Additional copies will be furnished, upon request, at the cost of reproduction.

[Instruction for 6.08 Q: The following paragraph should be included for projects being processed in e-Builder. Delete this SC in its entirety if it is not applicable. Be certain to remove this note before your final Contract Document is printed.]

Article 6, Paragraph 6.08, Legal Requirements, is amended by adding the following new Subparagraph 6.10 Q:

Contract Information Management System. Design-Builder shall comply with City's Contract Information Management System requirements. Design-Builder shall use City's Internet web based Contract Information Management System/Project Management Communications Tool provided by City and protocols included in that software during the term of this Contract. Design-Builder shall maintain user applications to City's provided system for all personnel, subcontractors or suppliers as applicable.

[Instruction for 6.09: Identify pre-paid permit fees. If not applicable, delete this SC. Be certain to remove this note before your final Contract Document is printed.]

SC-6.09. Article 6, Government Approvals and Permits, Subparagraph 6.09. is amended by adding the following:

6.09.A Design-Builder does not need to obtain and pay for the following construction permits and licenses, which have been paid for by City:

[Example - Use the following language if City is paying for the building permit.]

Permit. City will only pay the City's Codes Administration required building permit. All other permits and inspection fees required by City's Codes Administration Department and other City Departments or other governmental and non-governmental agencies having jurisdiction over the project shall be at DESIGN-BUILDER's expense.

[OR]

Plan Review Fees. City will only pay City's Codes Administration Plan Review Fees. A fee of one-half of the permit cost is required when the total project valuation exceeds \$100,000.00. This plan review fee shall be rounded up to the next higher dollar. Plan review fees are due at the time plans are submitted for plan review. All other permits and inspection fees required by City's Codes Administration Department and other City Departments or other governmental and non-governmental agencies having jurisdiction over the project shall be at DESIGN-BUILDER's expense.

SC-6.10. Article 6., Construction Phase Services, shall be amended by adding the following Paragraph 6.10. 5:

The Design-Builder, subcontractors (all tiers), and suppliers shall furnish sufficient forces, construction plant, and equipment, and shall work such hours as may be required to insure the prosecution of the Work in accordance with the time periods specified in the Contract Documents. If in the opinion of the City, the Design-Builder falls behind the Construction Progress Schedule, the Design-Builder shall take such steps as may be necessary to improve the progress. The City may require the Design-Builder to submit a recovery plan which may include an increase in the number of shifts, and/or overtime operations, and days of work including holidays, Saturdays, and Sundays, all without additional costs to the City.

SC-6.10.E.3 Article 6, Construction Phase Services, shall be amended by adding the following Paragraph 6.10.E.3:

During the term of this Contract at City's option, Design-Builder shall incorporate into the Work the services of City's designated artist as a Subcontractor to perform specified artwork associated with the Work. By Change Order, Design-Builder and its Surety shall include City's artist as a Subcontractor, shall extend the scope and amount of the Payment and Performance and Maintenance Bonds, and general liability, automobile liability and workers' compensation insurance to cover City's artist in connection with the Project, and shall incorporate the City's contract requirements specific to the artist.

[Instruction for 6.10.E.: List all other DESIGN-BUILDERS on the Site, with appropriate information, including authority and responsibility for coordination of activities. If not applicable, delete this SC. **Be certain to remove this note before your final Contract Document is printed.]**

SC-6.10.E Article 6, Construction Phase Services, shall be amended by adding the following Paragraphs:

6.10.E.1 It is anticipated that work under separate contracts will be performed at the Site, concurrent with the Work to be performed pursuant to these Contract Documents. The City will have authority and responsibility for coordination of the activities among these DESIGN-BUILDERS performing work at the Site.

Design-Builder and Design-Builder's employees shall confine their activities to the areas assigned except for the necessary Work connected with this Contract. In the event of conflicting interests not immediately resolved between two or more contractors, the decisions of the City will be final.

[Option - Enumerate Contracts to be coordinated]

[OR]

[Instruction: If this option is selected, contracts to be coordinated must include language advising the Contractor(s) of the Design-Builder's authority and responsibility for coordination.]

6.10.E.1 It is anticipated that work under separate contracts will be performed at the Site, concurrent with the Work to be performed pursuant to these Contract Documents. The Design-Builder will have authority and responsibility for coordination of the activities among the various contractors performing work at the Site.

Design-Builder and Design-Builder's employees shall confine their activities to the areas assigned except for the necessary Work connected with this Contract. In the event of conflicting interests not immediately resolved between two or more contractors, the decisions of the Design-Builder will be final.

[Option - Enumerate Contracts to be coordinated]

[Instruction: The following is suggested language to describe the specific matters and extent of the authority of the Coordinating Entity. Modify or supplement the language as appropriate to the specific situation. **Be certain to remove this note before your final Contract Document is printed.]**

6.10.E.3. The City **[OR]** Design-Builder shall coordinate the scheduling of work between this Contract and other concurrent contracts so that interference with the use of existing facilities and public works and conflicts with interfacing work will be minimized. Particular attention shall be paid to maintaining suitable traffic patterns and adequate access to the existing facilities.

6.10.E.4. Whenever construction activities conflict with the use of existing facilities and public works, **[choose the appropriate person, e.g. the Director, the facility manager, etc.]** _____ shall decide which activity shall be given priority. The _____ **[entity identified in 6.10.E.1 as having coordination responsibility]**

shall be responsible for coordinating work by its own forces, by other contractors and by all subcontractors with work by the operating staff of the existing facility. The _____ shall exert full control over the actions of all employees and other persons with respect to the use and preservation of property and existing facilities, except such control as may be specifically reserved to City or others. The _____ has the right to exclude from the Site all persons who have no purpose related to the Work or its inspection, and may require all person on the Site (except City's employees or representatives) to observe the same regulations as the _____ requires of its own employees.

6.10.E.5. ***[Insert if Design-Builder is not the entity identified in 6.10.E.1 as having coordination responsibility.]*** Design-Builder will be expected to cooperate with the _____ ***[entity identified in 6.10.E.1 as having coordination responsibility]*** and to schedule activities at the Site in a manner that will not result in delay or expense to City or other contractors.

6.10.E.6. Design-Builder's and Contractor's employees shall confine their activities to the areas assigned except for the necessary Work connected with this Contract. In the event of conflicting interests not immediately resolved between two or more contractors,, the decisions of the _____ ***[entity identified in 6.10.E.1 as having coordination responsibility]*** will be final.

SC-6.10.G.4 Article 6, Construction Phase Services, shall be amended by adding the following Paragraph 6.10.G.4

Following the Effective Date of the Contract, City will assign all or part of the listed procurement contract(s) to Design-Builder. Subject to acceptance by Design-Builder, all duties, responsibilities and obligations of City for the assigned contract(s), or parts thereof, will be assumed by Design-Builder.

Contract

Description

[Instruction for 6.10.L.4: Additional requirements for cleaning, particularly for buildings, may be imposed as follows. Modify language as necessary. If not applicable, delete this SC. Be certain to remove this note before your final Contract Document is printed.]

SC-6.10.L.4 Article 6, Construction Phase Services, shall be amended by adding the following Paragraph 6.10.L.4:

Prior to Substantial Completion, Design-Builder shall complete cleaning to include (i) remove temporary protective coatings, barriers, and labels not required to remain; (ii) clean finishes free of dust, stains, films, and other foreign substances; (iii) clean and polish transparent materials, including mirrors, polished metal, and interior and exterior glass; (iv) vacuum clean carpet and similar soft surfaces; (v) sweep and damp mop resilient and hard floor surfaces, including exposed concrete floors; (vi) wipe surfaces of mechanical and electrical equipment clean, including elevator equipment and other similar equipment and remove excess lubrication and other substances; (vii) clean permanent filters of ventilating equipment and replace disposable filters; (viii) Clean ducts, blowers, and coils when units have been operated during construction; (ix) clean plumbing fixtures to a sanitary condition, free of stains including those resulting from water exposure; (x) clean light fixtures and lamps to achieve full function efficiency; (xi) clean waste and debris from service areas, roofs, downspouts, drainage systems, areaways, plenums, shafts, equipment vaults, manholes, and other areas; (xii) clean and sweep exterior paving and walks, removing stains, spills, and foreign substances; (xiii) rake clean landscaped areas; (xiv) remove waste and surplus materials, rubbish, and construction facilities from Site; and (xv) maintain work in clean condition until City certifies Substantial Completion.

[Instruction for 6.12: Additional requirements may be included relating to Warranties. Sample language, modify as necessary. If not applicable, delete this SC. Be certain to remove this note before your final Contract Document is printed.]

SC-6.12.A. Article 6, Construction Phase Services, shall be amended by adding the following Paragraph 6.12:

- a. DESIGN- BUILDER shall submit 3 sets of required Warranty data bound into 11-1/2 inch by 11-1/2 inch 3 D-side ring expansion plastic binders.
 - a.1. Binder covers shall have printed title "WARRANTIES", Project identification, and subject matter on cover and exterior edge of binder.
 - a.2. DESIGN-BUILDER shall provide a table of contents for each volume, with each Product or piece of equipment identified, typed on 24 pound white paper.
 - a.3. DESIGN-BUILDER shall provide a directory with list names, addresses, and telephone numbers of Design-Build Team, Architect, Architect's consultants, contractor,, all tier subcontractors, and product and equipment supplier.
 - a.4. DESIGN-BUILDER shall arrange Warranties by system.

[Instruction for 6.12.A.: Additional requirements may be included relating to Operating and Maintenance Manuals. Sample language, modify as necessary. If not applicable, delete this SC. Be certain to remove this note before your final Contract Document is printed.]

SC-6.12.A. Article 6, Construction Phase Services, shall be amended by adding the following Paragraph 6.12.A:

- 6.12.A.2. Operating and Maintenance Manuals shall consist of three (3) sets of required data bound into 11-1/2 inch by 11-1/2 inch 3 D-side ring expansion plastic binders
 - b1. Binder covers shall have printed title "OPERATING AND MAINTENANCE MANUALS", Project identification, and subject matter on cover and exterior edge of binder.
 - b.2. When multiple binders are used, correlate data into related consistent groupings.
 - b.3. Internally subdivide binder contents with permanent page dividers, logically organized as described below, with tab titling clearly typed under reinforced laminated plastic tabs.
 - b.4. Provide a table of contents for each volume, with each Product or system description identified, typed on 24 pound white paper.
 - b5. Provide a directory with list names, addresses, and telephone numbers of Design-Build Team, Architect, Architect's consultants, contractor, all tier subcontractors, and product and equipment supplier.
 - b.6. Provide operation and maintenance instructions by system. For each category, identify (i) names, addresses, and telephone numbers of subcontractors, sub-subcontractor, and supplier; (ii) source of maintenance and repair parts; (iii) significant design criteria; (iv) list of equipment; (v) list for each components parts; (vi) operating instructions for equipment and systems; (vii) maintenance instructions for equipment and systems; and (viii) maintenance instructions for special finishes, including recommended cleaning methods for materials, special precautions, and identifying detrimental cleaning agents.
 - b.7. Provide documents and certificates including (i) product data and shop drawings; (ii) certificates; and (iii) photocopies of warranties.
 - b.8. Provide one (1) set of required data on compact disk in Adobe Acrobat PDF format.

[Instruction for 6.13.B: If the contract includes installation of new equipment, systems, etc. which requires training or assistance for City personnel, include language stating specific training requirements. Sample language, modify as necessary. If not applicable, delete this SC. **Be certain to remove this note before your final Contract Document is printed.]**

SC-6.13.B Article 6, Construction Phase Services, shall be amended by adding the following Paragraph:

a. DESIGN-BUILDER shall engage a factory-authorized service representative to train Owner's maintenance personnel to adjust, operate, and maintain control systems and components.

.1. Train City's maintenance personnel on procedures and schedules for starting and stopping, troubleshooting, servicing, and maintaining equipment and schedules.

.2 Provide operator training on data display, alarm and status descriptors, requesting data, executing commands, calibrating and adjusting devices, resetting default values, troubleshooting, field device locations and operation, workstation and peripherals, graphic generation, field panel programming, and requesting logs.

.2.a. Include a minimum of 40 hours dedicated instructor time on-site between the hours of 8 a.m. to 5 p.m. weekdays only.

.b. Schedule training with City, with at least seven days' advance notice.

c.3. Provide a training manual to each attendee.

.c.4. Provide one VHS format video taping of one complete training session.

.3. Within one year of date of Substantial Completion, provide up to three site visits, when requested by City, to adjust and calibrate components and to assist City's personnel in making program changes and in adjusting sensors and controls to suit actual conditions.

6.19. Work Which Includes One Percent for Art Projects

[Instruction for 6.19: If a construction project will include One Percent for Art components, additional provisions may be required in the Contract Documents. For those projects which will include art, several possibilities can arise, including:

1. The art may be a work that is fabricated off Site by the artist such as a framed painting or other movable item which is installed inside or outside the structure by OWNER or DESIGN-BUILDER or by the artist.

2. The art may be work that is incorporated into the structure by DESIGN-BUILDER or artist such as a mural painted on a wall or a mosaic or some other art that is actually fabricated or created on the Site.

If the art is fabricated off Site and can be installed by OWNER after the structure is completed, then the Contract may not require a Supplementary Condition. If the art will be fabricated or created on the Site, then the art is considered a public improvement which invokes other statutory, charter, ordinance and risk considerations, which may include Payment Bonds for the amount of the art, prevailing wage requirements as applicable to the art, Performance Bonds, MBE/WBE requirements, Buy American policy, general liability insurance, auto insurance, and workers' compensation insurance. In particular, because many artists are not able to obtain Payment or Performance Bonds because of the nature of their work and because the bonding and insurance industry generally does not have a satisfactory method to serve this need, it may be necessary to either redefine the scope of the artist's work so that it is done off

DB 00800 Design-Build Supplementary Conditions 102014.doc 00800 Design-Build Supplementary Conditions 102014

Site, or if not possible, to weave the artist's work into the Contract so that the bonding and insurance for the DESIGN-BUILDER can be extended to cover the artist. The following language is suggested, however, each instance should be reviewed and approved by the Law Department before either the art contract or the construction contract are developed. If not applicable, delete this SC. Be certain to remove this note before your final Contract Document is printed.]

A. During the term of this Contract at CITY's option, DESIGN-BUILDER shall incorporate into the Work the services of CITY's designated artist as a Subcontractor to perform specified artwork associated with the Work. By Change Order, DESIGN-BUILDER and its Surety shall include CITY's artist as a Subcontractor, shall extend the scope and amount of the Payment and Performance and Maintenance Bonds, and general liability, automobile liability and workers' compensation insurance to cover CITY's artist in connection with the Project, and shall incorporate the CITY's contract requirements specific to the artist.

[If the project sight is known to have a hazardous enviromental condition use the following supplemental condition]

SC-8.02., Article 8, City's Responsibilities, is amended by adding Paragraph 8.02.A as follows:

In the preparation of the Contract Documents, the following reports and drawings relating to a Hazardous Environmental Condition identified at the Site of the Work were utilized:

a. The following information is provided for Design-Builder's information and use:

Drawings dated _____, prepared by _____; entitled _____, which may be reviewed at ***[location]***.

[Enumerate all surveys, easements, legal descriptions, etc. that are available to the Design-Builder.]

SC-8.02., Article 8, City's Services and Responsibilities, is deleted and replaced with the following paragraph:

8.02.A. Due to the unavailability of current survey information, the successful bidder is required to provide survey information.

SC-8.02.A.3, Article 8, City's Services and Responsibilities, is deleted and replaced with the following paragraph:

8.02.A.3. Due to the unavailability of accurate legal description information, the successful bidder is required to provide said legal description information.

SC-11.01 Article 11, Paragraph 11.01, Time of the Essence is amended by adding the following new Subparagraphs immediately following Subparagraph 11.01 A:

B. Starting and Completion

1. The Work to be performed under this Contract shall begin on the date specified in the written Notice to Proceed issued by the Director of _____, and the Work shall be substantially complete, in accordance with Paragraph 1.05, on or before (date) ***[or]*** within _____ Calendar Days thereafter. Once the Work starts, DESIGN-BUILDER shall continuously pursue completion of the Work.

2. The Work shall be completed and ready for final payment in accordance with Paragraph 13.06 on or before (date) ***[or]*** within _____ Calendar Days after the date of Substantial Completion of the Work.

[Instruction for 11.06: Do not include both types of damages clauses. Consult with the Law Department before choosing the type of damages provision that will be included in the Contract.

C. Liquidated Damages

1. If the Work is not substantially completed, in accordance with Paragraph 13.05, on or before (date) **[or]** within the period stated in Paragraph 11.01 B.1], DESIGN-BUILDER shall pay liquidated damages to CITY in the amount of _____ (\$ _____) for each Calendar Day until the Work is substantially complete. The amount of liquidated damages shall be deducted from any payments due or to become due DESIGN-BUILDER.

2. If the Work is not completed and ready for final payment in accordance with Paragraph 13.05, within the period stated in Paragraph 11.01 B.2, DESIGN-BUILDER shall pay liquidated damages to CITY in the amount of **[Choose appropriate liquidated damages amount]** _____ (\$ _____) for each Calendar Day until the Work is completed and ready for final payment. The amount of liquidated damages shall be deducted from any payments due or to become due DESIGN-BUILDER.

[OR]

C. Actual Damages.

If the Work is not completed within the Contract Times and, as a direct result, CITY incurs additional costs or loses revenues, then the amount of such additional costs and lost revenues, including but not limited to, costs for the completion, correction, replacement, or repair of the Work, lost rental income, costs of relocating tenants, costs of lease replacement or extension, any interest charges, fines or penalties imposed, and/or additional staff costs for administration, including legal costs, will be aggregated and assessed against DESIGN-BUILDER. These and other such costs will compound and accrue until the completion of the Work and acceptance of the Work by CITY. DESIGN-BUILDER shall pay actual damages to CITY in the amount of those additional costs and lost revenues.

[Instruction for 13.01: *Include any specific instructions to the Design-Builder regarding submission of the Schedule of Values. If not applicable, delete. Be certain to remove this note before your final Contract Document is printed.]*

SC-13.01A: Article 13, Payment, is revised by adding the following Paragraphs to 13.01, Schedule of Values:

- .1 Design-Builder will submit **[number]** copies of the Schedule of Values using City Form 02190.02.
- .2 Include separate line items for (i) Bonds and (ii) Insurance.
- .3 Dollar amounts shall include material, labor, overhead, and profit applicable to each individual item indicated.
- .6 Temporary facilities and other major cost items that are not direct cost of actual work-in-place may be shown either as separate line items in the Schedule of Values or distributed as general overhead expense, at Contractor's option.

[Instruction for 13.02: *City standard retainage is 10%. Include the following retainage language and amend as required for projects funded in whole or in part by Federal funds or innovative financing as specified in the Federal requirements. Revise remaining information below to suit the Project. If not applicable, delete. Be certain to remove this note before your final Contract Document is printed.]*

SC- 13.02. Article 13, Payment, is revised by adding the following to Paragraphs as follows:

13.02.D. City shall make payments to Design-Builder monthly on or about the _____ day of each month. Payments to Design-Builder will be made on the basis of ninety-five percent (95%) of the value of the Work satisfactorily completed plus ninety-five percent (95%) of the value of properly stored and insured, unused materials on hand on the Site

of the Work. City shall retain five percent (5%) of each partial payment until completion and acceptance of the Work covered by the Contract and final payment is due. All Work covered by a payment becomes City's property, provided that the Work paid for remains the sole responsibility of Design-Builder until all terms and conditions of the Contract have been met.

13.02.E. Design-Builder shall submit **[number]** copies of the Application for Payment, in typewritten form, using City Form 01290.01 and accompanied by Schedule of Values, Form 01290.02, as well as any other supporting documents required by the Contract.

.1 Using the approved Schedule of Values, indicate dollar value in each column of each line item for portion of Work completed through the last day of the application period. Round off dollar values to the nearest dollar. Complete every entry on the form including the MBE/WBE dollar amounts and percentages.

.2 Differentiate between items stored on-site and items stored off-site. Include evidence of insurance or bonded warehousing if required.

.3 Change Orders: Indicate each authorized Change Order as separate items on continuation sheet. List by Change Order Number and indicate dollar value breakdown of each Change Order.

.4 Allowances: Provide a separate line item in the Schedule of Values for each allowance. Show line-item value of unit-cost allowances, as a product of the unit cost, multiplied by measured quantity. Use information indicated in the Contract Documents to determine quantities.

13.02.F In addition to the requirements of Paragraph 13.02.E, Design-Builder shall submit the following with each Application for Payment.

.1 Updated Construction Progress Schedule.

.2 Construction Progress Photos on compact disc; Jpg files. **[Four] <Insert number> [black-and-white] [color]** photographs coinciding with cutoff date associated with each Application for Payment. Photographer shall select vantage points to best show status of construction and progress since last photographs were taken.

.1 Unless otherwise indicated, date and time stamp each photograph as it is being taken so stamp is integral to photograph.

.2 Photographs shall be **[Medium-format, 2-1/4 by 2-3/4 inches (60 by 70 mm)]**.

SC- 13.06. Article 13, Payment, is revised by adding the following to Paragraphs as follows:

13.06.B. Final Payment Application: In addition to other Application for Payment requirements, the Final Payment Application must be accompanied by Form 01290.14 Contractor Affidavit for Final Payment and Form 01290.15 Subcontractor Affidavit for Final Payment for each subcontractor regardless of tier.

[Instruction for 13.05.: For applicable projects it may help to avoid disputes between OWNER and CONTRACTOR if it is stated that certain specific items of the Work either must be, or need not be, fully completed at the time of Substantial Completion. This may be accomplished by adding language to list certain principal items that must be ready for continuous service by City, or to list such items as fencing, landscaping, or signing, the completion of which may not be a requirement for Substantial Completion. Be certain to remove this note before your final Contract Document is printed.]

SC- 13.05.B. Article 13, Payment, Paragraph 13.05., Substantial Completion, is supplemented as follows:

13.05.B.1 To be considered substantially complete, the following items of the Work must be operational and ready for City's continuous use as intended: ***[list – see examples below]***

- (i) All elements of the Work are complete and operational, ready for Owner's continuous occupancy and use as intended.
- (ii) A list of deficiencies has been completed by the Contractor and accepted by the Program Manager.
- (iii) Testing and balancing are complete.
- (iv) A Temporary Certificate of Occupancy is secured.
- (v) All life safety systems, including but not limited to fire protection, are fully operational and tested.
- (vi) The Owner has been instructed in the use and operation of systems serving the space.
- (vii) Contractor's access to areas accepted as Substantially Complete shall be limited to hours between 11:00 pm and 5:00 am, or, with the concurrence of the Owner, other times outside normal hours of operation or use of the space.

Items of the Work not essential to City's operation, which may be completed without after the Work is accepted as Substantially Complete, and may include the following: minor damage to finishes, including.

Items of the Work not essential to plant operation, which may be completed without interruption of plant operation, may be completed after the Work is accepted as substantially complete, and may include the following: ***[list – see examples below]***.

- (i) minor adjustment of hardware,
- (ii) replacement of damaged ceiling panels,
- (iii) similar minor adjustments or replacements

City shall also allow Design-Builder reasonable access to complete items listed in Paragraph 13.05 A which may be completed after the Work is accepted. ***[Instruction for 14.01: The following Paragraph should, in all instances, be added as a Supplementary Condition. Be certain to remove this note before your final Contract Document is printed.]***

14.02.E If CITY must complete the Work, all costs and charges incurred by CITY, together with the cost of completing the Work under the Contract, will be deducted from any monies due or which may become due DESIGN-BUILDER. If such expense exceeds the sum which would have been payable under the Contract, then DESIGN-BUILDER and the surety shall be liable and shall pay to CITY the amount of such access.

SC-16. Article 16, Miscellaneous, is amended by adding the following Paragraph(s) immediately following Paragraph 16.05:

[Instruction for SC 16.06, etc.: If the Contract requires that miscellaneous subjects not within the existing seventeen (16) Articles of the G

16.06 (title)

[Instruction for SC 17.01, etc.: If the Contract requires that a subject not within the existing sixteen (16) articles of the General Conditions need be addressed, and is not an individual item which may be included within Article 17, add additional articles and sections as applicable. If not applicable, delete this SC. Be certain to remove this note before your final Contract Document is printed.]

SC-18.____ The General Conditions are amended by adding the following Article(s):

ARTICLE 18 (title)

Exhibit C-3
General Conditions



DESIGN-BUILD GENERAL CONDITIONS

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS AND TERMINOLOGY

- 1.01 Defined Terms
- 1.02 Terminology

ARTICLE 2 PRELIMINARY MATTERS

- 2.01 Delivery of Bonds
- 2.02 Evidence of Insurance
- 2.03 Copies of Documents
- 2.04 Commencement of Contract Times; Notice to Proceed
- 2.05 Starting the Work
- 2.06 Before Starting Construction
- 2.07 Initially Acceptable Schedules

ARTICLE 3 CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

- 3.01 Intent
- 3.02 Reference to Standards and Specifications of Technical Societies
- 3.03 Reporting and Resolving Discrepancies
- 3.04 Amending and Supplementing Contract Documents
- 3.05 Reuse of Documents

ARTICLE 4 AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS;

REFERENCE POINTS

- 4.01 Availability of Lands
- 4.02 Subsurface and Physical Conditions
- 4.03 Differing Subsurface or Physical Conditions
- 4.04. Physical Conditions - Underground Facilities
- 4.05 Reference Points
- 4.06 Asbestos, Lead-Based Paint, PCBs, Petroleum, Hazardous Waste or Radioactive Material

ARTICLE 5 BONDS AND INSURANCE

- 5.01 Performance, Payment and Other Bonds
- 5.02 Licensed Sureties and Insurers
- 5.03 Certificates of Insurance
- 5.04 DESIGN-BUILDER's Liability Insurance
- 5.05 CITY's Liability Insurance
- 5.06 Property Insurance
- 5.07 Waiver of Rights

5.08 Receipt and Application of Insurance Proceeds

5.09 Partial Utilization - Property Insurance

ARTICLE 6 DESIGN-BUILDER'S RESPONSIBILITIES

6.01 General Requirements

6.02 Professional Design Services

6.03 Design Standards, Seals and Endorsements

6.04 Standard of Care for Professional Design Services

6.05 Progress Schedule

6.06 Recovery Schedules

6.07 Detailed Design Services

6.08 Legal Requirements

6.09 Government Approvals and Permits

6.10 Construction Phase Services

6.11 DESIGN-BUILDER's Responsibility for Project Safety

6.12 DESIGN-BUILDER's Warranty

6.13 DESIGN-BUILDER's Correction of Defective Work

6.14 CITY's Acceptance of Defective Work

6.15 CITY's Correction of Defective Work

6.16 No Time Extensions

6.17 No Effect on Legal Requirements

6.18 Indemnification

ARTICLE 7 OTHER WORK

7.01 Related Work at Site

7.02 Coordination

ARTICLE 8 CITY'S RESPONSIBILITIES

8.01 Duty to Cooperate

8.02 Furnishing of Services and Information

8.03 CITY's Representative

8.04 CITY's Separate Contractors

ARTICLE 9 CHANGES IN THE WORK

9.01 Authorized Changes in the Work

9.02 Unauthorized Changes in the Work

9.03 Execution of Change Orders

9.04 Notification to Surety

ARTICLE 10 CHANGE OF CONTRACT PRICE

10.01 Change of Contract Price

10.02 Cost of the Work

10.03 Cash Allowances

10.04 Unit Price Work

10.05 Dispute Resolution

ARTICLE 11 CONTRACT TIMES

11.01 Time of the Essence

11.02 Change of Contract Times

11.03 Proof Required To Justify An Extension of Time For Excusable and Compensable

Delays

- 11.04 Delays Within DESIGN-BUILDER's Control
- 11.05 Delays Beyond the CITY's and DESIGN-BUILDER's Control
- 11.06 Delay Damages
- 11.07 Dispute Resolution

ARTICLE 12 TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

- 12.01 Access to Work
- 12.02 Tests and Inspections
- 12.03 Notice of Defects
- 12.04 Uncovering Work
- 12.05 CITY May Stop the Work
- 12.06 Correction or Removal of Defective Work
- 12.07 Correction Period
- 12.08 Acceptance of Defective Work
- 12.09 CITY May Correct Defective Work

ARTICLE 13 PAYMENTS TO DESIGN-BUILDER AND COMPLETION

- 13.01 Schedule of Values
- 13.02 Monthly Progress Payments
- 13.03 Withholding of Payment
- 13.04 DESIGN-BUILDER's Payment Obligations
- 13.05 Substantial Completion
- 13.06 Final Completion; Final Payment

ARTICLE 14 SUSPENSION OF WORK AND TERMINATION

- 14.01 CITY May Suspend Work
- 14.02 CITY May Terminate for Default
- 14.03 CITY May Terminate for Convenience

ARTICLE 15 CLAIMS AND DISPUTES

15.01 Definition

- 15.02 Written Notice and Burden of Proof
- 15.03 Time Limits on Claims
- 15.04 Continuing Contract Performance
- 15.05 Injury or Damage to Person or Property
- 15.06 Initial Resolution of Claims and Disputes
- 15.07 Final Resolution of Claims and Disputes

ARTICLE 16 MISCELLANEOUS

- 16.01 Giving Notice
- 16.02 Computation of Times
- 16.03 Cumulative Remedies
- 16.04 Survival of Obligations
- 16.05 Controlling Law

ARTICLE 1 DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

A. Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1. **Addenda** - Written or graphic instruments issued prior to the opening of Bids that clarify, correct or change the Bidding Requirements or the Contract Documents.
2. **Agreement** - The written Contract between CITY and DESIGN-BUILDER governing the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.
3. **Application for Payment** - The form accepted by CITY's Representative which is to be used by DESIGN-BUILDER in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
4. **Asbestos** - Any material that contains more than one percent (1%) Asbestos and is friable or is releasing Asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
5. **Bid** - consists of (1) the Technical Approach Submittal of the DESIGN-BUILDER providing information on the design and construction Work to be undertaken by DESIGN-BUILDER for the Project and (2) the Price Submittal setting forth the firm, fixed price for which the DESIGN-BUILDER agrees to perform all of the Work required by the Contract Documents.
6. **Bidder** - One who submits a Bid directly to CITY, as distinct from a sub-bidder who submits a bid to a Bidder. If the CITY executes the Bid Form/Contract submitted by Bidder, the term "Bidder" shall mean DESIGN-BUILDER in both the Bidding Documents and Contract Documents unless the context clearly indicates otherwise.
7. **Bidding Documents** - The advertisement or Invitation to Bid, Instructions to Bidders, the Bid Form/Contract, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).
8. **Bidding Requirements** - The advertisement or invitation to bid, Instructions to Bidders, Bid security, and the Bid Form/Contract with any supplements.
9. **Bonds** - Payment Bond and Performance and Maintenance Bond and other instruments of security.
10. **Calendar Day** - Any day shown on the calendar, including Saturdays, Sundays, and holidays.
11. **Change Order** - A written document issued by CITY that authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Contract.
12. **CITY/OWNER** - Kansas City, Missouri, a constitutionally chartered municipal corporation, with which DESIGN-BUILDER has entered into the

Contract and for whom the Work is to be provided.

13. CITY's Project Design and Construction Criteria - are set forth in the Project Information portion of the Bidding Documents, and are those criteria developed by or for CITY to describe CITY's program requirements and objectives for the Project, including use, space, price, time, site, and expandability requirements, as well as submittal requirements and other requirements governing DESIGN-BUILDER's performance of the Work. CITY's Project Design and Construction Criteria may include, without limitation, survey information; interior space requirements; material quality standards; schematic layouts and conceptual design criteria; cost or budget estimates; design and construction schedules; site development requirements; provisions for utilities, storm water retention and disposal, and parking requirements; standards, codes, and design manuals required to be employed; aesthetic considerations; conceptual documents; design criteria and performance-based criteria and requirements; and other Project-specific technical materials and requirements.

14. CITY's Representative - Person or agency designated to act for the Director as provided in these Contract Documents.

15. Construction Documents - means the complete and detailed drawings and specifications prepared or furnished by the DOR that provide the detailed requirements for construction of the Project, including, without limitation, defining the quantities and qualities of, and the relationships among, all of the materials and equipment needed to construct and deliver to CITY a finished and functional Project that conforms to CITY's Project Design and Construction Criteria.

16. Consultant - a person, firm, or corporation having a contract with CITY to furnish services as an independent professional associate or consultant (including, without limitation, as a construction manager, construction advisor, or program manager) with respect to the Project and who is identified as such in the Supplementary Conditions. The term "Consultant" also includes such person's firms, or corporation's agents, officers, directors, or employees.

17. Contract - The entire and integrated written agreement between CITY and DESIGN-BUILDER concerning the Work that incorporates all Contract Documents. The Bid Form/Contract submitted by Bidder is the Contract between CITY and DESIGN-BUILDER upon execution by CITY. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

18. Contract Documents - The Contract Documents establish the rights and obligations of the parties and include the Contract, Addenda (which pertain to the Contract Documents), DESIGN-BUILDER's Bid Form/Contract (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Intent to Contract), the HRD Construction Project Instructions, the DESIGN-BUILDER's Utilization Plan/Request for Waiver, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Project Manual and the certification page(s) of the CITY and Consultant(s), together with approved project baseline schedule and amendments thereto and all Written Amendments, Change Orders, Work Change Directives, and CITY's written interpretations and

clarifications issued on or after the Effective Date of the Contract, and approved Shop Drawings. Reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this Paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by CITY to DESIGN-BUILDER are not Contract Documents, except project schedules submitted by DESIGN-BUILDER and approved by CITY.

16. Contract Price - The money payable by CITY to DESIGN-BUILDER for completion of the Work in accordance with the Contract Documents as stated in the Agreement.

20. Contract Times - the number of calendar days or the date(s) stated in the Contract Documents for DESIGN-BUILDER to achieve certain Milestones, to achieve Substantial Completion of the Work, or portions of the Work, and to complete the entire Work such that DESIGN-BUILDER is entitled to receive final payment.

21. Day – Shall constitute a Calendar Day.

22. DESIGN-BUILDER - is the single entity or combination of persons and/or entities having the licensure, qualifications, and capability to perform as both a Designer of Record and a General Contractor on the Project, authorized by law to do business in Missouri and to perform or furnish professional design services and construction services for the Project, with whom CITY has entered into the Contract.

23. Designer of Record or DOR - is the qualified design professional member of DESIGN-BUILDER, holding a currently valid license or certificate of authority issued by the State of Missouri pursuant to Chapter 327, Revised Statutes of Missouri, who is to perform, provide for the performance of, oversee, and coordinate all of the professional design services for the Project, either directly, through employees or associates, or through agreements with Design Subconsultants; who shall review and approve all shop drawings issued on the Project; who shall coordinate the services of all design professionals and trade disciplines on the Project; who shall confirm the compliance of the Project as designed and constructed with the design intent of CITY's Project Design and Construction Criteria; and who shall bear ultimate responsibility for the accuracy, completeness, quality, and propriety of all professional design services performed on the Project.

24. Design Subconsultant means those qualified design professionals other than the DOR holding currently valid licenses or certificates of authority issued by the State of Missouri pursuant to Chapter 327, Revised Statutes of Missouri, who are retained by the DESIGN-BUILDER, the DOR, or the GC to perform or furnish professional design services for the Project.

25. Director - The term Director shall mean the duly appointed executive officer of a department of CITY who is empowered by the City Charter or by the City Council to enter into a contract on behalf of CITY, or to grant a permit for improvements to land owned by CITY. A Director is authorized to delegate this authority to a CITY employee so designated in writing.

26. Drawings - The drawings which graphically show the scope, extent and

character of the Work to be furnished and performed by DESIGN-BUILDER and which have been prepared by DESIGN PROFESSIONAL and are included in the Contract Documents. Shop Drawings are not Drawings as so defined.

27. *Effective Date of the Contract* - The date indicated in the Contract on which it becomes effective, but if no such date is indicated it means the date on which the Contract is fully executed by CITY.

28. *General Contractor or GC* - means that member of DESIGN-BUILDER, qualified to perform construction services for the Project in the City of Kansas City, Missouri, who is to perform or oversee the performance of the construction services for the Project, either directly or through agreements with Subcontractors; who shall oversee and coordinate the services of all trade disciplines on the Project; who shall ensure the compliance of the Project, as constructed, with the Project design documents; and who shall bear responsibility for the accuracy, completeness quality, and propriety of all construction services performed on the Project.

29. *General Requirements* - Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

30. *Hazardous Environmental Condition* - The presence at the Site of Asbestos, Lead-Based Paint, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

31. *Hazardous Waste* - The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

32. *Laws or Regulations* - Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

33. *Lead Architect* - refers to that natural person, identified by DESIGN-BUILDER as such in the Key Personnel portion of the Technical Approach Submittal of DESIGN-BUILDER's Bid, who is undertaking primary responsibility for the performance and furnishing of all professional design services for the Project and for the other obligations of the DOR under the Contract Documents.

34. *Lead-Based Paint* - Any paint, varnish, stain, or other applied coating that has one (1) mg or more of lead per square centimeter. The terms "leaded paint" and "lead-containing paint" are synonymous with Lead-Based Paint.

35. *Liens* - Liens, charges, security interests or encumbrances upon real property or personal property.

36. *Milestone* - A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

37. *Notice of Intent to Contract* - The written notice by CITY to the apparent successful Bidder stating that upon compliance by that apparent successful Bidder with the conditions in the Bid Documents enumerated, within the time specified, and upon enactment of an appropriate ordinance or resolution, CITY

will sign and deliver the Contract.

38. Notice to Proceed - The written notice given by CITY to DESIGN-BUILDER, establishing the date on which the Contract Time(s) will commence to run and on which date DESIGN-BUILDER shall begin to perform its obligations under the Contract Documents. The term includes, without limitation, the Contract Notice to Proceed, the Design Notice to Proceed, and/or the Construction Notice to Proceed, as defined in the Contract for DESIGN-BUILDER Services... DESIGN-BUILDER shall perform no Work or services prior to the date on which the Contract Time(s) commence to run.

39. Partial Utilization - Use by CITY of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

40. PCBs - Polychlorinated biphenyls.

41. Petroleum - Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes and crude oils.

42. Project - The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

43. Project Manual - The documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual may be issued in one or more volumes and is contained in the table(s) of contents.

44. Request for Qualifications or RFQ - is the written solicitation issued by CITY for the Project, requesting preparation and submission of Statements of Qualifications by interested Applicants.

45. Radioactive Material - Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

46. Samples - Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

47. Shop Drawings - All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for DESIGN-BUILDER and submitted by DESIGN-BUILDER to illustrate some portion of the Work.

48. Site - Lands or areas indicated in the Contract Documents as being furnished by CITY upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by CITY which are designated for the use of DESIGN-BUILDER.

49. Specifications - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative

details applicable thereto.

50. Statement of Qualifications or SOQ - Written and/or graphic description of the credentials, qualifications, experience, and other information about an Applicant that is responsive to the evaluation criteria set forth in the RFQ.

51. Subcontractor - Any individual, firm, partnership, company, corporation or association licensed or otherwise authorized by law to do business in Missouri, to whom DESIGN-BUILDER, with written notification to CITY, has entered into an agreement to perform a part of the Work.

52. Substantial Completion - When Work (or a specified part thereof) has progressed to the point where, in the opinion of CITY as evidenced by CITY's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

53. Supplementary Conditions - The part of the Contract Documents which amends and/or supplements these General Conditions.

54. Supplier- A manufacturer, fabricator, supplier, distributor, material man or vendor having a direct contract with DESIGN-BUILDER or with any Subcontractor to furnish materials or equipment to be incorporated into the Work by DESIGN-BUILDER or any Subcontractor.

55. Underground Facilities - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

56. Unit Price Work - Work to be paid for on the basis of unit prices.

57. Work - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work includes and is the result of performing or furnishing labor, and furnishing and incorporating material and equipment into the construction, and furnishing documents, all as required by the Contract Documents.

58. Work Change Directive - A written directive to DESIGN-BUILDER, issued on or after the Effective Date of the Contract, signed by CITY and recommended by CITY, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed, or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

59. Written Amendment- A written statement modifying the Contract

Documents, signed by CITY and DESIGN-BUILDER on or after the Effective Date of the Contract and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

1.02 Terminology

A. Intent of Certain Terms or Adjectives

1. Whenever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of CITY as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to CITY any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.08 or any other provision of the Contract Documents.

B. Defective

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to CITY's Representative's recommendation of final payment (unless responsibility for the protection thereof has been assumed by CITY at Substantial Completion in accordance with Paragraph 13.5).

C. Furnish, Install, Perform, Provide

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of DESIGN-BUILDER, "provide" is implied.

D. Unless stated otherwise in the Contract Documents, words and phrases which have a well-known technical or construction industry or trade meanings are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 PRELIMINARY MATTERS

2.01 Delivery of Bonds

A. DESIGN-BUILDER shall deliver to CITY such Bonds as DESIGN-BUILDER may be required to furnish.

2.02 Evidence of Insurance

A. DESIGN-BUILDER shall deliver to CITY certificates of insurance or other evidence of insurance that CITY may request, which DESIGN-BUILDER is required to purchase and maintain in accordance with Article 5 or any other applicable provision in the Contract Documents.

2.03 Copies of Documents

A. CITY shall furnish to DESIGN-BUILDER one (1) copy of the Drawings and Specifications, including addenda.

2.04 Commencement of Contract Times; Notice to Proceed

A. The Contract Times will commence to run on the date indicated in the Notice to Proceed.

2.05 Starting the Work

A. DESIGN-BUILDER shall start to perform the Work on the date when the Contract Times commence to run, but no Work shall be done at the Site prior to the date on which the Contract Times commence to run, unless otherwise indicated in the Notice to Proceed.

2.06 Before Starting Construction

A. Preliminary Schedules: Within ten (10) days after the Effective Date of the Contract or on such later date as CITY's Representative shall provide in writing, DESIGN-BUILDER shall submit to CITY's Representative for review:

1. Preliminary Progress Schedule: DESIGN-BUILDER shall submit a proposed project schedule for CITY's acceptance. The proposed project schedule shall include a detailed and comprehensive design and construction schedule utilizing a critical path method diagram network that (a) shows all major procurement and construction elements and phases of the Project; (b) breaks down each element or phase by trade; (c) shows early and late starts so that all float time will be accurately identified; (d) all other activities necessary for the timely completion of the Project in accordance with the scheduled dates for Substantial and Final Completion; and (e) highlights the project's critical path. CITY's acceptance is expressly limited to CITY's acknowledgement that, based upon CITY's limited review, the dates of Substantial Completion and Milestone dates are acceptable. After final acceptance of the preliminary progress schedule by the CITY, it shall be considered the project baseline schedule pursuant to Paragraph 2.07(B).
2. Preliminary schedule of Shop Drawings and Sample submittals which will list each required submittal and the times for submitting, reviewing and processing such submittal; and
3. Preliminary 01290.02 Schedule of Values for all of the Work which will include quantities and prices of items which when added together equals the Contract Price and will subdivide the Work into component parts in sufficient detail to

serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.07 Initially Acceptable Schedules

A. Thirty day interim schedule: The DESIGN-BUILDER shall prepare and submit to the CITY a 30-day interim schedule within seven (7) Calendar Days after the Notice to Proceed. This schedule shall contain the sequence and dates of major work for the entire duration of the Work, including the following activities.

1. The construction activities to be accomplished or commenced during the first thirty (30) Calendar Days following the Notice to Proceed;
2. Procurement and submittal approvals, fabrication and delivery of all long lead time procurement activities;
3. Activities or Milestones that may be affected by the actions of the CITY or third parties.

The DESIGN-BUILDER shall incorporate the CITY's comments and resubmit the 30-day interim schedule within seven (7) Calendar Days from receipt of the CITY's comments.

B. Project Baseline Schedule: The DESIGN-BUILDER's 30-day interim schedule, as revised by the CITY pursuant to Paragraph 2.07A, shall be considered the baseline schedule and shall be used by the DESIGN-BUILDER for planning, scheduling, managing, and executing the Work. The baseline schedule shall not be changed without the written consent of CITY.

C. DESIGN-BUILDER's schedule of values will be acceptable to CITY's Representative as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

A. The Contract Documents comprise the entire Contract between CITY and DESIGN-BUILDER concerning the Work.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for at no additional cost to CITY. Clarifications and interpretations of the Contract Documents shall be issued by CITY.

C. Correlation and intent of documents: The Drawings and Specifications are intended to supplement each other. Any Work shown on the Drawings and not mentioned in the Specifications (or vice versa) shall be as binding and shall be completed the same as if mentioned or shown on both. In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

1. .The Contract, including all Change Orders and Written Amendments

2. Approved Shop Drawings
3. Addenda, with those of later date having precedence over those of earlier date
4. Project Baseline Schedule Requirements
5. The Supplementary Conditions
6. The General Conditions
7. Drawings and Specifications

D. In the case of an inconsistency between Drawings and Specifications, the requirements of the Specifications shall govern. If Drawings are in conflict, larger scale details shall govern over smaller or no-scale Drawings. If Specification sections are in conflict with each other, the conflict shall be resolved by CITY in accordance with reasonable interpretation of such documents.

E. The general character of the detailed Work is shown on the Drawings, but minor modifications may be made in the full size or scale details. Where the word "similar" occurs on the Drawings, it shall be used in its general sense and not as meaning identical, and all details shall be worked out in relation to their location and their connection to the other parts of the Work. Where on any Drawings a portion of the Work is drawn out and the remainder is indicated in outline, the parts drawn out shall apply also to all other like portions of the Work. Where ornaments or other details are indicated by starting only, such details shall be continued throughout the courses or parts in which they occur and shall also apply to all other similar parts in the Work, unless otherwise indicated.

3.02 Reference to Standards and Specifications of Technical Societies

A. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or on the date of DESIGN-BUILDER's proposal if there are no Bids), except as may be otherwise specifically stated in the Contract Documents.

1. No provision of any such standard, specification, manual, code or instruction of Supplier shall be effective to change the duties or responsibilities of CITY, or DESIGN-BUILDER, or any of their Subcontractors, Consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to CITY or any of CITY's Consultants, agents or employees any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies: If, during the performance of the Work, DESIGN-BUILDER discovers any conflict, error, ambiguity or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Laws or Regulations applicable to the performance of the Work or of any standard, specification, manual, code or any instruction of any Supplier referred to in Paragraph 6.07, DESIGN-BUILDER shall report it immediately to CITY in writing. DESIGN-BUILDER shall not

proceed with the Work affected thereby (except in an emergency as authorized by Paragraph 6.17) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04; provided, however, that DESIGN-BUILDER shall not be liable to CITY or CITY's Consultants for failure to report any such conflict, error, ambiguity or discrepancy unless DESIGN-BUILDER knew or reasonably should have known thereof.

B. Resolving Discrepancies. The provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Contract Documents and:

1. the provisions of any standard, specification, manual, code or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
2. the provisions of any Laws or Regulations applicable to the performance of the Work.

3.04 Amending and Supplementing Contract Documents

A. The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

1. a Written Amendment or
2. a Change Order (pursuant to Article 10), whether pursuant to a Work Change Directive or otherwise.

B. The requirements of the Contract Documents may be supplemented and minor variations and deviations in the Work may be authorized, in one or more of the following ways:

1. CITY's approval of a Shop Drawing or Sample, or
2. CITY's written interpretation or clarification.

ARTICLE 4 AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

4.01 Availability of Lands

A. CITY shall furnish the Site. CITY shall identify any encumbrances or restrictions not of general application but specifically related to use of lands so furnished with which DESIGN-BUILDER will have to comply in performing the Work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by CITY, unless otherwise provided in the Contract Documents. If DESIGN-BUILDER and CITY are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times or both as a result of any delay in CITY's furnishing these lands, rights-of-way or easements, DESIGN-BUILDER may make a Claim as provided in Article 15. DESIGN-BUILDER shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 Subsurface and Physical Conditions

A. Reports and Drawings: Reference is made to the Supplementary Conditions for identification of:

1. Subsurface Conditions: Those reports of explorations and tests of subsurface conditions at or contiguous to the Site that have been utilized by CITY in preparing the Contract Documents; and
2. Physical Conditions: Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that have been utilized by CITY in preparing the Contract Documents.

B. Limited Reliance by DESIGN-BUILDER on Technical Data Authorized: DESIGN-BUILDER may rely upon the general accuracy of the technical data contained in reports and drawings of subsurface or physical conditions, but such reports and drawings are not Contract Documents. The technical data is identified in the Supplementary Conditions. Except for reliance on such technical data, DESIGN-BUILDER may not rely upon or make any Claim against CITY, or CITY's Consultants with respect to:

1. the completeness of such reports and drawings for DESIGN-BUILDER's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by DESIGN-BUILDER and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings, or
3. any DESIGN-BUILDER interpretation of or conclusion drawn from any technical data or any such other data, interpretations, opinions or information.

4.03 Differing Subsurface or Physical Conditions

A. Notice of Differing Subsurface or Physical Conditions. If DESIGN-BUILDER believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any technical data on which DESIGN-BUILDER is entitled to rely as provided in Paragraphs 4.02 A and 4.02 B is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then DESIGN-BUILDER shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.17), notify CITY in writing about such condition(s). DESIGN-BUILDER shall not further disturb such conditions or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. CITY's Review: After receipt of notice as required by Paragraph 4.03 A, CITY will promptly review the pertinent conditions, determine the necessity for CITY to obtain additional exploration or tests with respect thereto and notify DESIGN-BUILDER in writing of CITY's findings and conclusions.

C. Possible Contract Documents Change: If CITY concludes that a change in the

Contract Documents is required as a result of a condition that meets one or more of the categories in Paragraph 4.03 A, a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document the consequences of such change.

D. Possible Price or Times Adjustments: An equitable adjustment in the Contract Price or in the Contract Times, or both, will be allowed to the extent that the existence of a subsurface or physical condition causes an increase or decrease in DESIGN-BUILDER's cost of, or time required for, performance of the Work; subject, however, to the following:

1. the condition must meet any one or more of the categories described in Paragraphs 4.03 A.1 through 4.03 A.4, inclusive;
2. a change in the Contract Documents pursuant to Paragraph 4.03 C will not be an automatic authorization of, nor a condition precedent to, entitlement to any such adjustments;
3. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.06 and 10.04; and
4. DESIGN-BUILDER shall not be entitled to any adjustment in the Contract Price or Contract Times if;
 - a. DESIGN-BUILDER knew, or by the exercise of ordinary care could have known, of such conditions at the time DESIGN-BUILDER made a final commitment to CITY with respect to Contract Price and Contract Times by the submission of a Bid; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for DESIGN-BUILDER prior to DESIGN-BUILDER's making such final commitment; or
 - c. DESIGN-BUILDER failed to give the written notice as required by Paragraph 4.03 A.

E. If CITY and DESIGN-BUILDER are unable to agree on entitlement to, or magnitude of, an equitable adjustment in the Contract Price pursuant to Article 10 and/or Contract Times pursuant to Article 11, a Claim may be made therefore as provided in Article 15. However, CITY, CITY's Consultants shall not be liable to DESIGN-BUILDER for any costs, losses or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all other dispute resolution costs) sustained by DESIGN-BUILDER on or in connection with any other project or anticipated project.

4.04. Physical Conditions - Underground Facilities

A. Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to CITY by the owners of such Underground Facilities or by others.

1. CITY shall not be responsible for the accuracy or completeness of any such

information or data; and

2. The cost of all of the following will be included in the Contract Price and DESIGN-BUILDER shall have full responsibility for:

- a. reviewing and checking all such information and data,
- b. locating all Underground Facilities shown or indicated in the Contract Documents,
- c. coordination of the Work with the owners of such Underground Facilities during construction, and
- d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. Not Shown or Indicated: If an Underground Facility is uncovered or revealed at or contiguous to the Site, and was not shown or indicated in the Contract Documents, or was shown or indicated incorrectly in the Contract Documents, DESIGN-BUILDER shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.17), identify the owner of such Underground Facility and give written notice to that owner and to CITY.

C. CITY's Review: After receipt of notice as required by Paragraph 4.04 B, CITY will promptly review the consequences of the existence of the Underground Facility and notify DESIGN-BUILDER in writing CITY's findings and conclusions.

D. Possible Contract Documents Change: If CITY concludes that a change in the Contract Documents is required as a result of the existence of an Underground Facility that either was not shown, or was shown incorrectly, in the Contract Documents, a Work Change Directive or Change Order will be issued as provided in Article 10 to reflect and document the consequences of such change.

E. Possible Price or Times Adjustments: An equitable adjustment in the Contract Price or in the Contract Times, or both, will be allowed to the extent that the existence of the Underground Facility causes an increase or decrease in DESIGN-BUILDER's cost of, or time required for, performance of the Work; subject, however, to the following:

1. a change in the Contract documents pursuant to Paragraph 4.04 D will not be an automatic authorization of, nor a condition precedent to, entitlement to any such adjustments;
2. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.06 and 10.04; and
3. DESIGN-BUILDER shall not be entitled to any adjustment in the Contract Price or Contract Times if;
 - a. DESIGN-BUILDER knew, or by the exercise of ordinary care could have known, of the existence of the Underground Facility at the time DESIGN-BUILDER made a final commitment to CITY with respect to Contract Price and Contract Times by the submission of a Bid; or
 - b. the existence of the Underground Facility could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test or study of the Site and contiguous areas required by the

Bidding Requirements or Contract Documents to be conducted by or for DESIGN-BUILDER prior to DESIGN-BUILDER's making such final commitment; or

c. DESIGN-BUILDER failed to give the written notice as required by Paragraph 4.04 B.

F. If CITY and DESIGN-BUILDER are unable to agree on entitlement to, or magnitude of, an equitable adjustment in the Contract Price pursuant to Article 10 and/or Contract Times pursuant Article 11, a Claim may be made therefore as provided in Article 15. However, CITY and CITY's Consultants shall not be liable to DESIGN-BUILDER for any costs, losses or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all other dispute resolution costs) sustained by DESIGN-BUILDER on or in connection with any other project or anticipated project.

4.05 Reference Points

A. CITY shall provide engineering surveys to establish reference points for construction that in CITY's judgment are necessary to enable DESIGN-BUILDER to proceed with the Work. DESIGN-BUILDER shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of CITY. DESIGN-BUILDER shall report to CITY whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 Asbestos, Lead-Based Paint, PCBs, Petroleum, Hazardous Waste or Radioactive Material

A. Reports and Drawings: Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the CITY in the preparation of the Contract Documents.

B. Limited Reliance by DESIGN-BUILDER on Technical Data Authorized: DESIGN-BUILDER may rely upon the general accuracy of the technical data contained in reports and drawings relating to a Hazardous Environmental Condition at the Site, but such reports and drawings are not Contract Documents. Such technical data is identified in the Supplementary Conditions. Except for such reliance on such technical data, DESIGN-BUILDER may not rely upon or make any Claim against CITY, or CITY's Consultants with respect to:

1. the completeness of such reports and drawings for DESIGN-BUILDER's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by DESIGN-BUILDER and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
3. any DESIGN-BUILDER interpretation of or conclusion drawn from any technical data or any such other data, interpretations, opinions or information.

C. DESIGN-BUILDER shall not be responsible for any Hazardous Environmental

Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. DESIGN-BUILDER shall be responsible for all Hazardous Environmental Conditions created with any materials brought to the Site by DESIGN-BUILDER, Subcontractors, Suppliers, or anyone else for whom DESIGN-BUILDER is responsible. DESIGN-BUILDER shall not be entitled to an extension of the Contract Times or an increase in the Contract Price if DESIGN-BUILDER, Subcontractor, Supplier or anyone for whom DESIGN-BUILDER is responsible created any Hazardous Environmental Condition at the Site or in connection with the Work.

D. If DESIGN-BUILDER encounters a Hazardous Environmental Condition at the Site or if DESIGN-BUILDER or anyone for whom DESIGN-BUILDER is responsible creates a Hazardous Environmental Condition at the Site, DESIGN-BUILDER shall immediately:

1. secure or otherwise isolate such condition;
2. stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6. 15); and
3. notify CITY (and promptly thereafter confirm such notice in writing). CITY shall promptly determine the necessity for CITY to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. DESIGN-BUILDER shall neither resume Work nor be required to resume Work in connection with such condition or in any affected area until after CITY has obtained any required permits related thereto and delivered to DESIGN-BUILDER written notice:

1. specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or
2. specifying any special conditions under which such Work may be resumed safely. If CITY and DESIGN-BUILDER cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price pursuant to Article 10and/or Contract Times to pursuant to Article 11 as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by DESIGN-BUILDER, a Claim may be made therefore as provided in Article 15.

F. If after receipt of written notice as required in Paragraph 4.06 E, DESIGN-BUILDER does not agree to resume Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under special conditions specified in the notice, then CITY may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If CITY and DESIGN-BUILDER cannot agree as to entitlement to or magnitude of an equitable adjustment in Contract Price pursuant to Article 10and/or Contract Times pursuant to Article 11 as a result of deleting such portion of the Work, then a Claim may be made therefore as provided in Article 15. CITY may have such deleted portion of the Work performed by CITY's own forces or others in accordance with Article 7.

G. The provisions of Paragraphs 4.02, 4.03, and 4.04 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

H. All materials used, whether new or salvaged, shall be asbestos-free materials. DESIGN-BUILDER shall immediately call to the attention of the CITY's Representative any specified material or product which the DESIGN-BUILDER knows or suspects to

contain asbestos, whether new or salvaged.

ARTICLE 5 BONDS AND INSURANCE

5.01 Performance, Payment and Other Bonds

A. DESIGN-BUILDER shall furnish Performance and Maintenance and Payment Bonds, each in an amount at least equal to the Contract Price, as set out in the Contract Documents, as security for the faithful performance and payment of all DESIGN-BUILDER's obligations under the Contract Documents. These Bonds shall remain in effect at least until one (1) year after the date when final payment of the Contract becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. DESIGN-BUILDER shall also furnish such other Bonds as are required by the Supplementary Conditions.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations. A certified copy of the agent's authority to act must accompany all Bonds signed by an agent.

C. If the surety on any Bond furnished by DESIGN-BUILDER is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirement of Paragraph 5.01 B, DESIGN-BUILDER shall within twenty (20) days thereafter substitute another Bond and surety, both of which must be acceptable to CITY.

5.02 Licensed Sureties and Insurers

A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by CITY or DESIGN-BUILDER shall be obtained from surety or insurance companies that are duly licensed in the State of Missouri and in the jurisdiction in which the Project is located, if not in Missouri, to issue Bonds or insurance policies for the limits and coverages so required. All surety and insurance companies shall hold an A.M. Best rating of A-, V, or better.

5.03 Certificates of Insurance

A. DESIGN-BUILDER shall deliver to CITY, prior to the start of any Work at the Project Site, properly completed certificates of insurance or other evidence that the required insurance is in full force and effect, in a form acceptable to CITY. The receipt or acceptance of a certificate of insurance that does not incorporate the required terms and coverage shall not constitute a waiver by the City of the insurance requirements contained in the Contract Documents.

B. All policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by DESIGN-BUILDER in accordance with Paragraphs 5.04 and 5.06 will contain waiver provisions in accordance with Paragraph 5.07 A. The certificates of insurance will contain a provision stating that should any of the policies described in the certificate be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

C. If the coverage afforded is cancelled or changed or its renewal is refused, DESIGN-BUILDER shall give at least thirty (30) days prior written notice to CITY and to each other additional insured to whom a certificate of insurance has been issued.

5.04 DESIGN-BUILDER's Liability Insurance

A. DESIGN-BUILDER shall purchase and maintain such liability and other insurance

as is appropriate for the Work being performed and furnished, and will provide protection from claims set forth below which may arise out of or result from DESIGN-BUILDER's performance and furnishing of the Work and DESIGN-BUILDER's other obligations under the Contract Documents, whether it is to be performed or furnished by DESIGN-BUILDER, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of DESIGN-BUILDER's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than DESIGN-BUILDER's employees;
4. claims for damages insured by customary personal injury liability coverage;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefore; and
6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance so required by Paragraph 5.04 A, to be purchased and maintained shall:

1. with respect to insurance required by Paragraphs 5.04 A.3 through 5.04 A.5 inclusive, include as additional insureds (subject to any customary exclusion for professional liability) CITY, Consultants and any other individuals or entities identified in the Supplementary Conditions to be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
2. include at least the specific coverages and be written for not less than the limits of liability provided in Paragraph 5.04 C or required by Laws or Regulations, whichever is greater;
3. include completed operations insurance;
4. include contractual liability insurance covering DESIGN-BUILDER's indemnity obligations;
5. remain in effect at least until final payment and at all times thereafter when DESIGN-BUILDER may be correcting, removing or replacing defective Work in accordance with Paragraphs 13.06 and 13.07;
6. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two (2) years after final payment (and DESIGN-BUILDER shall furnish CITY and each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance

has been issued evidence satisfactory to CITY and any such additional insured of continuation of such insurance);

7. contain a cross-liability or severability of interest clause or endorsement. Insurance covering the specified additional insureds shall be primary insurance, and all other insurance carried by the additional insureds shall be excess insurance;

8. with respect to commercial automobile liability, commercial general liability, and umbrella liability insurance, DESIGN-BUILDER shall require its insurance carrier(s) to waive all rights of subrogation against CITY, and CITY's officers, directors, partners, employees and agents; and

9. contain a provision or endorsement that the costs of providing the insureds a defense and appeal, including attorneys fees, as insureds, shall be supplementary and shall not be included as part of the policy limits but shall remain the insurer's responsibility.

C. Specific policies of insurance required by this Paragraph 5.04 shall include:

1. Workers' Compensation and Employers' Liability Insurance. This insurance shall protect DESIGN-BUILDER against all claims under applicable state workers' compensation laws, including coverage as necessary for the benefits provided under the United States Longshoremen's and Harbor Workers' Act and the Jones Act. DESIGN-BUILDER shall also be protected against claims for injury, disease, or death of employees which, for any reason, may not fall within the provisions of workers' compensation laws. This policy shall include an "all states" or "other states" endorsement. The liability limits shall be not less than:

Workers' Compensation: Statutory

Employers' liability: \$1,000,000 each occurrence

2. Commercial Automobile Liability Insurance. This insurance shall be occurrence type written in comprehensive form and shall protect DESIGN-BUILDER, and CITY, and Consultants against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, either on or off the Project Site, whether they are owned, non-owned, or hired.

The liability limits shall be not less than: \$2,000,000

3. Commercial General Liability Insurance. This insurance shall be occurrence type written in comprehensive form acceptable to CITY. This insurance shall protect DESIGN-BUILDER, and CITY, and Consultants as additional insureds, against claims arising from injuries, sickness, disease, or death of any person or damage to property arising out of performance of the Work. The policy shall also include coverage for personal injury liability; contractual liability; completed operations and products liability; and for blasting, explosion, and collapse of buildings; and damage to underground property. The liability limits for bodily injury and property damage shall be not less than:

\$2,000,000 combined single limit for each occurrence

\$2,000,000 general aggregate.

4. Professional Liability Insurance with limits Per Claim/Annual Aggregate of \$2,000,000.

5. The insurer's costs of providing the insureds a defense and appeal as additional insureds, including attorney's fees, shall be supplementary and shall not be included as part of the policy limits but shall remain the insurer's separate responsibility.

5.05 CITY's Liability Insurance

A. In addition to the insurance required to be provided by DESIGN-BUILDER under Paragraph 5.04, CITY, at CITY's option, may purchase and maintain at CITY's expense liability insurance that will protect CITY against claims which may arise from operations under the Contract Documents.

5.06 Property Insurance

A. Unless otherwise provided in the Supplementary Conditions, DESIGN-BUILDER shall purchase and maintain property insurance on the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws or Regulations). This insurance shall:

1. include the interests of CITY, DESIGN-BUILDER, Subcontractors, and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;
2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, tornado, collapse, debris removal, demolition occasioned by enforcement of Laws or Regulations, water damage, damage caused by frost and freezing, and acts of God;
3. be maintained in effect until final payment is made unless otherwise agreed to in writing by CITY with thirty (30) days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. CITY shall not be responsible for purchasing and maintaining any property insurance to protect the interests of DESIGN-BUILDER, Subcontractors or others involved in the Work to the extent of any deductible amounts. The risk of loss within the deductible amounts will be borne by DESIGN-BUILDER, Subcontractor or others suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

5.07 Waiver of Rights

A. CITY and DESIGN-BUILDER intend that all policies purchased in accordance with Paragraphs 5.04 and 5.06 will protect CITY, DESIGN-BUILDER, CITY's Consultants, Subcontractors, and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds in such policies and will provide primary coverage for all losses and damages caused by the perils covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery

against any of the insureds or additional insureds thereunder. CITY and DESIGN-BUILDER waive all rights against each other and their respective officers, directors, partners, employees and agents for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work, but only to the extent of insurance coverage; and, in addition, waive all such rights against CITY, Consultants, Subcontractors, and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of any and each of them) under such policies for losses and damages so caused and covered by insurance. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by CITY as trustee or otherwise payable under any policy so issued. None of the above waivers shall apply if specifically in conflict with Laws and Regulations.

5.08 Receipt and Application of Insurance Proceeds

A. Any insured loss under the property insurance will be adjusted with CITY and made payable to CITY as fiduciary for the insureds, as their interests may appear, subject to the requirements of any indentures of indebtedness entered into by CITY.

B. CITY as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object to CITY's exercise of this power in writing within fifteen (15) days after the occurrence of loss. If such objection is made, CITY as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, CITY as fiduciary shall adjust and settle the loss with the insurers.

5.09 Partial Utilization - Property Insurance

A. If CITY finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work; provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 DESIGN-BUILDER'S SERVICES AND RESPONSIBILITIES

6.01 General Requirements

A. Project Manager and Lead Architect. The Design-Build Project Manager and the Lead Architect shall be reasonably available to CITY's Representative and shall have the necessary expertise and experience required to supervise the Work. The Design-Build Project Manager and the Lead Architect shall communicate regularly with CITY's Representative. The Design-Build Project Manager, the Lead Architect, and any of the other Key Personnel identified in the Technical Approach Submittal portion of DESIGN-BUILDER's Bid may be removed or replaced only with the prior written consent of CITY.

B. Pre-Commencement Meeting. The parties will meet within ten (10) days after CITY's execution of the Contract to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to

schedules, submittals, and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

C. List of Subcontractors. DESIGN-BUILDER shall submit required information for all Subcontractors on Form 01290.09 - Subcontractor and Major Material Suppliers List, provided in these Contract Documents, prior to Subcontractor beginning Work at the Site. No acceptance by CITY of any Subcontractor or Sub-Subcontractor shall relieve DESIGN-BUILDER of its responsibility for scheduling and coordinating the Work of all Subcontractors and Sub-Subcontractors, nor shall it relieve DESIGN-BUILDER of its complete and exclusive responsibility and liability for all acts and omissions of any Subcontractor or Sub-Subcontractor, nor shall it result in any waiver of CITY's right to reject defective or nonconforming Work.

6.02 Professional Design Services

A. DESIGN-BUILDER shall, consistent with applicable Missouri licensing laws, perform or furnish, through the DOR and any Design Subconsultants, the necessary architectural, engineering, and other professional design services and the labor, materials, supervision, equipment, computers, documents, and other items and services necessary for the preparation of the required drawings, specifications, and other design information and submittals to permit DESIGN-BUILDER to complete the Work consistent with CITY's Project Design and Construction Criteria, the Contract Documents, and Legal Requirements. DESIGN-BUILDER acknowledges its responsibility to CITY for the proper performance of the Work by the DOR and Design Subconsultants and its responsibility for any of their acts or omissions in connection with the Work, and acknowledges that such subcontracting shall in no way relieve DESIGN-BUILDER of its obligations and liabilities under the Contract Documents and Legal Requirements. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between CITY and any Design Subconsultant, or between CITY and the DOR (unless the DOR is the DESIGN-BUILDER under contract with CITY), including, but not limited to, any third-party beneficiary rights, and a provision to such effect shall be inserted into all agreements between DESIGN-BUILDER and its Design Subconsultants and DOR (if the DOR is not the DESIGN-BUILDER under contract with CITY).

6.03 Design Standards; Seals and Endorsements

A. Design Standards. Except as otherwise directed in writing by CITY, DESIGN-BUILDER and the DOR shall use and implement in the performance of professional design services under the Contract, all applicable design standards required by federal, state, and local laws or codes or such standards as are recognized and used in the industry. In the development of any design under the Contract, DESIGN-BUILDER and the DOR shall comply with the Contract Documents and Legal Requirements, including, without limitation, all applicable provisions of the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq., as well as 28 C.F.R. Parts 35 and 36 and 29 C.F.R. Part 1630, and CITY's Buy American policy, all as may be amended from time to time. DESIGN-BUILDER and the DOR shall notify and explain to CITY any applicable exceptions under these acts or provisions.

B. Seals and Endorsements. The DOR shall affix its seal to and endorse all drawings, plans, and specifications, or estimates, and engineering data prepared by the DOR under the Contract. All Design Subconsultants shall similarly affix their seals to and endorse their respective drawings, plans, and specifications, or estimates, and

engineering data prepared for the Project.

C. Correction of Errors. DESIGN-BUILDER and the DOR shall monitor for quality assurance purposes all design services performed under the Contract, and shall immediately revise and correct the design drawings and plans at their own expense, without adjustment to the Contract Price and/or Contract Time(s), any act, omission, error, or oversight in the performance of such professional design services and the associated construction.

6.04 Standard of Care for Professional Design Services

A. The standard of care for all professional design services performed as part of the Work shall be the care and skill ordinarily exercised by members of the same design profession practicing under substantially similar conditions at the same time and locality of the Project, or as otherwise provided by Missouri law. Notwithstanding the preceding sentence, DESIGN-BUILDER shall design and construct the Project in such a manner that the Project and all of its components are functional and operational and in compliance with CITY's Project Design and Construction Criteria, Legal Requirements in effect as of the date of the Contract, and any other specific performance standards the parties may agree upon for any aspect of the Project.

6.05 Progress Schedule

A. DESIGN-BUILDER shall adhere to the progress schedule established in accordance with Article 2 as it may be adjusted from time to time as provided below:

1. DESIGN-BUILDER shall provide, at least once every thirty (30) calendar days, updated information on the project schedule, including thirty (30) day look ahead schedules, projected variances per event category and per Subcontractor, identification of all variances and calculation of the number of Days difference between the as-built critical path and the project schedule critical path

2. DESIGN-BUILDER shall, with each application for payment, provide completed monthly updated status report for the previous month on the project schedule and updated information indicating as-built and as-planned conditions. The updated information on the project schedule shall not modify any Milestone dates in the project schedule that CITY has previously approved. The updated information required is a condition precedent to payment pursuant to paragraph 14.02 and shall include at a minimum:

a concise statement of the outlook for meeting project schedule dates and the reasons for any change in outlook from the previous report;

b. a review of any significant technical problems encountered during the month;

c. an explanation of any corrective action taken or proposed; and

d. a summary of any Claims anticipated by DESIGN-BUILDER with respect to the Work, including the anticipated costs and schedule impacts of any such Claims.

6.06 Recovery Schedules

A. If the DESIGN-BUILDER should:

1. fail, refuse or neglect to supply a sufficient number of workers or to deliver the materials or equipment with such promptness as to prevent the delay in the

progress of the Work;

2. fail in any respect to commence and diligently prosecute the Work in accordance with the approved baseline project schedule in order to achieve substantial completion;
3. fail to commence, prosecute, finish, deliver or install the different portions of the Work on time as specified in the approved baseline project schedule; or
4. fail in the performance of any of the material covenants of the Contract Documents;

CITY shall have the right to direct the DESIGN-BUILDER, upon seven (7) calendar days notice, to prepare a written recovery plan, for CITY's approval, to accelerate the Work in order to conform to the approved baseline project schedule, including, without limitation, providing additional labor or expediting delivery of materials, performing overtime or re-sequencing the Work without adjustments to the Contract value. Upon CITY's approval of the recovery plan, DESIGN-BUILDER shall accelerate the Work in accordance with the plan.

B. Proposed recovery schedules shall be submitted to the CITY as a separate project plan for review and approval by CITY prior to incorporation into the approved baseline schedule. The recovery schedule shall be submitted in a format compatible with the baseline schedule format. Each proposed revision shall be submitted as a separate schedule, with the following minimum requirements:

1. A critical path method diagram showing revised and affected activities or Milestones.
2. An activity report for all revised and affected activities or Milestones.

C. Upon acceptance of the recovery schedule by CITY, data shall be added or revised for all new or revised activities and incorporated into the approved baseline project schedule.

6.07 Detailed Design Services

A. Interim Design Submissions. At the meeting contemplated by Section 6.07.B of these General Conditions of Contract, CITY and DESIGN-BUILDER shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that CITY may wish to review, which interim design submissions may include design criteria, drawings, diagrams, and specifications setting forth the Project requirements.

B. Design Review Meetings. On or about the time of scheduled design submissions, DESIGN-BUILDER's Project Manager and Lead Architect shall convene design review meetings with CITY to confer about the submissions. At the meetings, DESIGN-BUILDER shall identify, among other things, the evolution of the design and any significant changes or deviations from CITY's Project Design and Construction Criteria or the Contract Documents, or, if applicable, previously submitted design submissions. In the event DESIGN-BUILDER believes that any changes requested by CITY at such meetings are inconsistent with CITY's Project Design and Construction Criteria or earlier approvals such that DESIGN-BUILDER's compliance with same may have an adverse impact on the Contract Price and/or the Contract Time(s), DESIGN-BUILDER shall submit its written notice to CITY specifying such impact within seven (7) days after such meeting, or DESIGN-BUILDER shall be deemed to have waived any

claim for adjustment to the Contract Price and/or the Contract Time(s) arising out of such meeting or request.

C. Approval of Interim Design Submissions. Following each design review meeting, DESIGN-BUILDER shall prepare and maintain meeting minutes and shall provide copies to all attendees for review. CITY shall review and approve the interim design submissions in a time that is consistent with the reasonable turnaround times set forth in DESIGN-BUILDER's approved schedule. Any such review and approval by CITY shall be only for purposes of determining the interim design submissions' apparent general consistency with CITY's Project Design and Construction Criteria, and shall not relieve DESIGN-BUILDER from any responsibility or liability for its complete and exclusive control and responsibility for providing complete and accurate design and construction services as required to achieve CITY's objectives, including, without limitation, the use, operation, and maintenance of the Project in conformance with CITY's Project Design and Construction Criteria, the Contract Documents, Legal Requirements, and applicable guidelines, requirements, and standards.

D. Construction Documents. DESIGN-BUILDER shall submit to CITY those Construction Documents consisting of drawings and specifications that describe and set forth in detail the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions; as such submissions may have been modified in a design review meeting and approved by CITY. The parties shall have a design review meeting to discuss, and CITY shall review and approve, the Construction Documents in accordance with the procedures and consistent with the purposes set forth in Sections 6.07.B. and 6.07.C. above and Section 6.07.E. below. Upon CITY's issuance of the Construction Notice to Proceed, DESIGN-BUILDER shall proceed with construction in accordance with the approved Construction Documents and shall submit to CITY, prior to commencement of construction, the number of copies of the approved Construction Documents, in the required form, as set forth in the Supplementary Conditions.

E. Approval of Construction Documents. CITY's review and approval of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of CITY's Project Design and Construction Criteria. Neither CITY's review and approval of any interim design submissions nor CITY's review and approval of the Construction Documents shall be deemed to transfer from DESIGN-BUILDER to CITY any of DESIGN-BUILDER's exclusive responsibility, control, and liability for the design and construction required under the Contract Documents.

F. Design Packages. To the extent not prohibited by the Contract Documents or Legal Requirements and with CITY's written approval, DESIGN-BUILDER may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

6.08 Legal Requirements

A. General. DESIGN-BUILDER shall perform the Work in accordance with the Contract Documents and Legal Requirements, and shall provide all notices applicable to the Work as required by the Contract Documents and the Legal Requirements

B. Changes in Legal Requirements. The Contract Price and/or Contract Time(s) may be equitably adjusted to compensate DESIGN-BUILDER for the effects of any

changes in Legal Requirements enacted after CITY's execution of the Contract that affect the performance of the Work. Such effects may include, without limitation, revisions DESIGN-BUILDER is required to make to the Construction Documents because of changes in Legal Requirements.

C. Americans with Disabilities Act. DESIGN-BUILDER agrees to comply, during the course of this Contract, with all provisions of the Americans with Disabilities Act, 42 U.S.C. Sec. 12101 et seq., as well as 28 C.F.R. Parts 35 and 36 and 29 C.F.R. Part 1630, as applicable and as amended from time to time.

D. Minority and Women's Business Enterprises. CITY is committed to ensuring that minority business enterprises (MBE) and women's business enterprises (WBE) participate to the maximum extent possible in the performance of CITY contracts. DESIGN-BUILDER shall comply with all requirements of CITY's Minority and Women's Business Enterprise Program as enacted in CITY's Code, Sections 38-84 through 38-100.4 and as hereinafter amended. DESIGN-BUILDER shall achieve the MBE/WBE participation goals set forth in DESIGN-BUILDER's Construction Contractor Utilization Plan/Request for Waiver (CITY's HRD Form 8-DB). DESIGN-BUILDER's compliance with this provision is a material part of this Contract.

E. Audit. The City Auditor, the CITY's Internal Auditor, the CITY's Director of Human Relations, and the CITY Department administering this Contract shall have the right to audit this Contract and all books, documents, and records relating thereto.

1. DESIGN-BUILDER shall maintain all of its books, documents, and records relating to this Contract during the Contract period and for three (3) years after the date of final payment or earlier termination of the Contract.
2. DESIGN-BUILDER shall make such books, documents, and records available to the City Auditor, the CITY's Internal Auditor, the CITY's Director of Human Relations, and the CITY Department administering this Contract, within ten (10) days after written request.

F. Prevailing Wage.

1. GENERAL CONTRACTOR shall comply and require its Subcontractors to comply with;

- a. sections 290.210 to 290.340, RSMO the State of Missouri Prevailing Wage Law (the "Law"); and
- b. 8 CSR 30-3.010 to 8 CSR 30-3.060, the Prevailing Wage Law Rules (the "Rules"); and
- c. the Annual Wage Order (Wage Order) issued by the State of Missouri's Department of Labor and Industrial Relations; and
- d. any applicable Annual Incremental Wage Increase (Wage Increase) to the Annual Wage Order.

2. The Law, Rules, Annual Wage Order and any Wage Increase are incorporated into and made part hereof this Contract and shall be collectively referred to in this Section as the "Prevailing Wage Requirements."

3. GENERAL CONTRACTOR shall pay and require its Subcontractors to pay to all workers performing work under this Contract not less than the prevailing hourly rate of wages for the class or type of work performed by the worker in accordance

with the Law, Rules, Wage Order and any applicable Wage Increase. GENERAL CONTRACTOR shall take whatever steps are necessary to insure that the prevailing hourly wage rates are paid and that all workers for GENERAL CONTRACTOR and each of its Subcontractors are paid for the class or type of work performed by the worker in accordance with the Prevailing Wage Requirements. If GENERAL CONTRACTOR shall fail to start to perform GENERAL CONTRACTOR's obligations under the Contract Documents within sixty (60) days from the date on which the Contract Times commenced to run, as indicated in the Notice to Proceed, GENERAL CONTRACTOR and each of its subcontractors shall be obligated to pay all workers in accordance with any new Wage Order, as subsequently amended by any applicable Wage Increase, issued by the Department of Labor and Industrial Relations within the aforementioned sixty (60) day period. The new Wage Order and any applicable Wage Increase shall govern notwithstanding the fact that the Wage Order being replaced might be physically attached or incorporated in the Contract Documents.

4. Prior to each of its Subcontractors beginning Work on the Site, GENERAL CONTRACTOR shall require each Subcontractor to complete CITY's Form 00490 entitled "Pre-contract Certification" that sets forth the Subcontractor's prevailing wage and tax compliance history for the two (2) years prior to the bid. GENERAL CONTRACTOR shall retain one (1) year and make the Pre-contract Certifications available to CITY within five (5) days after written request.

5. GENERAL CONTRACTOR shall keep and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to keep full and accurate records on CITY's:

a. "Certified Payroll Report" Form indicating the worker's name, address, social security number, occupation(s) and craft(s) of every worker employed in connection with the public work together with the number of hours worked by each worker and the actual wages paid in connection with the Project; and

b. "Daily Labor Force Report" Form indicating the worker's name, occupational title or classification group & skill and the workers' hours. CITY shall furnish blank copies of the Daily Labor Force Report Form to GENERAL CONTRACTOR for its use and for distribution to Subcontractors; and

c. "Payroll Certification" Form. GENERAL CONTRACTOR shall prepare and shall require each Subcontractor to prepare a "Payroll Certification" Form to accompany the Certified Payroll Report. The Payroll Certification must be signed by the employee or agent who pays or supervises the payment of the workers employed under the Contract for the GENERAL CONTRACTOR and each Subcontractor.

d. Copies of CITY's "Certified Payroll Report" form, the Daily Labor Force Report and Payroll Certification Form are included in the Project Manual and are collectively referred to in this Section as the "Records."

6. GENERAL CONTRACTOR shall submit its and its Subcontractors Daily Labor Force Reports to CITY each day. GENERAL CONTRACTOR shall make all of CONTRACTOR's and Subcontractors' Records open to inspection by any authorized representatives of OWNER and the Missouri Department of Labor and Industrial Relations at any reasonable time and as often as they may be necessary and such Records shall not be destroyed or removed from the State of Missouri for a

period of one (1) year following the completion of the public work in connection with which the Records are made. GENERAL CONTRACTOR shall have its and its Subcontractors Certified Payroll Reports and Payroll Certifications available at the GENERAL CONTRACTOR's office and shall provide the Records to the City electronically at City's sole discretion. In addition, all Records shall be considered a public record and GENERAL CONTRACTOR shall provide the Records to the CITY in the format required by the CITY within three (3) working days of any request by CITY at the GENERAL CONTRACTOR's cost. CITY, in its sole discretion, may require GENERAL CONTRACTOR to send any of the Records directly to the person who requested the Record at GENERAL CONTRACTOR's expense.

7. GENERAL CONTRACTOR shall post and keep posted a clearly legible statement of all prevailing hourly wage rates to be paid to all workers employed by GENERAL CONTRACTOR and each of its Subcontractors in the performance of this Contract in a prominent and easily accessible place at the Site of the Work by all workers.

8. If the Contract Price exceeds \$250,000.00, GENERAL CONTRACTOR shall and shall require each Subcontractor engaged in any construction of public works to have its name, acceptable abbreviation or recognizable logo and the name of the city and state of the mailing address of the principal office of the company, on each motor vehicle and motorized self-propelled piece of equipment which is used in connection with the Project during the time the GENERAL CONTRACTOR or Subcontractor is engaged on the project. The sign shall be legible from a distance of twenty (20') feet, but the size of the lettering need not be larger than two (2") inches. In cases where equipment is leased or where affixing a legible sign to the equipment is impractical, the GENERAL CONTRACTOR may place a temporary stationary sign, with the information required pursuant to this section, at the main entrance of the Project in place of affixing the required information on the equipment so long as such sign is not in violation of any state or federal statute, rule or regulation. Motor vehicles which are required to have similar information affixed thereto pursuant to requirements of a regulatory agency of the state or federal government are exempt from the provisions of this subsection.

9. GENERAL CONTRACTOR must correct any errors in GENERAL CONTRACTOR's or any Subcontractors' Records, or GENERAL CONTRACTOR's or any Subcontractors' violations of the Law, Rules, Annual Wage Order and any Wage Increase within fourteen (14) calendar days after notice from CITY.

10. GENERAL CONTRACTOR shall and shall require its Subcontractors to cooperate with the CITY and the Department of Labor and Industrial Relations in the enforcement of this Section, the Law, Rules, Annual Wage Order and any Wage Increase. GENERAL CONTRACTOR shall and shall require its Subcontractors to permit CITY and the Department of Labor and Industrial Relations to interview any and all workers during working hours on the Project at GENERAL CONTRACTOR's sole cost and expense.

11. GENERAL CONTRACTOR shall file with CITY, upon completion of the Project and prior to final payment therefore, affidavits from GENERAL CONTRACTOR and each of its Subcontractors, stating that each has fully complied with the provisions and requirements of the Missouri Prevailing Wage Law. CITY shall not make final payment until the affidavits, in proper form and order, from

GENERAL CONTRACTOR and each of its Subcontractors, are filed by GENERAL CONTRACTOR.

12. GENERAL CONTRACTOR shall forfeit as a statutory penalty to the CITY one hundred dollars (\$100.00) for each worker employed, for each calendar day, or portion thereof, such worker is paid less than the prevailing hourly rates for any work done under this Contract, by GENERAL CONTRACTOR or by any of GENERAL CONTRACTOR's Subcontractors. If GENERAL CONTRACTOR or any of its Subcontractors have violated any section(s) of 290.210 to 290.340, RSMo, in the course of the execution of the Contract, CITY shall when making payments to the GENERAL CONTRACTOR becoming due under this Contract, withhold and retain therefrom all sums and amounts due and owing as a result of any violation of sections 290.210 to 290.340, RSMo.

G. Prevailing Wage Damages. GENERAL CONTRACTOR acknowledges and agrees that, based on the experience of CITY, violations of the Missouri Prevailing Wage Act, whether by GENERAL CONTRACTOR or its Subcontractors, commonly result in additional costs to CITY. GENERAL CONTRACTOR agrees that additional costs to CITY for any particular violation are difficult to establish and include but are not limited to: costs of construction delays, additional work for CITY, additional interest expenses, investigations, and the cost of establishing and maintaining a special division working under the City Manager to monitor prevailing wage compliance.

1. In the event of the failure by GENERAL CONTRACTOR or any of its Subcontractors to pay wages as provided in the Missouri Prevailing Wage Act, CITY shall be entitled to deduct from the Contract Price, and shall retain as liquidated damages, one hundred dollars (\$100.00) per day, per worker who is paid less than the prevailing hourly rate of wages, to approximate the additional costs. The sum shall be deducted, paid or owed whether or not the Contract Times have expired.

2. CITY shall give written notice to GENERAL CONTRACTOR setting forth the workers who have been underpaid, the amount of the statutory penalty and the amount of the liquidated damages as provided for in this Subparagraph J. GENERAL CONTRACTOR shall have fourteen (14) calendar days to respond, which time may be extended by CITY upon written request. If GENERAL CONTRACTOR fails to respond within the specified time, the CITY's original notice shall be deemed final. If GENERAL CONTRACTOR responds to CITY's notice, CITY will furnish GENERAL CONTRACTOR a final decision in writing within five (5) days of completing any investigation.

H. Missouri Secretary of State Business Entity Registration. DESIGN-BUILDER shall obtain, from all Subcontractors and Sub-Subcontractors for the Project, a copy of their current certificate of good standing or fictitious name registration from the Missouri Secretary of State before they begin work on the Site. DESIGN-BUILDER shall retain such documents in its files and shall make them available to CITY within ten (10) days after written request.

I. Tropical Hardwoods. The provisions of Code Section 2-1872, restricting the use of tropical hardwoods, shall apply to this Contract.

J. Preference for Missouri Products. Pursuant to Section 71.140, RSMo, preference shall be given to materials, products, supplies, and all other articles produced, manufactured, made, or grown within the State of Missouri.

K. Open Excavations. DESIGN-BUILDER shall comply, and shall cause each of its Subcontractors to comply, with Legal Requirements and with the following specific requirements relating to open excavations; provided, however, that inclusion of these

requirements in the Contract Documents shall in no event result in CITY's responsibility or liability for any safety programs or precautions in connection with the Work, the Site, or the Project, as such responsibility and liability are exclusively those of DESIGN-BUILDER.

1. Protecting Excavations. DESIGN-BUILDER shall restore all required excavations to the level of the adjacent surfaces as soon as practicable. Unsupervised open excavations on public properties are discouraged at all times. If DESIGN-BUILDER, in performance of the Work, makes or causes to be made any excavation in, upon, under, through, or adjoining any street, sidewalk, alley, park, boulevard, parkway, or any other public properties, and leaves any part or portion thereof open, DESIGN-BUILDER shall provide effective protection for the public.

2. Securing Excavations. DESIGN-BUILDER shall protect and secure all excavations in roadways in compliance with existing federal, state, and local codes and standards, including, but not limited to, the most current edition of the Manual of Uniform Traffic Control Devices. DESIGN-BUILDER shall protect and secure all unsupervised excavations that are not within roadways, either by covering or fencing, in compliance with the following:

a. Covering. A protective cover that can sustain the weight of persons or objects placed upon it may be installed over an unsupervised excavation. The cover shall be secured to the ground to prevent movement. Protective covers shall have no opening(s) or protuberance(s) of sufficient size to cause or allow a fall and/or injury. Advance warning devices shall be installed as necessary.

b. Fencing. Fencing to prevent entry may be installed surrounding an unsupervised excavation that is not protectively covered in its entirety. The fencing shall be a minimum of 42" in height. The fencing shall be constructed in such a manner that it is adequately secured and will remain upright at all times under normal Site conditions.

c. Inspections. All protective coverings and fences over and around excavations shall be inspected at least daily to assure integrity. Protective coverings and/or fences in heavily trafficked areas shall be inspected more often as necessary.

L. Notification of Utilities. DESIGN-BUILDER shall adhere to the provisions of Sections 319.010 et seq., RSMo, which provide that a person or firm making an excavation in any public street, road or alley, right of way dedicated to public use, utility easement of record, or within any private street or private property may do so only after giving notice to, and obtaining information from, owners of Underground Facilities. Missouri's 24-hour toll-free accident-prevention hotline number is 1-800-344-7483 (1-800-DIG-RITE).

M. Missouri Sales Tax Exemption. CITY is a Missouri exempt entity pursuant to Section 144.062, RSMo, and tangible personal property to be incorporated or consumed in the construction of the Project may be purchased without the payment of sales tax. CITY shall furnish to DESIGN-BUILDER a Missouri Project Exemption Certificate for Sales Tax at the time of issuance of the Notice to Proceed.

N. Clean Air Act and Clean Water Act. DESIGN-BUILDER shall comply with

requirements of the Clean Air Act (42 U.S.C. 7401 *et seq.*); Clean Water Act (33 U.S.C. 1251 *et seq.*), Missouri Clean Water Law (Chapter 644 RSMo), Code of Federal regulations (Title 40: Protection of Environment, Title 33: Navigation and Navigable Waters) and the rules of the Missouri Code of State Regulations (CSR Title 10).

O. OSHA 10-Hour Training Requirement. DESIGN-BUILDER and any subcontractor working under this Contract shall require every employee on the Site to complete a ten-hour construction safety program which meets the requirements of Section 292.675, RSMo, except for those employees who shall have previously completed the required program and hold documentation to that effect. DESIGN-BUILDER shall remove or require the removal of any person from the Site who is subject to this requirement and who does not complete or is unable to produce documentation of their successful completion of the required program within the time limitations prescribed by Section 292.675, RSMo. DESIGN-BUILDER shall forfeit the sum of two thousand five hundred dollars (\$2,500.00), in addition to one hundred dollars (\$100.00) per employee each calendar day, or portion thereof, the employee(s) shall continue to be employed without having completed the required program within the time limitations prescribed by Section 292.675, RSMo. CITY shall be entitled to withhold and retain any amounts due and owing hereunder when making payment to DESIGN-BUILDER.

P. Affirmative Action. If the Contract Price exceeds \$300,000.00 and DESIGN-BUILDER employs fifty (50) or more people, DESIGN-BUILDER shall comply with City's Affirmative Action requirements in accordance with the provisions of Chapter 38 of City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto. DESIGN-BUILDER shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 38 of City's Code.

DESIGN-BUILDER shall:

1. Submit, in print or electronic format, a copy of DESIGN-BUILDER'S current certificate of compliance to the City's Human Relations Department (HRD) prior to receiving the first payment under the contract, unless a copy has already been submitted to HRD at any point within the previous two calendar years. If, and only if, DESIGN-BUILDER does not possess a current certification of compliance, DESIGN-BUILDER shall submit, in print or electronic format, a copy of its affirmative action program to HRD prior to receiving the first payment under the contract, unless a copy has already been submitted to HRD at any point within the previous two calendar years.

2. Require any Subcontractor awarded a subcontract exceeding \$300,000.00 to affirm that Subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.

3. Obtain from any Subcontractor awarded a subcontract exceeding \$300,000.00 a copy of the Subcontractor's current certificate of compliance and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed. If, and only if, Subcontractor does not possess a current certificate of compliance, DESIGN-BUILDER shall obtain a copy of the Subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed.

City has the right to take action as directed by City's Human Relations Department to enforce this provision. If DESIGN-BUILDER fails, refuses or neglects to comply with the provisions of Chapter 38 of City's Code, then such failure shall be deemed a total

breach of this Contract and this Contract may be terminated, canceled or suspended, in whole or in part, and DESIGN-BUILDER may be declared ineligible for any further contracts funded by City for a period of one (1) year. This is a material term of this Contract.

Q. Contract Information Management System. If applicable, DESIGN-BUILDER shall comply with CITY's Contract Information Management System requirements. DESIGN-BUILDER shall use CITY's Internet web based Contract Information Management System/Project Management Communications Tool provided by CITY, and protocols included in that software during the term of this Contract. DESIGN-BUILDER shall maintain user applications to CITY's provided system for all personnel, subcontractors or suppliers as applicable and shall require subcontractors/subconsultants to maintain same.

6.09 Government Approvals and Permits

A. DESIGN-BUILDER's Responsibility. DESIGN-BUILDER, at its own expense, shall secure all occupational and professional licenses; shall pay all Code application costs, Code review costs, governmental charges, and inspection fees; and shall secure from public or private sources or from any government or quasi-government entity having jurisdiction over the Project all necessary permits, approvals, and licenses required for the prosecution of the Work and necessary for the fulfillment of DESIGN-BUILDER's obligations under the Contract Documents.

B. DESIGN-BUILDER, at its own expense, shall comply with all Federal, State and local laws and regulations, including, but not limited to the Missouri Clean Water Law (Chapter 644 RSMo) together with any accompanying regulation(s) contained in the Missouri Code of State Regulations (CSR Title 10), as well as any implementing permits, together with any CITY Provisions during the life of this Contract including but not limited to:

- 1 Approvals and permits as required for construction or land disturbance activities.
2. Compliance with the State of Missouri – Department of Natural Resources (“MDNR”) Missouri State Operating Permit (“Land Disturbance Permit”), MO-R100006 for all construction or land disturbance activity.
3. Development and implementation of a Storm Water Pollution Prevention Plan (SWPPP).
 - a. DESIGN-BUILDER shall not commence land disturbance activity until the initial SWPPP has been finalized.
 - b. Preparation and submittal of all applications, documentation and exhibits required to obtain MDNR approvals for uninterrupted Work at the Site.
 - c. Amending/Updating SWPPP.
 - d. Site Inspections and submittal of Inspection Reports
 - e. Proper Operation and Maintenance to achieve compliance with the terms of the Permit.
 - f. Maintenance of required records in accordance with MDNR requirements and requirements included in Article 6 of these Contract Documents.

4. In addition to requirements of Article 6, DESIGN-BUILDER shall also provide record access to Missouri Department of Natural Resources (MDNR).
5. No additional Contract time will be granted to obtain approvals or permits or for coordination with that agency

C. Subcontractors' Licenses. Before Subcontractors begin Work at the Site, DESIGN-BUILDER shall obtain copies of all licenses required of such Subcontractors by these Contract Documents. DESIGN-BUILDER shall retain such evidence in its files and make it available to CITY within ten (10) days after written request.

D. No Release from Responsibility. No review, inspection, or approval of any of the Work by any government or quasi-government entity having jurisdiction over the Project shall relieve DESIGN-BUILDER of its exclusive responsibility and liability for the performance of its obligations in accordance with the Contract Documents and Legal Requirements.

6.10 Construction Phase Services

A. DESIGN-BUILDER's Responsibility. Unless otherwise provided in the Contract Documents to be the responsibility of CITY or a separate contractor under CITY's control, DESIGN-BUILDER shall provide through itself or its Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities, other temporary facilities, and all other items or services necessary to permit DESIGN-BUILDER to perform and complete the construction of the Project consistent with the Contract Documents and Legal Requirements.

B. DESIGN-BUILDER's Skill and Control. DESIGN-BUILDER shall perform all construction activities efficiently, in a workmanlike manner, and with the requisite expertise, skill, and competence to satisfy the Contract Documents and Legal Requirements. DESIGN-BUILDER shall at all times exercise complete and exclusive control over the means, methods, sequences, and techniques of construction, and all safety precautions and programs in connection with the performance of the Work.

C. Uncovering Work

1. Work Covered Improperly. If any Work (or the work of others at the Site) is covered contrary to the written request of CITY, DESIGN-BUILDER must uncover it at CITY's request for CITY's observation and replace it at DESIGN-BUILDER's expense.

2. Work Covered Properly. If CITY considers it necessary or advisable that covered Work be observed by CITY or be inspected or tested by others, DESIGN-BUILDER, at CITY's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as may be required, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

a. Defective Work. If it is found that such Work is defective, DESIGN-BUILDER shall pay all costs, losses, and damages (including, but not limited to, all fees and charges of contractors, engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) caused by, arising out of, or resulting from such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and CITY shall be entitled to an appropriate decrease in the Contract

Price. If the parties are unable to agree as to the amount thereof, CITY may make a Claim therefore.

b. Non-Defective Work. If, however, such Work is not found to be defective, DESIGN-BUILDER shall be allowed an increase in the Contract Price or an extension of the Contract Time(s) (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, DESIGN-BUILDER may make a Claim therefore.

D. Subcontractors

1. CITY's Approval. DESIGN-BUILDER shall engage only Subcontractors and Sub-subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents and Legal Requirements. Upon execution of the Contract and at such later times as CITY may request, DESIGN-BUILDER shall furnish, in writing, information about DESIGN-BUILDER's proposed Subcontractors and Sub-subcontractors. CITY shall promptly provide in writing any reasonable objections it may have to any such Subcontractor or Sub-subcontractor, in which case DESIGN-BUILDER shall submit an acceptable replacement. DESIGN-BUILDER shall not contract with any Subcontractor or Sub-subcontractor to which CITY objects, provided that the Contract Price and/or Contract Time(s) shall be equitably adjusted to the extent CITY's objection actually impacts DESIGN-BUILDER's cost and/or time of performance. DESIGN-BUILDER shall not be required to contract with any Subcontractor or Sub-Subcontractor against whom DESIGN-BUILDER has reasonable objection. CITY's consent or failure to object to any Subcontractor or Sub-subcontractor shall neither constitute any waiver by CITY of any of its rights and remedies under the Contract Documents or Legal Requirements, nor relieve DESIGN-BUILDER of any of its duties, obligations, liabilities, or warranties under the Contract Documents or Legal Requirements.

2. DESIGN-BUILDER's Subcontractors. DESIGN-BUILDER acknowledges its responsibility to CITY for the proper performance of the Work by DESIGN-BUILDER's Subcontractors and Sub-subcontractors and its responsibility for any of their acts or omissions in connection with the Work, and acknowledges that such subcontracting shall in no way relieve DESIGN-BUILDER of its obligations and liabilities under the Contract Documents and Legal Requirements.

3. Written Agreements. All Work performed by any Subcontractor or Sub-Subcontractor shall be pursuant to a written agreement or purchase order that specifically binds such Subcontractor or Sub-Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of CITY, and that affords to DESIGN-BUILDER the same rights against such Subcontractors and Sub-subcontractors as the Contract Documents afford to CITY against DESIGN-BUILDER. Nothing in the Contract Documents is intended or shall be construed to create any legal or contractual relationship between CITY and any Subcontractor or Sub-Subcontractor, nor to confer any benefit from CITY upon any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights, and a provision to such effect shall be inserted into all subcontracts and purchase orders between DESIGN-BUILDER and its Subcontractors and Sub-subcontractors.

4. Contingent Assignment. Each agreement and purchase order referenced in Section 6.10.D.3 above shall include an express assignment to CITY upon the conditions that (1) such assignment is effective only in the event of CITY's termination of the Contract for cause pursuant to Section 12.3 of these General Conditions of Contract, (2) such assignment is effective only with respect to those agreements and purchase orders CITY accepts in writing, and (3) such assignment is subject to any prior rights of the surety obligated under the Bonds.

E. Coordination

1. DESIGN-BUILDER's Forces. DESIGN-BUILDER shall coordinate the activities of the DOR, the GC, all Design Subconsultants, all Subcontractors, and all Sub-subcontractors with respect to the Work. Such coordination shall include, but not be limited to, jobsite meetings involving all such Project participants, at dates and times mutually agreed upon in advance with CITY's Representative.

2. CITY's Forces. If CITY performs any work on the Project or at the Site with CITY's own forces or with separate contractors under CITY's control, DESIGN-BUILDER shall reasonably cooperate and coordinate its activities with those of such separate forces or contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption, delay, or damage to any party.

F. Supervision and Superintendence

1. DESIGN-BUILDER shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.

2. At all times during the progress of the Work, DESIGN-BUILDER shall assign a competent resident superintendent of the Work, who shall not be replaced without written request to and written approval by CITY except under extraordinary circumstances. The superintendent will be DESIGN-BUILDER's representative at the Site and shall have authority to act on behalf of DESIGN-BUILDER. All communications given to or received from the superintendent shall be binding on DESIGN-BUILDER.

G. Services, Working Hours, Labor, Materials, and Equipment

1. DESIGN-BUILDER shall provide competent, suitably qualified personnel to survey, layout, and construct the Work as required by the Contract Documents. DESIGN-BUILDER shall at all times maintain good discipline and order at the Site. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto. CITY's prior written approval shall be required in the event DESIGN-BUILDER intends to perform Work at the Site outside regular working hours.

2. Unless otherwise specified in the Contract Documents, DESIGN-BUILDER shall furnish and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

3. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees shall expressly run to the benefit of CITY. If required by CITY, DESIGN-BUILDER shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's instructions except as may be otherwise provided in the Contract Documents.

H. Use of Site and Other Areas

1. DESIGN-BUILDER shall confine its construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas identified in and permitted by the Contract Documents and other areas permitted by Legal Requirements. DESIGN-BUILDER shall not unreasonably encumber the Site and the other areas with construction equipment or other materials or equipment. DESIGN-BUILDER shall assume full responsibility for any damage to the Site or the other areas, or to the owner(s) or occupant(s) thereof, or of any adjacent land or areas, resulting from the performance of the Work.

2. Should any claim be made by any such owner(s) or occupant(s) because of the performance of the Work, DESIGN-BUILDER shall promptly resolve such claim. In case of a failure on the part of DESIGN-BUILDER to restore such property or to make good such damage or injuries, CITY may, upon forty-eight (48) hours' written notice to DESIGN-BUILDER, repair, rebuild, or otherwise restore such property as CITY may deem necessary, and the cost thereof will be deducted from any moneys due or which may become due to DESIGN-BUILDER under this Contract.

3. DESIGN-BUILDER shall, to the fullest extent permitted by Legal Requirements, defend, indemnify, and hold harmless CITY, its Consultant(s), and its or their officials, officers, directors, employees, and agents from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of contractors, engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) arising out of or resulting from any claim or action, legal or equitable, brought by any such owner(s) or occupant(s) against CITY or any other party indemnified hereunder to the extent caused by or based upon DESIGN-BUILDER's performance of the Work.

4. During the progress of the Work, DESIGN-BUILDER shall keep the Site and the other areas free from accumulations of waste materials, rubbish, and other debris resulting from the Work. DESIGN-BUILDER shall leave the Site clean and ready for utilization or occupancy by CITY at Substantial Completion of the Work. At the completion of the Work, DESIGN-BUILDER shall remove all waste materials, rubbish, and debris from the Site and the other areas, as well as all tools, appliances, construction equipment and machinery, and surplus materials. DESIGN-BUILDER shall restore to its pre-Work condition all property not designated for alteration by the Contract Documents.

DESIGN-BUILDER shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall DESIGN-BUILDER subject any part of the Site, the Work or adjacent property to stresses

or pressures that will endanger it or them.

I. Emergencies

1. In the event of emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, DESIGN-BUILDER, without special instruction or authorization from CITY, is obligated to act to prevent threatened damage, injury, or loss. DESIGN-BUILDER shall give prompt written notice to CITY if DESIGN-BUILDER believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If CITY determines that a change in the Contract Documents is required because of the action taken by DESIGN-BUILDER in response to an emergency, a Work Change Directive or Change Order will be issued.

2. A change in the Contract Documents pursuant to Section 6.10.I will not be an automatic authorization of, nor a condition precedent to, entitlement to adjustment to the Contract Price and/or Contract Time(s). If CITY and DESIGN-BUILDER are unable to agree on entitlement to, or magnitude of, an equitable adjustment to the Contract Price and/or Contract Time(s), a Claim may be made therefore. However, neither CITY nor its Consultant(s) shall be liable to DESIGN-BUILDER for any costs, losses, or damages (including but not limited to all fees and charges of contractors, engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) sustained by DESIGN-BUILDER on or in connection with any other project or anticipated project.

J. Access to the Work

1. CITY, its Consultant(s), other CITY representatives and personnel, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and Work at reasonable times for their observation, inspection, and testing of the Work. DESIGN-BUILDER shall afford proper and safe conditions for such access and shall advise of DESIGN-BUILDER's Site safety procedures and programs so that such persons and entities may comport themselves therewith as may be applicable.

K. Tests and Inspections

1. DESIGN-BUILDER shall give to CITY's Representative timely notice of readiness of the Work for all required inspections, tests, or approvals, and DESIGN-BUILDER shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

2. If any Work (or the work of others at the Site) that is to be inspected, tested, or approved is covered by DESIGN-BUILDER without written approval required by Sections 6.10.K.4 or 6.10.A, it must, if requested by CITY's Representative, be uncovered for observation.

3. Uncovering Work as provided in Section 6.10.K.2 shall be at DESIGN-BUILDER's expense unless DESIGN-BUILDER gave timely notice to CITY's Representative of DESIGN-BUILDER's intention to cover the same and CITY's Representative failed to act with reasonable promptness in response to such notice.

4. If Legal Requirements of any public body (including CITY) having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, DESIGN-BUILDER shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish the required certificates of inspection or approval to CITY's Representative.

5. DESIGN-BUILDER shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for CITY's acceptance of materials or equipment to be incorporated into the Work, or acceptance of materials, mix designs, or equipment submitted for approval prior to DESIGN-BUILDER's purchase thereof for incorporation into the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to CITY.

6. CITY shall engage and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

- a. for inspections, tests or approvals covered by Sections 6.10.K.4 and 6.10.K.5;
- b. that costs incurred in connection with tests or inspections conducted pursuant to Section 6.10.K.2 shall be paid as provided in Section 6.10.K.3; and
- c. as otherwise specifically provided in the Contract Documents.

L. Clean Up

1. General. DESIGN-BUILDER shall keep the Site, including adjacent land areas and roads, reasonably free from debris, trash, mud, and construction wastes to permit DESIGN-BUILDER to perform its construction services efficiently and safely, and without interfering with the use of adjacent land areas and roads.

2. Regular Clean-Up Required. On a regular basis agreeable to CITY, DESIGN-BUILDER shall remove from CITY's property and from adjacent land areas and roads, and shall legally dispose of, all waste, trash, mud, and debris generated as a result of the Work performed under this Contract.

3. Disposal Records. DESIGN-BUILDER shall maintain written records of disposal methods and disposal sites, including, without limitation, copies of dump receipts or other forms provided by licensed landfills or agreements with property owners on whose property such waste materials are placed. DESIGN-BUILDER shall make such disposal records available to CITY within ten (10) working days from the date of CITY's written request therefore.

4. Substantial Completion. Upon Substantial Completion of the Work, or a portion of the Work, DESIGN-BUILDER shall remove all debris, trash, mud, construction wastes, materials, equipment, machinery, and tools arising from the Work or applicable portions thereof and shall leave the area "broom clean," to permit CITY to use or occupy the Project or a portion of the Project for its intended use.

5. CITY's Right to Clean Up. If DESIGN-BUILDER fails to provide the clean-up

of the Site as required by this Section 6.10.L, CITY, in its sole option, may have the required clean-up performed. All costs, losses, and damages (including but not limited to all fees and charges of contractors, engineers, architects, attorneys, and other professionals, and all court or other dispute resolution costs) caused by or resulting from such clean-up or other costs, losses, and damages incurred or sustained by CITY in exercising such rights and remedies will be charged against DESIGN-BUILDER.

6.11 DESIGN-BUILDER's Responsibility for Project Safety

A. Exclusive Responsibility. DESIGN-BUILDER recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury, or loss to (i) all individuals at the Site, whether working or visiting; (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site; and (iii) all other property at the Site or adjacent thereto. DESIGN-BUILDER assumes complete and exclusive responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. DESIGN-BUILDER's Safety Officer identified in the Technical Approach Submittal of DESIGN-BUILDER's Bid shall supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, DESIGN-BUILDER's Safety Officer shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Officer shall make routine daily inspections of the Site and shall hold weekly safety meetings with DESIGN-BUILDER's personnel, Subcontractors, and others as applicable. CITY may attend such meetings in its sole discretion, but CITY shall have no obligation to do so, and no responsibility or liability shall be imposed upon CITY for its attendance or failure to attend such meetings.

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

C. Subcontractors' Responsibility. DESIGN-BUILDER's responsibility for safety under this Section 6.9 and the Contract Documents and Legal Requirements is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with Legal Requirements, including those related to health and safety matters; and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages, or accidents resulting from their performance of the Work.

6.12 DESIGN-BUILDER's Warranty

A. DESIGN-BUILDER warrants to CITY that the Work, including all workmanship, materials, and equipment furnished as part of the Work, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents, and free of defects in materials and workmanship. DESIGN-BUILDER's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain

the Work by persons other than DESIGN-BUILDER or anyone for whose acts DESIGN-BUILDER may be liable. Nothing in this warranty is intended to limit any manufacturer's warranty providing CITY with greater warranty rights than set forth in this Section 6.10 or the Contract Documents. Upon Substantial Completion, DESIGN-BUILDER will provide CITY with all manufacturers' and products warranties associated with the Work, and shall provide assignments of such warranties to CITY if necessary.

6.13 DESIGN-BUILDER's Correction of Defective Work

A. One-Year Correction Period. If, (i) during the course of DESIGN-BUILDER's performance of its obligations under the Contract Documents; or (ii) within one (1) year after the date of Substantial Completion, or (iii) within such longer period of time as may be prescribed by Legal Requirements, by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the Site or other areas made available for DESIGN-BUILDER's use by CITY or permitted by Legal Requirements as contemplated in Section 6.08 is found to be defective, CITY shall give written notice thereof to DESIGN-BUILDER. Within seven (7) days after the date of CITY's written notice, DESIGN-BUILDER shall, without cost to CITY and in accordance with CITY's written instructions, complete the following corrective Work or, if such corrective Work cannot be completed within seven (7) days, DESIGN-BUILDER shall reasonably commence to perform, and shall complete within a reasonable time thereafter, the following corrective Work:

1. Correct the repair of damages to the Site or other areas; or
2. Correct such defective Work, or if it has been rejected by CITY, remove it from the Site and replace it with Work that is not defective; and
3. Satisfactorily correct or remove and replace any damage to other Work or to the work of others or damage to other lands or areas resulting therefrom.

B. Early Use of Equipment. In special circumstances where a particular item of equipment is placed into continuous service before Substantial Completion of all of the Work, the correction period for that item may start to run from an earlier date if so provided in the Contract Documents.

C. Additional One-Year Correction Period. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Section 6.13, the correction period with respect to such corrected or replaced Work will be extended for an additional period of one (1) year, or such longer period of time as may be prescribed within Section 6.13.A, after such correction or removal and replacement has been satisfactorily completed.

6.14 CITY's Acceptance of Defective Work

A. CITY's Sole Option. If, instead of requiring correction or removal and replacement of defective Work, CITY prefers to accept such defective Work, CITY may do so, in its sole discretion.

B. DESIGN-BUILDER's Costs. In the event CITY decides to accept such defective Work, DESIGN-BUILDER shall pay all costs, losses, and damages (including, but not limited to, all fees and charges of contractors, engineers, architects, attorneys, and other professionals, and all court or other dispute resolution costs) attributable to CITY's evaluation of and determination to accept such defective Work, and in addition

DESIGN-BUILDER shall pay CITY for the diminished value of the Work.

C. Deductive Change Order. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions into the Contract Documents with respect to the Work and, due to the diminished value of the Work; CITY shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, CITY may make a Claim therefore.

D. Payment by DESIGN-BUILDER. If the acceptance of defective Work occurs after final payment, DESIGN-BUILDER shall pay the appropriate amount to CITY.

6.15 CITY's Correction of Defective Work

A. CITY's Right to Correct Work. If DESIGN-BUILDER fails, within the time period set forth in Section 6.13. above after written notice from CITY, to correct, or commence to correct, defective Work or to remove and replace, or commence to remove and replace, rejected Work as required by CITY, or if DESIGN-BUILDER fails to perform the Work in accordance with the Contract Documents and Legal Requirements, or if DESIGN-BUILDER fails to comply with any other provision of the Contract Documents or Legal Requirements, or in the event of an emergency where delay by DESIGN-BUILDER would cause serious risk of loss or damage, CITY, in its sole option, may have the defective Work corrected or the rejected Work removed and replaced.

B. CITY's Right to Take Possession. In connection with such corrective and remedial action, CITY may exclude DESIGN-BUILDER from all or part of the Site; take possession of all or part of the Work and suspend DESIGN-BUILDER's services related thereto; take possession of DESIGN-BUILDER's tools, appliances, construction equipment, and machinery at the Site; and incorporate into the Work all materials and equipment stored at the Site or for which CITY has paid DESIGN-BUILDER but which are stored elsewhere. DESIGN-BUILDER shall allow CITY, its Consultants, CITY's other contractors, and its or their agents and employees, access to the Site to enable CITY to exercise the rights and remedies under this Section 6.13.

C. DESIGN-BUILDER's Costs. All costs, losses, and damages (including but not limited to all fees and charges of contractors, engineers, architects, attorneys, and other professionals, and all court or other dispute resolution costs) caused by or resulting from such removal and replacement (including, but not limited to, all costs of repair or replacement of work of others destroyed or damaged by the correction, removal, and replacement of such defective or rejected Work) or other costs, losses, and damages incurred or sustained by CITY in exercising such rights and remedies will be charged against DESIGN-BUILDER.

D. Deductive Change Order. If such removal and replacement occurs prior to final payment, a Change Order will be issued and CITY shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, CITY may make a Claim therefore.

E. Payment by DESIGN-BUILDER. If such removal and replacement occurs after final payment, DESIGN-BUILDER shall pay the appropriate amount to CITY.

6.16 No Time Extension

A. DESIGN-BUILDER shall not be allowed an extension of the Contract Time(s) (or Milestones) because of any delay in the performance of the Work attributable to the exercise by CITY of CITY's rights and remedies under Sections 6.13, 6.14, and/or 6.15.

6.17. No Effect on Legal Requirements

A. The one-year period referenced in Section 6.13 applies only to DESIGN-BUILDER's obligation to correct defective or nonconforming Work, and such obligations are in addition to any other obligation or warranty imposed under the Contract Documents, Legal Requirements, or applicable law.

B. The provisions of Section 6.13 shall not be construed as a substitute for or waiver of the provisions of any applicable statute of limitations or repose, and the time period set forth in Section 6.13 does not constitute a period of limitations or repose for any other rights or remedies CITY may have under the Contract Documents, Legal Requirements, or applicable law with respect to enforcement of DESIGN-BUILDER's obligations.

6.18 Indemnification

A. For purposes of this Paragraph 6.18 only, the following terms shall have the meanings listed:

1. Claims means all claims, damages, liability, losses, costs and expenses, including court costs and reasonable attorneys' fees, including attorney's fees incurred by the CITY in the enforcement of this indemnity obligation.
2. DESIGN BUILDER'S Agents means DESIGN BUILDER's officers, employees, subconsultants, subcontractors, successors, assigns, invitees, and other agents.
3. CITY means CITY, its Program Manager/Construction Advisor and any of their agents, officials, officers, employees and program managers or construction advisors.

B. DESIGN BUILDER's obligations under this Paragraph with respect to indemnification for acts or omissions, including negligence, of CITY, shall be limited to the coverage and limits of insurance that DESIGN BUILDER is required to procure and maintain under this Contract. DESIGN BUILDER affirms that it has had the opportunity to recover the costs of the liability insurance required in this Contract in its contract price.

C. DESIGN BUILDER shall defend, indemnify and hold harmless CITY from and against all Claims arising out of or resulting from all acts or omissions in connection with this Contract caused in whole or in part by DESIGN BUILDER or DESIGN BUILDER's Agents, regardless of whether or not caused in part by any act or omission, including negligence, of OWNER.

D. In any and all Claims against CITY, DESIGN PROFESSIONAL, CONSULTANT, or any of their respective agents, officers, directors or employees by any employee (or the survivor or personal representative of such employee) of DESIGN BUILDER, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.18 C shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for DESIGN BUILDER or any such Subcontractor, Supplier or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.

E. The indemnification obligations of DESIGN BUILDER under Paragraph 6.18 C shall not extend to liability arising out of, resulting from, or caused by the professional

negligence, errors or omissions of DESIGN PROFESSIONAL, CONSULTANT, or any of their respective agents, officers, directors or employees.

ARTICLE 7 OTHER WORK

7.01 Related Work at Site

A. CITY may perform other work related to the Project at the Site by CITY's own forces, or let other direct contracts therefore, or have other work performed by utility owners. If such other work is to be performed and such fact was not noted in the Contract Documents, then:

1. Written notice thereof will be given to DESIGN-BUILDER prior to starting any such other work, and
2. DESIGN-BUILDER may make a Claim therefore as provided in Article 15 if DESIGN-BUILDER believes that such performance involves additional expense to DESIGN-BUILDER or requires additional time and the parties are unable to agree as to the amount or extent thereof.

B. DESIGN-BUILDER shall afford each other contractor who is a party to such a direct contract, and each utility owner (and CITY, if CITY is performing the additional work with CITY's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, DESIGN-BUILDER shall do all cutting, fitting and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. DESIGN-BUILDER shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of CITY and the others whose work will be affected. The duties and responsibilities of DESIGN-BUILDER under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of DESIGN-BUILDER in said direct contracts between CITY and such utility owners and other contractors.

C. If the proper execution or results of any part of DESIGN-BUILDER's Work depends upon work performed by others under this Article 7, DESIGN-BUILDER shall inspect such other work and promptly report to CITY and CITY in writing any delays, defects or deficiencies in such other work that render it unavailable or unsuitable for the proper execution or results of DESIGN-BUILDER's Work. DESIGN-BUILDER's failure to report same will constitute an acceptance of such other work as fit and proper for integration with DESIGN-BUILDER's Work, except for latent or non-apparent defects and deficiencies in such other work.

7.02 Coordination

A. If CITY contracts with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the person, firm or corporation who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;
2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, CITY shall have sole authority and responsibility in respect of such coordination.

ARTICLE 8 CITY'S RESPONSIBILITIES

8.01 Duty to Cooperate

A. CITY shall, throughout the performance of the Work, cooperate with DESIGN-BUILDER and perform CITY's responsibilities, obligations, and services in a reasonably timely manner to facilitate DESIGN-BUILDER's timely and efficient performance of the Work and so as not to unreasonably delay or interfere with DESIGN-BUILDER's performance of its obligations under the Contract Documents.

B. CITY shall provide DESIGN-BUILDER access to the Site, and CITY shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the reasonable turnaround times set forth in DESIGN-BUILDER's schedule approved in writing by CITY as referenced in Section 2.5 of these General Conditions of Contract.

8.02 Furnishing of Services and Information

A. Unless stated to the contrary in the Contract Documents (including, without limitation, Article 4 hereof), CITY shall provide, at its own cost and expense, for DESIGN-BUILDER's information and use, the following, upon which DESIGN-BUILDER is entitled to rely in performing the Work unless otherwise stated in the information provided or in the Supplementary Conditions:

1. To the extent available, surveys describing the property, boundaries, topography, and reference points for use during construction, including existing service and utility lines;
2. Temporary and permanent easements, zoning, and other requirements and encumbrances affecting land use or necessary to permit the proper design and construction of the Project and enable DESIGN-BUILDER to perform the Work;
3. A legal description of the Site;
4. To the extent available, as-built and record drawings of any existing structures at the Site.

B. CITY is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable DESIGN-BUILDER to perform the Work. CITY is further responsible for all costs, including attorneys' fees, incurred in securing such agreements.

8.03 CITY's Representative

A. CITY's Representative shall be responsible for providing CITY-supplied information and approvals in a reasonably timely manner to permit DESIGN-BUILDER to fulfill its obligations under the Contract Documents. CITY's Representative shall also provide DESIGN-BUILDER with prompt notice if CITY's Representative observes any material failure on the part of DESIGN-BUILDER to fulfill its contractual obligations, including any errors, omissions, or defects in the performance of the Work.

8.04 CITY's Separate Contractors

A. CITY is responsible for all work performed on the Project or at the Site by

separate contractors under CITY's control (including, without limitation, separate architects and engineers CITY has engaged for the Project). CITY shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, DESIGN-BUILDER in order to enable DESIGN-BUILDER to timely complete the Work consistent with the Contract Documents.

ARTICLE 9 CHANGES IN THE WORK

9.01 Authorized Changes in the Work

A. Without invalidating the Contract and without notice to any surety, CITY may, at any time or from time to time, order additions, deletions or revisions in the Work. Such additions, deletions or revisions will be authorized by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, DESIGN-BUILDER shall promptly proceed with the Work involved that will be performed under the applicable conditions of the Contract Documents.

B. If CITY and DESIGN-BUILDER are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price pursuant to Article 10 or an adjustment of the Contract Times pursuant to Article 11 or both that should be allowed as a result of a Work Change Directive, a Claim may be made therefore as provided in Article 15.

9.02 Unauthorized Changes in the Work

A. DESIGN-BUILDER shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified or supplemented, except in the case of an emergency or in the case of uncovering Work.

9.03 Signing of Change Orders

A. CITY and DESIGN-BUILDER, shall sign appropriate Change Orders covering:

1. changes in the Work which are:
 - a. ordered by CITY or
 - b. required because of acceptance of defective Work or correcting defective Work.; or
 - c. agreed to by the parties;
2. changes in the Contract Price or Contract Times or both which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
3. changes in the Contract Price or Contract Times or both which embody the substance of any written decision approved by CITY, provided that, in lieu of signing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws or Regulations, but during any such appeal, DESIGN-BUILDER shall carry on the Work and adhere to the progress schedule..

9.04 Notification to Surety

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times or both) is required by the provisions of any Bond to be given to a surety, the

giving of any such notice will be DESIGN-BUILDER's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

ARTICLE 10 CHANGE OF CONTRACT PRICE

10.01 Change of Contract Price

A. The Contract Price constitutes the total compensation payable to DESIGN-BUILDER for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by DESIGN-BUILDER shall be at DESIGN-BUILDER's expense without change in the Contract Price.

B. The Contract Price may only be changed by a Change Order. Any request for an adjustment in the Contract Price shall be based on written notice delivered within fourteen (14) calendar days after occurrence of the event giving rise to the request or within fourteen (14) calendar days after first recognition of the conditions giving rise to the request. Prior notice is not required for requests or claims relating to an emergency endangering life or property as described in Paragraph 6.16. Thereafter, the DESIGN-BUILDER shall submit written documentation of its request, including appropriate supporting documentation, within ten (10) calendar days after giving notice, unless the CITY grants an extension based on good cause shown by the DESIGN-BUILDER that such additional time is warranted.

C. The value of any Work covered by a Change Order or of any request for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by Unit Prices contained in the Contract Documents, by application of such Unit Prices to the quantities of the items involved (subject to the provisions of Paragraph 10.04); or
2. where the Work involved is not covered by Unit Prices contained in the Contract Documents, by a mutually agreed lump sum; or
3. where the Work involved is not covered by Unit Prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 10.01 C.2, on the basis of the Cost of the Work (determined as provided in Paragraphs 10.02 A and B) plus a DESIGN-BUILDER's fee for overhead and profit (determined as provided in Paragraph 10.01 D).

D. The DESIGN-BUILDER's fee allowed to DESIGN-BUILDER for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or
2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 10.02 A.1 and 10.02 A.2, the DESIGN-BUILDER's fee shall be ten percent (10%);
 - b. for costs incurred under Paragraph 10.02 A.3, the DESIGN-BUILDER's fee shall be five percent (5%);
 - c. where one or more tiers of subcontracts are on the basis of the Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 10.01 D.2 and 10.02 A.1 through A.3 is that the Subcontractor who actually performs or furnishes the Work, at whatever tier, will be paid a fee of ten

percent (10%) of the costs incurred by such Subcontractor under Paragraphs 10.02 A.1 and 10.02 A.2 and that any higher tier Subcontractor and DESIGN-BUILDER will each be paid a fee of five percent (5%) of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under Paragraphs 10.02 A.4, 10.02 A.5 and 10.02 B;

e. the amount of credit to be allowed by DESIGN-BUILDER to CITY for any change which results in a net decrease in cost will be the amount of the actual net decrease in costs plus a deduction in DESIGN-BUILDER's fee by an amount equal to five percent (5%) of such net decrease; and

f. when both additions and credits are involved in any one change, the adjustment in DESIGN-BUILDER's fee shall be computed on the basis of the net change in accordance with Paragraphs 10.01 D.2.a through 10.01 D.2.e, inclusive.

E. Whenever the Cost of the Work is to be determined pursuant to Paragraphs 10.02 A and B, DESIGN-BUILDER shall establish and maintain records thereof in accordance with generally accepted accounting practices and submit in form acceptable to CITY an itemized cost breakdown together with supporting data.

10.02 Cost of the Work

A. The term "Cost of the Work" means the sum of all costs necessarily incurred and paid by DESIGN-BUILDER in the proper performance of the Work. When the value of any Work covered by a Change Order or when a request for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to DESIGN-BUILDER will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the request. Except as otherwise agreed to in writing by CITY, costs covered by Change Orders or requests shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any costs itemized in 10.02 B:

1. Payroll costs for employees in the direct employ of DESIGN-BUILDER in the performance of the Work, using occupational titles and job classifications agreed upon by CITY and DESIGN-BUILDER. Such employees shall include, without limitation, job Site superintendents, foremen and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing the Work after regular working hours, on Saturdays, Sundays or legal holidays shall be included in the above to the extent authorized by OWNER.

2. Cost of all materials and equipment furnished and incorporated into the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to DESIGN-BUILDER unless CITY deposits funds with DESIGN-BUILDER with which to make payments, in which case the cash discounts shall accrue to CITY. All trade discounts, rebates and refunds and returns from sale of surplus materials and

equipment shall accrue to CITY, and DESIGN-BUILDER shall make provisions so that they may be obtained.

3. Payments made by DESIGN-BUILDER to Subcontractors for Work performed or furnished by Subcontractors. If required by CITY, DESIGN-BUILDER shall obtain competitive bids from Subcontractors acceptable to OWNER and DESIGN-BUILDER and shall deliver such bids to CITY who will then determine, with the advice of CITY, which bids, if any, will be accepted. If any subcontract provides that the Subcontractor is to be paid on the basis of the Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as DESIGN-BUILDER's Cost of the Work and fee as provided in Paragraphs 10.01 D and E and 10.02 A and B. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work when such services are approved in advance by CITY in writing.

5. Other costs including the following:

a. The proportion of necessary transportation, travel and subsistence expenses of DESIGN-BUILDER's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the Site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value of such items used but not consumed which remain the property of DESIGN-BUILDER.

c. Rentals of all construction equipment and machinery and the parts thereof whether rented from DESIGN-BUILDER or others in accordance with rental agreements approved by CITY, and the costs of transportation, loading, unloading, installation, assembly, dismantling and removal thereof, all in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

d. Applicable sales, consumer, use or similar taxes related to the Work, and for which DESIGN-BUILDER is liable, imposed by Laws or Regulations.

e. Deposits lost for causes other than negligence of DESIGN-BUILDER, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses required to perform the Work.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by DESIGN-BUILDER in connection with the performance and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by CITY in accordance with Article 5), provided they have resulted from causes other than the negligence of DESIGN-BUILDER, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include

settlements made with the written consent and approval of CITY. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining DESIGN-BUILDER's fee. If, however, any such loss or damage requires reconstruction and DESIGN-BUILDER is placed in charge thereof, DESIGN-BUILDER shall be paid for those services a fee proportionate to that stated in Paragraph 10.01 D.2.

g. The cost of utilities, fuel and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage and similar petty cash items in connection with the Work.

i. Cost of premiums for additional or increased Bonds, or for insurance required because of approved changes in the Work.

B. Costs excluded: The term "Cost of the Work" shall not include any of the following:

1. Payroll costs and other compensation of DESIGN-BUILDER's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by DESIGN-BUILDER whether at the Site or in DESIGN-BUILDER's principal or a branch office for general administration of the Work (if not specifically included in the agreed upon occupational titles and job classifications referred to in Paragraph 10.02 A.1 or specifically covered by Paragraph 10.02 A.4), all of which are to be considered administrative costs covered by the DESIGN-BUILDER's fee.

2. Expenses of DESIGN-BUILDER's principal and branch offices other than DESIGN-BUILDER's office at the Site.

3. Any part of DESIGN-BUILDER's capital expenses, including interest on DESIGN-BUILDER's capital employed for the Work and charges against DESIGN-BUILDER for delinquent payments.

4. Costs due to the negligence of DESIGN-BUILDER, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials, or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 10.02 A.

10.03 Cash Allowances

A. It is understood that DESIGN-BUILDER has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be furnished and performed for such sums as may be acceptable to CITY. DESIGN-BUILDER agrees that:

1. the allowances include the cost to DESIGN-BUILDER (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. DESIGN-BUILDER's costs for unloading and handling on the Site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

B. Prior to final payment, an appropriate Change Order will be issued by CITY to reflect actual amounts due DESIGN-BUILDER on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

10.04 Unit Price Work

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Contract. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price.

B. Each unit price will be deemed to include an amount considered by DESIGN-BUILDER to be adequate to cover DESIGN-BUILDER's overhead and profit for each separately identified item.

C. CITY or DESIGN-BUILDER may negotiate an adjustment of the price per unit of Unit Price Work stated in the Contract if:

1. the quantity of any item of Unit Price Work performed by DESIGN-BUILDER differs by twenty percent (20%) or more from the estimated quantity of such item indicated in the Contract; and
2. there is no corresponding adjustment with respect to any other item of Work; and
3. DESIGN-BUILDER believes that DESIGN-BUILDER is entitled to an increase in Contract Price as a result of having incurred additional expense or CITY believes that CITY is entitled to a decrease in Contract Price.

10.05 Dispute Resolution

A. If CITY and DESIGN-BUILDER are unable to agree on entitlement to, or magnitude of, an equitable adjustment in the Contract Price in accordance with Article 10 within fourteen (14) calendar days from the receipt of supporting documentation of the request pursuant to 10.01.B., unless the CITY grants an extension based on good cause shown by the DESIGN-BUILDER that such additional time is warranted, then a Claim for such adjustment may be made pursuant to Article 15.

ARTICLE 11 CONTRACT TIMES

11.01 Time of the Essence

A. All times stated in the Contract Documents are of the essence of the Contract.

11.02 Change of Contract Times

A. The Contract Times (or Milestones) may only be changed by a Change Order. Any request for an adjustment in the Contract Times shall be based on

written notice delivered within fourteen (14) calendar days after occurrence of the event giving rise to the request or within fourteen (14) calendar days after first recognition of the conditions giving rise to the request. Thereafter, the DESIGN-BUILDER shall submit written documentation of its requests, including appropriate supporting documentation, within ten (10) days after giving notice, unless the CITY grants an extension based on good cause shown by the DESIGN-BUILDER that such additional time is warranted.

11.03 Proof Required To Justify An Extension of Time For Excusable and Compensable Delays

A. In support of any request for an extension of the Contract Times pursuant to this Article, DESIGN-BUILDER must demonstrate to the reasonable satisfaction of the CITY that the critical path of the approved baseline project schedule was delayed. DESIGN-BUILDER shall be entitled to an increase in contract time for the number of days that the critical path was delayed solely as a result of the compensable or excusable event. A compensable or excusable event includes, but is not limited to:

1. unreasonable delay of issuance of Notice to Proceed by CITY;
2. CITY's unreasonable delay of delivery furnished materials, equipment, or work;
3. unreasonable delay responding to shop drawings and submittals;
4. CITY's unreasonable delay in issuing a Change Order;
5. an order by the CITY to stop the Work where the DESIGN-BUILDER was not at fault; and
6. other reasonable grounds as determined by the CITY in its sole discretion.

B. DESIGN-BUILDER shall compare the critical path of the approved baseline project schedule to the actual critical path of the Work, identifying the specific impact of the compensable or excusable event.

C. DESIGN-BUILDER shall submit to the CITY a written time impact analysis illustrating the influence of each compensable or excusable event on the date of Substantial Completion. The time impact analysis shall demonstrate the time impact based on the date of the delay in time and the event time computations or all affected activities.

D. If the critical path of the Work is delayed by "Force Majeure", the DESIGN-BUILDER shall be entitled only to an extension of the Contract Times for the number of days of delay to the critical path. For purposes of this paragraph, "Force Majeure" shall mean fire, tornado, flood, earthquake, war, act of terrorism, civil disturbance, or labor strikes away from the project site.

E. Extensions of contract time pursuant to the this section will be granted only to the extent that the time adjustments exceed the total float time available when the event causing the delay occurred.

11.04 Delays Within DESIGN-BUILDER's Control

A. The Contract Times (or Milestones) will not be extended due to delays within the control of DESIGN-BUILDER. Delays attributable to and within the control of a

Subcontractor or Supplier shall be deemed to be delays within the control of DESIGN-BUILDER.

11.05 Delays Beyond the CITY's and DESIGN-BUILDER's Control

A. Where DESIGN-BUILDER is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both CITY and DESIGN-BUILDER, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be DESIGN-BUILDER's sole and exclusive remedy for such delay.

11.06 Delay Damages

A. In no event shall CITY be liable to DESIGN-BUILDER, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of DESIGN-BUILDER, or
2. delays beyond the control of CITY or DESIGN-BUILDER including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this Paragraph 11.06 bars a change in Contract Price pursuant to this Article 11 to compensate DESIGN-BUILDER due to delay, interference, or disruption directly attributable to actions or inaction of CITY, CITY's Consultant or anyone for whom CITY, or CITY's Consultant is responsible.

11.07 Dispute Resolution

A. If CITY and DESIGN-BUILDER are unable to agree on entitlement to, or magnitude of, an equitable adjustment in the Contract Time in accordance with Article 11 within fourteen (14) calendar days from the receipt of supporting documentation of the request pursuant to 11.02, unless the CITY grants an extension based on good cause shown by the DESIGN-BUILDER that such additional time is warranted, then a Claim for such adjustment may be made pursuant to Article 15.

ARTICLE 12 TESTS AND INSPECTIONS;

CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

12.01 Access to Work

A. CITY, CITY's Consultants, other representatives and personnel of CITY, independent testing laboratories and governmental agencies with jurisdictional interests will have access to the Site and Work at reasonable times for their observation, inspecting and testing. DESIGN-BUILDER shall provide them proper and safe conditions for such access and advise them of DESIGN-BUILDER's Site safety procedures and programs so that they may comply therewith as applicable.

12.02 Tests and Inspections

A. DESIGN-BUILDER shall give CITY and CITY's Representative timely notice of readiness of the Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. If any Work (or the work of others at the Site) that is to be inspected, tested or approved is covered by DESIGN-BUILDER without written approval required by Paragraphs 12.02 D or 12.02 E, it must, if requested by CITY's Representative, be uncovered for observation.

C. Uncovering Work as provided in Paragraph 12.02 B, shall be at DESIGN-BUILDER's expense unless DESIGN-BUILDER has given CITY and CITY's Representative timely notice of DESIGN-BUILDER's intention to cover the same and CITY and CITY's Representative have not acted with reasonable promptness in response to such notice.

D. If Laws or Regulations of any public body (including CITY) having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, DESIGN-BUILDER shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish CITY and CITY's Representative the required certificates of inspection or approval.

E. DESIGN-BUILDER shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for CITY's and CITY's acceptance of materials or equipment to be incorporated into the Work, or acceptance of materials, mix designs, or equipment submitted for approval prior to DESIGN-BUILDER's purchase thereof for incorporation into the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to CITY.

F. CITY shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests or approvals covered by Paragraph 12.02 D and E;
2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 12.04 B shall be paid as provided in said Paragraph 12.04 B; and
3. as otherwise specifically provided in the Contract Documents.

12.03 Notice of Defects

A. Prompt notice of all defective Work of which the CITY has actual knowledge will be given to DESIGN-BUILDER. Defective Work may be rejected, corrected or accepted as provided in this Article 12.

12.04 Uncovering Work

A. If any Work (or the work of others at the Site) is covered contrary to the written request of CITY or CITY's Representative, it must, if requested by CITY's Representative, be uncovered for CITY's or CITY's Representative's observation and replaced at DESIGN-BUILDER's expense.

B. If CITY considers it necessary or advisable that covered Work be observed by CITY or CITY's Representative or be inspected or tested by others, DESIGN-BUILDER, at CITY's request, shall uncover, expose or otherwise make available for observation, inspection or testing as may be required, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, DESIGN-BUILDER shall pay all costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all

court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and CITY shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, CITY may make a Claim therefore as provided in Article 15. If, however, such Work is not found to be defective, DESIGN-BUILDER shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction. If the parties are unable to agree as to the amount or extent thereof, DESIGN-BUILDER may make a Claim therefore as provided in Article 15.

12.05 CITY May Stop the Work

A. If the Work is defective, or DESIGN-BUILDER fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, CITY may order DESIGN-BUILDER to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of CITY to stop the Work shall not give rise to any duty on the part of CITY to exercise this right for the benefit of DESIGN-BUILDER, any SubDESIGN-BUILDER, Supplier, other individual or entity or any surety or employee or agent of any of them.

12.06 Correction or Removal of Defective Work

A. If required by CITY, DESIGN-BUILDER shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by either CITY or CITY's Representative, remove it and replace it with Work that is not defective. DESIGN-BUILDER shall pay all costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others).

12.07 Correction Period

A. If within one (1) year after the date of Substantial Completion, or such longer period of time as may be prescribed by Laws or Regulations, by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for DESIGN-BUILDER's use by CITY or permitted by Laws and Regulations as contemplated in Paragraph 6.10 is found to be defective, DESIGN-BUILDER shall promptly, without cost to CITY and in accordance with CITY's written instructions:

1. correct the repair of damages to such land or areas; or
2. correct such defective Work, or if it has been rejected by CITY, remove it from the Site and replace it with Work that is not defective; and
3. satisfactorily correct or remove and replace any damage to other Work or to the work of others or damage to other lands or areas resulting therefrom. If DESIGN-BUILDER does not promptly comply with the terms of such instructions, or in the event of an emergency where delay by DESIGN-BUILDER would cause serious risk of loss or damage, CITY may have the defective Work corrected or

the rejected Work removed and replaced, and all costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) caused by or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by DESIGN-BUILDER.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 12.07, the correction period hereunder with respect to such Work will be extended for an additional period of one (1) year, or such longer period of time as may be prescribed within Paragraph 12.07 A, after such correction or removal and replacement has been satisfactorily completed.

D. DESIGN-BUILDER's obligations under this Paragraph 12.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 12.07 shall not be construed as a substitute for or waiver of the provisions of any applicable statute of limitation or repose.

12.08 Acceptance of Defective Work

A. If, instead of requiring correction or removal and replacement of defective Work, CITY prefers to accept it, CITY may do so. DESIGN-BUILDER shall pay all costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to CITY's evaluation of and determination to accept such defective Work and shall pay OWNER for the diminished value of the Work. If any such acceptance occurs prior to CITY's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions into the Contract Documents with respect to the Work and, due to the diminished value of the Work, CITY shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, CITY may make a Claim therefore as provided in Article 15. If the acceptance of defective Work occurs after such recommendation, an appropriate amount shall be paid by DESIGN-BUILDER to CITY.

12.09 CITY May Correct Defective Work

A. If DESIGN-BUILDER fails within a reasonable time after written notice from CITY or CITY's Representative to correct defective Work or to remove and replace rejected Work as required by CITY in accordance with Paragraph 12.06, or if DESIGN-BUILDER fails to perform the Work in accordance with the Contract Documents, or if DESIGN-BUILDER fails to comply with any other provision of the Contract Documents, CITY may, after seven (7) days written notice to DESIGN-BUILDER, correct and remedy any such deficiency.

B. CITY shall proceed expeditiously when exercising the rights and remedies under this Paragraph 12.09. In connection with such corrective and remedial action, CITY may exclude DESIGN-BUILDER from all or part of the Site; take possession of all or part of the Work and suspend DESIGN-BUILDER's services related thereto; take possession of DESIGN-BUILDER's tools, appliances, construction equipment and machinery at the

Site; and incorporate into the Work all materials and equipment stored at the Site or for which CITY has paid DESIGN-BUILDER but which are stored elsewhere. DESIGN-BUILDER shall allow CITY, CITY's Representative, agents and employees, CITY's other contractors, CITY and Consultants access to the Site to enable CITY to exercise the rights and remedies under this Paragraph 12.09.

C. All costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by CITY in exercising such rights and remedies will be charged against DESIGN-BUILDER and a Change Order will be issued incorporating the necessary revisions into the Contract Documents with respect to the Work; and CITY shall be entitled to an appropriate decrease in the Contract Price. If CITY and DESIGN-BUILDER are unable to agree as to the amount thereof, CITY may make a Claim therefore as provided in Article 15. Such Claims for costs, losses and damages will include but not be limited to all costs of repair or replacement of work of others destroyed or damaged by correction, removal and replacement of DESIGN-BUILDER's defective or rejected Work.

D. DESIGN-BUILDER shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by CITY of CITY's rights and remedies under Paragraphs 12.06 and 12.09.

ARTICLE 13 PAYMENTS TO DESIGN-BUILDER AND COMPLETION

13.01 Schedule of Values

A. Pursuant to Paragraph 2.06.A.3, DESIGN-BUILDER shall submit to CITY a Schedule of Values allocating the Contract Price among the various elements of the construction portion of the Work. The Schedule of Values shall be prepared on CITY's form, with such detail and supported by such data and documentation as CITY may require. The Schedule of Values shall be used as a guideline for CITY's review of DESIGN-BUILDER's Applications for Payment for the construction portion of the Work.

13.02 Monthly Progress Payments

A. On or before the date established in the Contract Documents, DESIGN-BUILDER shall submit, for CITY's review and approval, DESIGN-BUILDER's Application for Payment, on CITY's form, requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be complete and accurate and accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting contemplated by Section 6.01.B of these General Conditions of Contract, including, without limitation, certified payrolls in form and substance acceptable to CITY. CITY shall have the right to review all design services and construction services, performed at the Site or elsewhere, to determine whether the quantity and quality of labor, services, equipment, and materials are as required by the Contract Documents and as represented in the Application for Payment.

B. If payment is requested on the basis of materials and equipment not incorporated into the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, paid invoice, or other documentation warranting that CITY has received the materials and equipment free and clear of all liens and claims, and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements

to protect CITY's interest therein, all of which will be subject to CITY's approval.

C. The Application for Payment shall constitute DESIGN-BUILDER's representation that the Work has been performed consistent with the Contract Documents and Legal Requirements, has progressed to the Design Milestone or portion of the Schedule of Values indicated in the Application for Payment, and that title to all Work will pass to CITY free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon DESIGN-BUILDER's receipt of payment under the Application for Payment for that portion of the Work, whichever occurs earlier.

13.03 Payment; Withholding of Payment

A. On or before the date established in the Contract Documents, CITY shall pay DESIGN-BUILDER all amounts properly due under the Application for Payment. No payment to DESIGN-BUILDER by CITY, nor any use or occupancy of the Project or any part thereof by CITY, shall be interpreted or construed to constitute CITY's acceptance of any Work not in conformance with the Contract Documents or Legal Requirements, and shall not be held to prevent the maintenance of an action on DESIGN-BUILDER's Bonds or insurance, or against DESIGN-BUILDER directly, for failure to perform said Work in conformance with the Contract Documents and Legal Requirements. DESIGN-BUILDER expressly accepts the risk that defective Work may not be detected (1) during any review by CITY, (2) prior to CITY making any payment to DESIGN-BUILDER, or (3) prior to CITY's occupancy of the Project or any part thereof.

B. If CITY determines that DESIGN-BUILDER is not entitled to payment for all or part of an Application for Payment, CITY will notify DESIGN-BUILDER in writing. The notice shall indicate the specific amounts withheld, the reasons and contractual basis for the withholding, and the specific measures DESIGN-BUILDER must take to rectify CITY's concerns. Such reasons for withholding payment under an interim Application for Payment or under the Application for Final Payment shall include, but not be limited to, the following acts or omissions: (i) the assessment of liquidated damages; (ii) unsatisfactory Project progress; (iii) defective design or construction Work or materials not remedied; (iv) disputed Work; (v) failure to comply with any material provision of the Contract Documents or Legal Requirements; (vi) third party claims filed or reasonable evidence that a claim will be filed; (vii) failure to make timely payments for labor, services, equipment, or materials; (viii) damage to CITY's separate contractor, or to a Design Subconsultant, Subcontractor, or Sub-subcontractor, (ix) reasonable evidence that a Design Subconsultant, a Subcontractor, or a Sub-subcontractor cannot be fully compensated under its contract with the DESIGN-BUILDER; (x) evidence that the remaining portion of the Work cannot be completed in accordance with the Contract Documents and Legal Requirements for the unpaid balance of the Contract Price, (xi) overstatement of amounts included in any Application for Payment, (xii) losses caused by DESIGN-BUILDER, (xiii) DESIGN-BUILDER's failure or refusal to perform any of its obligations to CITY, (xiv) citation by any enforcing authority for acts or omissions of the DESIGN-BUILDER which do not comply with the Contract Documents and/or which result in a violation of any Legal Requirements, or (xv) any other reason listed in the Prompt Pay Act. In the event an insufficient amount is due to DESIGN-BUILDER under the current Application for Payment, CITY may make written demand for the return of an amount believed by CITY to be adequate to cover CITY's potential liabilities and damages arising from DESIGN-BUILDER's specified act or omission, and DESIGN-BUILDER shall promptly comply with such demand. DESIGN-BUILDER and CITY will

attempt to resolve CITY's concerns prior to the date payment is due.

C. CITY shall pay DESIGN-BUILDER all undisputed amounts in an Application for Payment within the times required by the Contract Documents and applicable law, including the Prompt Pay Act.

13.04 DESIGN-BUILDER's Payment Obligations

A. In accordance with its contractual obligations to such parties and in conformance with Missouri law, including, without limitation, the Prompt Pay Act, DESIGN-BUILDER will pay to Design Consultants and Subcontractors all amounts received by DESIGN-BUILDER from CITY on account of their services and work. DESIGN-BUILDER will impose similar requirements on its Design Subconsultants and Subcontractors to pay those parties with whom they have contracted. No subcontract or other agreement arising from this Contract shall include, by either express or implied terms, a "pay when paid" or "pay if paid" clause. Any such clause is against CITY policy and shall be considered null and void.

B. To the fullest extent permitted by Legal Requirements, DESIGN-BUILDER shall defend, indemnify, and hold harmless CITY, its Consultant(s), and its or their officials, officers, directors, employees, and agents from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of contractors, engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) arising out of or resulting from any claims for payment and/or mechanic's liens.

13.05 Substantial Completion

A. DESIGN-BUILDER shall notify City in writing when DESIGN-BUILDER believes the Work or, to the extent permitted in the Contract Documents, a portion of the Work, has achieved Substantial Completion, and shall submit to CITY a list of items remaining to be completed or corrected. Within ten (10) working days after CITY's receipt of DESIGN-BUILDER's notice, CITY and DESIGN-BUILDER will jointly inspect such Work to determine whether it is substantially complete in accordance with the requirements of the Contract Documents and Legal Requirements, including the issuance of all necessary certificates of occupancy or other authorizations for the use or occupancy of the Project required by any government or quasi-government authority having jurisdiction over the Project.

B. If CITY determines that such Work is substantially complete, CITY shall prepare and issue a Certificate of Substantial Completion, signed by DESIGN-BUILDER to acknowledge the responsibilities assigned to it, that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work and the date on which they must be completed or corrected before final payment shall become due, (iii) provisions (to the extent not already set forth in the Contract Documents) establishing CITY's and DESIGN-BUILDER's responsibility for the Project's security, maintenance, utilities, damage to the Work, and insurance pending final payment, and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

C. Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, and upon receipt and approval of DESIGN-BUILDER's Application for Payment therefor, CITY shall release to DESIGN-BUILDER all retained amounts

relating, as applicable, to the entire Work or completed portion of the Work, less all offsets and deductions authorized by the Contract Documents or by applicable law, and less an amount equal to two hundred percent (200%) of the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

D. Prior to Substantial Completion of all of the Work, CITY, at its sole option, may use or occupy a portion of the Work which has been determined to have achieved Substantial Completion provided that (i) a Certificate of Substantial Completion has been issued for that portion of Work, (ii) DESIGN-BUILDER and CITY have obtained the consent of their sureties and insurers, and, to the extent applicable, the appropriate government or quasi-government authorities having jurisdiction over the Project, including, without limitation, the issuance of all necessary certificates of occupancy, and (iii) CITY and DESIGN-BUILDER agree that CITY's use or occupancy will not interfere with DESIGN-BUILDER's completion of the remaining Work. Such partial use or occupancy shall not be construed to mean that the entire Project has achieved Substantial Completion.

13.06 Final Completion; Final Payment

A. DESIGN-BUILDER shall notify CITY in writing when DESIGN-BUILDER believes that all of the Work is finally complete and ready for CITY's final inspection. Within ten (10) working days after CITY's receipt of DESIGN-BUILDER's notice, CITY and DESIGN-BUILDER will jointly inspect the Work to determine whether the Work is finally complete in accordance with the requirements of the Contract Documents and Legal Requirements and whether the Contract has been fully performed.

B. At the time of submission of its Application for Final Payment, and as a condition precedent to final payment, DESIGN-BUILDER shall provide the following, in form and substance acceptable to CITY:

1. An affidavit that there are no claims, obligations, or liens outstanding or unsatisfied for labor, services, materials, equipment, taxes, or other items performed, furnished, or incurred for or in connection with the Work which might in any way affect CITY's interests, and an agreement to defend and indemnify CITY against any of same.
2. A general release executed by DESIGN-BUILDER under oath, waiving, upon receipt of final payment, all claims against CITY, except those claims previously made in writing to CITY by DESIGN-BUILDER, still pending at the time of the Application for Final Payment, and specifically identified in the general release as unsettled at the time of the Application for Final Payment;
3. Consent of DESIGN-BUILDER's surety to final payment;
4. One complete record set, both in electronic form and on a reproducible medium acceptable to CITY, of all Contract Documents and submittals;
5. All operating manuals, instruction manuals, maintenance manuals, product and manufacturers' warranties, and other documents, things, and deliverables required by the Contract Documents;
6. Certificates of insurance confirming that required coverages and limits of liability are and will remain in effect consistent with the requirements of the Contract Documents; and

7. A “Contractor Affidavit for Final Payment” from DESIGN-BUILDER and a “Subcontractor Affidavit for Final Payment” from all Subcontractors and Sub-subcontractors, regardless of tier.

C. After receipt of DESIGN-BUILDER's Application for Final Payment, and provided that DESIGN-BUILDER has completed all of the Work and provided all documents and information in conformance with the Contract Documents and Legal Requirements, CITY shall make final payment to DESIGN-BUILDER within the time required in the Contract Documents and pursuant to applicable Missouri law.

D. Upon making final payment, CITY waives all claims against DESIGN-BUILDER except claims relating to (i) DESIGN-BUILDER's failure to satisfy its payment obligations, if such failure affects CITY's interests, (ii) DESIGN-BUILDER's failure to perform and complete the Work consistent with the Contract Documents and Legal Requirements, including defects appearing after Substantial Completion, and (iii) the terms of any special warranties required by the Contract Documents.

ARTICLE 14 SUSPENSION OF WORK AND TERMINATION

14.01 CITY May Suspend Work

A. Notwithstanding any other provision of this Contract, at any time and without cause, and at its sole and absolute discretion, CITY, may suspend the Work or any portion of the Work by written notice to CONTRACTOR, which will initially fix the date on which Work will be resumed. DESIGN-BUILDER shall resume the Work on the date so fixed in the notice unless the date is changed by a subsequent written notice from CITY. DESIGN-BUILDER may be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any suspension if DESIGN-BUILDER makes a Claim therefore in accordance with Article 15.

B. DESIGN-BUILDER will not be allowed an adjustment in the Contract Price or an extension of the Contract Times if CITY suspends the Work because DESIGN-BUILDER's acts or omissions create or cause an emergency that CITY believes affects the safety or protection of persons, the Work, or property at the Site or adjacent thereto. CITY may order DESIGN-BUILDER to stop the Work, or any portion thereof, until the cause for such order has been adequately addressed by DESIGN-BUILDER; however, this right of CITY to stop the Work shall not give rise to any duty on the part of CITY to exercise this right for the benefit of DESIGN-BUILDER, any Subcontractor, Supplier, other individual or entity or any surety or employee or agent of any of them.

14.02 CITY May Terminate for Default

A. DESIGN-BUILDER may be deemed in default and CITY may terminate the services of DESIGN-BUILDER upon the occurrence of any one or more of the following events:

1. DESIGN-BUILDER fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under Paragraph 2.06 and 2.07 as adjusted from time to time pursuant to Paragraphs 6.05, 6.06, 11.02 and 11.03);
2. DESIGN-BUILDER abandons the Work or declares its intention to abandon the work;

3. DESIGN-BUILDER assigns or attempts to assign its rights or obligations under this Contract or any part thereof to any third party without the prior written consent of CITY;
4. DESIGN-BUILDER fails to make prompt payment duly owing to any subcontractor or material supplier within thirty (30) calendar days after payment was due;
5. DESIGN-BUILDER fails to achieve the required dates of substantial and final completion;
6. DESIGN-BUILDER disregards Laws or Regulations of any public body having jurisdiction;
7. DESIGN-BUILDER disregards the authority of CITY or OWNER; or
8. DESIGN-BUILDER otherwise violates in any substantial way any provisions of the Contract Documents.

B. CITY may, after giving DESIGN-BUILDER (and the surety) seven (7) days written notice and to the extent permitted by Laws or Regulations, terminate the services of DESIGN-BUILDER, exclude DESIGN-BUILDER from the Site and take possession of the Work and of all DESIGN-BUILDER's tools, appliances, construction equipment and machinery at the Site and use the same to the full extent they could be used by DESIGN-BUILDER (without liability to DESIGN-BUILDER for trespass or conversion), incorporate into the Work all materials and equipment stored at the Site or for which CITY has paid DESIGN-BUILDER but which are stored elsewhere, and finish the Work as CITY may deem expedient. In such case, DESIGN-BUILDER shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by CITY arising out of or resulting from completing the Work, such excess may be paid to DESIGN-BUILDER. If such costs, losses and damages exceed such unpaid balance, DESIGN-BUILDER shall pay the difference to CITY within fourteen (14) calendar days of CITY'S demand for payment. When exercising any rights or remedies under this Paragraph CITY shall not be required to competitively bid this work unless required by law.

C. Where DESIGN-BUILDER's services have been so terminated by CITY, the termination will not affect any rights or remedies of CITY against DESIGN-BUILDER then existing or which may thereafter accrue. Any retention or payment of moneys due DESIGN-BUILDER by CITY will not release DESIGN-BUILDER from liability.

D. If, after a default termination, it is determined that the DESIGN-BUILDER was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the CITY. The CITY shall then be liable to DESIGN-BUILDER for only those costs enumerated in paragraph 14.03.

14.03 CITY May Terminate for Convenience

A. Notwithstanding any other provision of this Contract, upon seven (7) calendar days written notice to DESIGN-BUILDER, CITY may, at its sole and absolute discretion, without cause and without prejudice to any other right or remedy of CITY, elect to terminate the Contract. In such case, DESIGN-BUILDER shall, with thirty (30) calendar days of receiving notice of termination under this paragraph, submit to CITY its

statement of costs and expenses and shall be paid:

1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
3. for all costs, losses and damages incurred in settlement of terminated contracts with Subcontractors, Suppliers and others; and
4. for reasonable expenses directly attributable to termination if approved in advance by CITY.

B. DESIGN-BUILDER shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

C. DESIGN-BUILDER waives any costs not submitted to CITY pursuant to paragraph 14.03.A.

D. CITY shall, within thirty (30) calendar days after receipt of DESIGN-BUILDER's statement, pay DESIGN-BUILDER all amounts it determines are properly determined.

ARTICLE 15 CLAIMS AND DISPUTES

15.01 Definition

A. A Claim is a demand or assertion by the DESIGN-BUILDER seeking, as a matter of right, the adjustment of Contract price and/or times with respect to the terms of the Contract.

15.02 Written Notice and Burden of Proof

A. Claims must be made by written notice pursuant to Article 16.01. The written notice shall clearly indicate that the DESIGN-BUILDER is making a claim. The responsibility to substantiate Claims shall rest with the DESIGN-BUILDER. No Claim may be made under this Contract except as provided in this Article.

B. Certification of Claim: The written notice of Claim shall include the following statement signed by the DESIGN-BUILDER's representative: "The DESIGN-BUILDER certifies that all statements made and the facts set out in this claim are true and correct and that no false records have been submitted in support of this claim." **Strict compliance with this paragraph shall be a condition precedent to the creation, existence or validity of any Claim.**

15.03 Time Limits on Claims

A. The DESIGN-BUILDER must give notice to the CITY within fourteen (14) calendar days after the denial of a request for or failure to reach an agreement on a change in Contract Price and/or change in Contract Time pursuant to Article 10 and Article 11 respectively. After the fourteen (14) day period for making Claims has expired, the Claim shall be considered waived.

B. The DESIGN-BUILDER shall submit the Claim to the CITY's Representative.

15.04 Continuing Contract Performance

A. Pending final resolution of a Claim, unless otherwise agreed in writing, the DESIGN-BUILDER shall proceed diligently with performance of the Work and the CITY

shall continue to make payments in accordance with the Contract Documents. The CITY may, but is not obligated to, notify the Surety of the nature and amount of the Claim.

15.05 Injury or Damage to Person or Property

A. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts that party is legally liable, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding thirty (30) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter.

15.06 Initial Resolution of Claims and Disputes

A. After the DESIGN-BUILDER has submitted the Claim to the CITY's Representative, the CITY'S Representative and DESIGN-BUILDER'S Representative shall conduct a settlement conference within fourteen (14) calendar days from the date of receipt of the Claim. If the Claim is not settled within seven (7) calendar days following the date of the settlement conference, the CITY'S Representative and the DESIGN-BUILDER's Representative shall state, in writing, following the conclusion of the seven (7) calendar day period, their respective position as to the matters in dispute.

B. The CITY'S and DESIGN-BUILDER'S statement of positions shall state all known factual grounds for each party's position. If the dispute remains unresolved at the end of the seven (7) calendar days from submission of the parties' written position statements, the DESIGN-BUILDER shall have the right to proceed with the pursuit of Claims pursuant to paragraph 15.07.

C. If a Claim has been resolved, the OWNER will prepare or obtain appropriate documentation.

15.07 Final Resolution of Claims and Disputes

A. All administrative procedures set forth in this contract must first be exhausted before suit is filed.

B. If the CITY'S Representative and the DESIGN-BUILDER'S Representative are unable to resolve the dispute pursuant to 15.06, the parties must submit their statements of position to the Director, who shall review the Claim and make a decision within fourteen (14) calendar days.

C. Absent fraud, gross mistake or bad faith, the Director's decision shall be final and binding on CITY and DESIGN-BUILDER within fourteen (14) calendar days after issuance. The DESIGN-BUILDER shall give written notice to the CITY stating its intent to submit its Claim to a court of law pursuant to paragraph 16.05.A. within thirty (30) calendar days after notice of Director's decision.

D. The time frames for the Director's decision and for DESIGN-BUILDER'S written notice of intent may be by participation in voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be mutually acceptable to the parties. Costs of the mediator shall be shared equally among the parties participating in the mediation. In no event shall any time frame be tolled more than 30 days for mediation. However, mediation may be employed at any time at the discretion and mutual agreement of the parties.

E. If the dispute is not resolved during voluntary mediation, The DESIGN-BUILDER agrees that it will file no suit based on facts or evidentiary materials that were not presented for consideration to the CITY during the mediation process or of which the DESIGN-BUILDER had knowledge and failed to present during the administrative procedures.

ARTICLE 16 MISCELLANEOUS

16.01 Giving Notice

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be given by personal delivery, by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice or by confirmed electronic facsimile transmission. Notice is effective on the date of personal delivery, deposit of registered or certified mail, postage prepaid, or confirmed electronic facsimile transmission.

16.02 Computation of Times

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last calendar day of such period. If the last day of such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

16.03 Cumulative Remedies

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon DESIGN-BUILDER and all of the rights and remedies available to CITY and CITY hereunder are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

16.04 Survival of Obligations

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract.

16.05 Controlling Law

A. This Contract shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. The CITY and DESIGN-BUILDER: (1) shall submit exclusively to the jurisdiction of the state and federal courts located in Jackson County, Missouri and no other; (2) shall waive any and all objections to jurisdiction and venue; and (3) shall not raise forum non-conveniens as an objection to the location of any litigation.

Exhibit D
TIF Infrastructure Agreement

AGREEMENT

BETWEEN

**THE TAX INCREMENT FINANCING COMMISSION
OF KANSAS CITY, MISSOURI,**

AND

MD MANAGEMENT, INC.

**FOR THE DESIGN AND CONSTRUCTION OF CERTAIN PUBLIC
INFRASTRUCTURE IMPROVEMENTS IN CONNECTION WITH THE
CONSTRUCTION OF A SPORTS COMPLEX**

PURSUANT TO THE KCI CORRIDOR TIF PLAN

February __, 2021

TABLE OF CONTENTS

	Page
1. Representations of the Developer	2
2. Design and Construction of Improvements	3
3. Date of Completion.....	4
4. Reimbursement of Redevelopment Project Costs.....	4
5. Reporting of Economic Activity Taxes	4
6. Payments in Lieu of Taxes.....	5
7. Bids Required.....	5
8. Control of Redevelopment Area	5
9. Progress Reports	6
10. Compliance with Laws	6
11. Payment of Prevailing Wages.....	6
12. Payment Bond.....	7
13. Performance and Maintenance Bond	7
14. Certificate of Completion and Compliance	7
15. Payment of Certified Costs.....	9
16. Assignment	9
17. MBE/WBE Ordinance	9
18. Work Force	10
19. Environmental Compliance and Indemnification	11
20. Indemnification	12
21. Insurance	13
22. Breach; Compliance.....	15
23. Modification.....	16

24. Effective Date	16
25. Excusable Delays	16
26. Notice	17
27. Administrative Fees and Costs.....	18
28. Headings	18
29. Validity and Severability	18
30. Time is of the Essence	19
31. Sole Agreement.....	19
32. Technical Amendments	19
33. Choice of Law.....	19
34. Multiple Counterparts	19
35. Continued Cooperation of Parties	19

EXHIBITS

Exhibit A	Description of Public Improvements
Exhibit B	Redevelopment Project Costs
Exhibit C	Development Schedule
Exhibit D	Certification of Costs and Reimbursement Policy
Exhibit E	Economic Activity Tax Documentation and Collection Policy
Exhibit F	Annual Assessment Form
Exhibit G	Funding Schedule
Exhibit H	Procedures for the Payment of Prevailing Wages
Exhibit H-1	Workforce Reporting
Exhibit I	Interest Policy
Exhibit J	Workforce Policy
Exhibit K	Environmental Policy
Exhibit L	Environmental Disclosures
Exhibit M	Policy on Disputed Charges

AGREEMENT

THIS AGREEMENT (this “Agreement”) is made as of February __, 2021, by and between the TAX INCREMENT FINANCING COMMISSION OF KANSAS CITY, MISSOURI (the “Commission”) and MD MANAGEMENT, INC., a Missouri corporation (the “Developer”), with respect to the following facts and objectives:

A. Pursuant to the Real Property Tax Increment Financing Allocation Act, Section 99.800 RSMo. 1982, et seq., as amended (the “Act”), on March 11, 1999, the City Council (the “City Council”) of Kansas City, Missouri (the “City”), by way of Ordinance No. 990256, approved the KCI Corridor Tax Increment Financing Plan and designated the area described therein as a redevelopment area (the “Redevelopment Area”).

B. The KCI Corridor Tax Increment Financing Plan was subsequently amended on June 10, 2004 by Ordinance No. 040618, Ordinance No. 040619, Ordinance No. 040620, Ordinance No. 040621, on February 3, 2005 by Ordinance No. 050107, on March 30, 2006 by Ordinance No. 060326, on March 13, 2008, by Ordinance 080211, on April 16, 2009, by Ordinance No. 090260, which was amended by Ordinance No. 100497, on December 16, 2010, by Ordinance No. 101007, on September 1, 2011, by Committee Substitute for Ordinance No. 110603, on June 7, 2012 by Ordinance No. 120485, on July 19, 2012, by Ordinance No. 120618, on March 28, 2013, by Committee Substitute for Ordinance No. 130108, on February 6, 2014, by Ordinance No. 140092, on October 30, 2014, by Committee Substitute for Ordinance No. 140907, on July 14, 2017, by Ordinance No. 160416, on December 14, 2017, by Ordinance No. 170970, on October 17, 2019, by Ordinance No. 190827, and on September 17, 2020, by Ordinance No. 200710 (the KCI Corridor Tax Increment Financing Plan, as amended by these ordinances is hereinafter referred to as the “Plan”).

C. The Plan provides, among other things, for the design and the construction of certain roadways and other public infrastructure improvements within and adjacent to the Redevelopment Area, including construction of certain public infrastructure improvements in connection with the construction of a Sports Complex, as described on **Exhibit A** attached hereto (the “Public Infrastructure Improvements”).

D. The Developer has agreed to design and construct the Public Infrastructure Improvements, subject to the reimbursement by the Commission of certain of the Developer’s costs related thereto that are identified on **Exhibit B** (“Redevelopment Project Costs”), and in accordance with the terms and conditions of this Agreement.

E. This Agreement constitutes the agreement for the implementation of the Sports Complex Infrastructure Improvements contemplated in the Financing Agreement, dated as of April 1, 2020, among the Commission, the City, the County of Platte county, Missouri and The Industrial Development Authority of the county of Platte county, Missouri (the “Authority”) entered into in connection with the Refunding Bonds (KCI Corridor Project) Series 2020 issued by the Authority.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the Commission and the Developer agree as follows:

1. Representations of the Developer. The Developer makes the following representations and warranties, which representations and warranties are true and correct on the date hereof:

a. Organization and Authority. The Developer is a corporation duly organized and validly existing under the laws of the State of Missouri. The Developer has all necessary power and authority to deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of the Developer herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings. Accordingly, this Agreement constitutes the legal valid and binding obligation of the Developer, enforceable in accordance with its terms.

b. No Defaults or Violation of Law. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

c. No Litigation. No litigation, proceedings or investigations are pending or, to the knowledge of the Developer (including the knowledge of any officer of the Developer authorized to execute this Agreement), threatened against the Developer seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the Developer to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Developer of the terms and provisions of this Agreement.

d. No Material Change. (i) The Developer has not incurred any material liabilities or entered into any material transactions other than in the ordinary course of business except for the transactions contemplated by this Agreement and (ii) there has been no material adverse change in the business, financial position, prospects or results of operations of the Developer, which could affect the Developer's ability to perform its obligations pursuant to this Agreement from that shown in the financial information provided by the Developer to the Commission prior to the execution of this Agreement.

e. Governmental or Corporate Consents. No consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution, delivery and performance by the Developer of this Agreement.

f. No Default. No default or event of default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default in any material respect on the part of the Developer under this Agreement, or any other material agreement or material instrument to which the Developer is a party or by which the Developer is or may be bound.

g. Approvals. The Developer has received and is in good standing with respect to all certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to conduct and to continue to conduct its

business as heretofore conducted by it and to own or lease and operate its properties as now owned or leased by it. The Developer has obtained all certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to acquire, construct, equip, operate and, during the construction, maintain the Public Infrastructure Improvements. The Developer has no reason to believe that all such certificates, licenses, consents, permits, authorizations or approvals which have not yet been obtained will not be obtained in due course.

h. Construction Permits. All governmental permits and licenses required by applicable law to construct, occupy and operate within the Redevelopment Area have been issued and are in full force and effect or, if the present stage of development does not allow such issuance, the Developer has no reason to believe, after due inquiry of the appropriate governmental officials, that such permits and licenses will not be issued in a timely manner in order to permit the Public Infrastructure Improvements to be constructed pursuant to the Construction Plans and Redevelopment Schedule.

i. Compliance with Laws. The Developer is in compliance with all valid laws, Ordinances, orders, decrees, decisions, rules, regulations and requirements of every duly constituted governmental authority, commission and court applicable to any of its affairs, business, operations as contemplated by this Agreement.

j. Survival of Representations. All representations of the Developer contained in this Agreement or in any certificate or other instrument delivered by the Developer pursuant to this Agreement, or in connection with the transactions contemplated thereby, shall survive the execution and delivery thereof, as representations of facts existing as of the date of execution and delivery of the instruments containing such representations.

2. Design and Construction of Public Infrastructure Improvements.

a. The Developer shall implement or cause to be implemented the Public Infrastructure Improvements in conformance with the plans and specifications prepared by Olsson, Inc. and its subcontractors and approved by the City's Parks and Recreation Department (hereinafter the "City Department"). Evidence of such approval by the City Department shall be delivered in writing to the Commission prior to the Developer submitting to the Commission for certification any costs related to the construction of the Public Infrastructure Improvements. All projected costs associated with the Public Infrastructure Improvements, including, but not limited to, storm water detention, sidewalk and road improvements, site work, site features and utilities required in connection with the implementation of the Public Infrastructure Improvements are set forth on **Exhibit B** attached hereto. The Public Infrastructure Improvements shall be built in accordance with the Plan, the plans and specifications prepared by Olsson, Inc. and the City Department's Design Standards and shall specifically include the items listed on **Exhibit A**, attached hereto. Upon completion, the Public Infrastructure Improvements shall be dedicated to the City, to the extent such Public Infrastructure Improvements are to be maintained by the City.

b. The construction of the Public Infrastructure Improvements shall conform to the current standards and specifications of the City Department including, but not limited to, any requirements imposed by the City as conditions for the issuance of a construction permit.

3. Date of Completion. Subject to the other provisions of this Agreement including, without limitation, **Section 25** and the availability of funds to reimburse Developer for all certified Redevelopment Project Costs as described herein, the Developer shall cause the Public Infrastructure Improvements to be completed in accordance with the Development Schedule, attached hereto as **Exhibit C**. The Public Infrastructure Improvements shall be deemed substantially complete when all work called for under this Agreement is accomplished, with the exception of the installation of landscaping, ground cover and signs not related to safety or traffic flow.

4. Reimbursement of Redevelopment Project Costs. To the extent the Developer is not in default of this Agreement, subject to the Commission's Certification of Costs and Reimbursement Policy, attached hereto as **Exhibit D**, and that certain Reimbursement Prioritization Agreement, dated December 15, 2017, as it has and may be amended from time to time (the "Prioritization Agreement"), the Developer shall be reimbursed up to Fifteen Million Five Hundred Seventy Thousand Dollars (\$15,570,000) of the Redevelopment Project Costs from Available Funds (as defined in the Prioritization Agreement); provided, however, that notwithstanding anything to the contrary contained herein, the Commission shall have no obligation to reimburse the Developer unless and until (a) the Developer receives a Certificate of Completion and Compliance for the completion of the Public Infrastructure Improvements or a portion thereof and (b) the Commission receives a fully-executed Cooperative Agreement between the City of Kansas City, Missouri and Sporting Fields Northland, LLC (the "Cooperative Agreement"), which provides, in part, for the construction of the Sports Complex (collectively, the "Funding Conditions").

5. Reporting of Economic Activity Taxes.

a. As to all real property owned or controlled by Developer within the Redevelopment Area in which businesses are located (the "Business") and are obligated to pay local, county, state or federal taxes, with the exception of property zoned for residential uses, the Developer shall furnish to the Commission each respective Business' name, address, federal tax identification number, MITS number and location code (if applicable) (the "Business Information") and comply with the Commission's Economic Activity Tax Documentation and Collection Policy, including supplying the Commission with such documentation described therein ("EATS Documentation"), then in effect and shall contractually require purchasers, lessees or other transferees of Developer's property within the Redevelopment Area ("Transferees") to do likewise. A copy of the now-current Commission's Economic Activity Tax Documentation and Collection Policy is attached hereto as **Exhibit E**. Such obligation shall inure to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties as if they were in every case specifically named and shall be construed as a covenant running with the land for the benefit of the Commission and the Developer and shall be enforceable as if such Transferee thereof was originally a party to and bound by this Agreement.

b. The Developer acknowledges and hereby agrees that it shall incorporate into every lease, deed or other instrument conveying an interest in real property within the Redevelopment Area which is owned or controlled by the Developer, the obligation to furnish documentation as required by the Commission's Economic Activity Tax Documentation and Collection Policy, as set forth above in subsection (a) of this **Section 5**, with the exception of property zoned for residential uses, and shall provide that said obligations or restrictions shall constitute a benefit held by the Developer and the Commission. Failure of the Developer to require to include such restrictions in any such lease, deed or other instrument with respect to property within the Redevelopment Area that is owned and subsequently conveyed by the Developer, shall in no way modify, lessen or diminish the obligation of the Transferee set forth above in subsection (a) of this **Section 5**.

c. The Developer acknowledges and hereby agrees that during the Term (as defined hereinafter) it shall require each Transferee to furnish the Business Information of such Transferee to the Commission as a condition precedent to closing any purchase agreement or the execution of any lease agreement for property within the Redevelopment Area.

d. The obligations imposed by this **Section 5** and the associated covenant running with land shall expire upon the termination of the Plan.

6. Payments in Lieu of Taxes. The Developer and the Commission hereby acknowledge that no payments in lieu of taxes ("PILOTS") will be used to reimburse Redevelopment Project Costs. All PILOTS collected pursuant to the Plan, as amended, shall be declared surplus funds and shall be distributed in accordance with the Act.

7. Bids Required. The Developer has previously or will solicit bids from three (3) qualified contractors to design and construct the Public Infrastructure Improvements described and identified on **Exhibit A**, attached hereto. The Developer, in light of the City's MBE/WBE Ordinance, will determine from these contractors the lowest qualified and best bidder which submitted a bid which satisfied the requirements of the Developer's request for bids (the "Best Bidder"), and shall contract with the Best Bidder to construct the Public Infrastructure Improvements pursuant to the Plan and this Agreement.

8. Control of Redevelopment Area. The Developer shall have complete and exclusive control over the design and construction of the Public Infrastructure Improvements subject, however, to all applicable laws, rules and regulations, including, but not limited to, all ordinances, rules and regulations of the City. As to all parts of the Redevelopment Area then owned by the Developer from time to time, the Developer hereby grants to the Commission, its agents and employees the right to enter at reasonable times for the purpose of inspecting the Redevelopment Area. The Commission, its agents or employees seeking access to the Redevelopment Area shall provide notice to the Developer of not less than one (1) business day prior to entering the Redevelopment Area so that the Developer can coordinate such entry with its project manager. The Developer shall have complete and exclusive control over the construction, management, sale and leasing of property owned by it from time to time within the Redevelopment Area, including, without limitation, the selection of purchasers and the price and terms of sale.

9. Progress Reports.

a. Prior to May 31st of each year during the Term, beginning on May 31, 2021 and continuing thereafter until the termination of this Agreement, the Developer shall report to the Commission the progress of its implementation of the Public Infrastructure Improvements, pursuant to the Annual Assessment Form, attached hereto as **Exhibit F**. Unless this Agreement is terminated or is otherwise null and void, at the first regularly-scheduled meeting of the Commission following the fifth anniversary of the first submission of the Annual Assessment Form and on each five-year anniversary thereafter, the Developer shall prepare and present to the Commission a detailed report on the progress of implementation of the Public Infrastructure Improvements. Such report shall include at least the following information and may contain such other information with regard to the Public Infrastructure Improvements as the Developer wishes to present or the Commission may reasonably require:

- (1) status of construction of the Public Infrastructure Improvements;
- (2) actual assessed value of each Redevelopment Project Area in which the Developer owns real property, provided that the Council has designated a Redevelopment Project Area containing such real property, before and after completion of the Public Infrastructure Improvements;
- (3) actual Redevelopment Project Costs for the Public Infrastructure Improvements compared to Plan estimates;
- (4) actual start and completion dates of Public Infrastructure Improvements compared to Plan estimates; and
- (5) estimated start date of Public Infrastructure Improvements not yet commenced at date of report.

b. The Developer shall from time to time furnish such other reports on specific matters not addressed by the foregoing as the Commission may reasonably require.

10. Compliance with Laws. At all times during the term of this Agreement, but subject to the Developer's right to contest the same in any manner permitted by law, the Developer, its officers, directors, and principals, at their sole cost and expense, shall comply in every respect with all applicable laws, ordinances, rules and regulations of all federal, state, county and municipal governments, agencies, bureaus or instrumentalities thereof now in force or which may be enacted hereafter which pertain to the construction of the Public Infrastructure Improvements, as well as the hiring of all Developer's employees and independent contractors utilized in connection with the construction of the Public Infrastructure Improvements. The Developer shall contractually require its independent contractors to comply with this **Section 10**.

11. Payment of Prevailing Wages. The Developer shall (a) pay and cause all its contractors and subcontractors to pay prevailing wage rates set forth in the then existing applicable Annual Wage Order as established pursuant to RSMo § 290-210 through § 290-340, inclusive, for any Public Infrastructure Improvements for which Redevelopment Project Costs are anticipated to be paid or reimbursed pursuant to the terms and conditions of this Agreement, (b) comply with the

procedures set forth on **Exhibit H**, attached hereto, and the reporting obligations set forth on **Exhibit H-1**, attached hereto, and (c) indemnify, protect, defend and hold the Indemnified Parties (as hereafter defined in **Section 20.a.**) harmless from and against any and all claims, demands, liabilities and costs, including reasonable attorneys' fees, costs and expenses, arising from damage or injury, actual or claimed, of whatsoever kind or character (including consequential and punitive damages) occurring or allegedly occurring as a result of the Developer's failure to comply with this **Section 11**.

12. **Payment Bond.** The Developer shall cause each of its designated contractors to furnish a payment bond, with good and sufficient sureties, which among other conditions, shall be conditioned for the payment of any and all materials, incorporated, consumed or used in connection with the construction of the Public Infrastructure Improvements it has agreed to implement, and all insurance premiums, both for compensation, and for all other kinds of insurance, and for all labor performed in such work whether by subcontractor or otherwise. The Developer shall indemnify, protect, defend and hold the Indemnified Parties harmless from and against any and all claims, demands, liabilities and costs, including reasonable attorneys' fees, costs and expenses, arising from damage, injury, actual or claimed, of whatsoever kind or character occurring or allegedly occurring as a result of the Developer's failure to comply with this Section.

13. **Performance and Maintenance Bond.** The Developer shall furnish, or cause to be furnished, a performance and maintenance bond in the full amount of each contract relating to the Public Infrastructure Improvements with good and sufficient sureties. The maintenance bond shall remain in effect for a period consistent with the City Department's standards until the date the Developer receives a Certificate of Completion and Compliance from the Commission for the Public Infrastructure Improvements.

14. **Certificate of Completion and Compliance.**

a. Within sixty (60) days of the completion of the Public Infrastructure Improvements and in order to ensure that the Developer has satisfied its obligations under the Plan and this Agreement to implement the Public Infrastructure Improvements, the Developer shall notify the Commission (the "Notice of Completion") in writing:

(1) that construction of the Public Infrastructure Improvements has been completed in accordance with the Plan and that the Developer is in compliance with all other provisions of this Agreement,

(2) of the actual private equity and debt used by the Developer to complete the Public Infrastructure Improvements, which may include capitalized interest during construction, and

(3) that it has submitted all documents required by the Commission's Certification of Costs and Reimbursement Policy, attached hereto as **Exhibit D**.

b. The Commission, upon receipt of the Notice of Completion, shall examine and determine:

(1) whether construction of the Public Infrastructure Improvements has been completed in accordance with the provisions of the Plan, the plans and specifications approved by the City Department, this Agreement, the Commission's Funding Schedule, attached hereto as **Exhibit G**, the MBE/WBE Ordinance, and the Commission's Procedures for the Payment of Prevailing Wages, attached hereto as **Exhibit H**, or

(2) whether the Redevelopment and Project Costs submitted by the Developer to the Commission and reviewed by an independent cost certifier, who shall be hired at the expense of the Commission, shall be or have been certified pursuant to the Commission's Bond Issuance and Disbursement Policy or the Certification of Costs and Reimbursement Policy, subject to **Section 4** of this Agreement.

c. If the Commission determines that (1) construction of the Public Infrastructure Improvements has been completed in accordance with the provisions of the Plan, the plans and specifications approved by the City Department, this Agreement, including, but not limited to, the Funding Schedule, the Workforce Policy, the MBE/WBE Ordinance, and the Policy and Procedure for the Payment of Prevailing Wages; and (2) all Redevelopment Project Costs related to the Public Infrastructure Improvements that are eligible for reimbursement have been certified pursuant to the Commission's Bond Issuance and Disbursement Policy or the Certification of Costs and Reimbursement Policy, as the case may be, subject to **Section 4** of this Agreement (the "Certified Costs"), then the Commission shall issue a Certificate of Completion and Compliance (the "Certificate of Completion and Compliance").

d. If the Commission determines that the Public Infrastructure Improvements, or any part thereof, have not been completed substantially in accordance with the provisions of this **Section 14** or that the Redevelopment Project Costs have not been certified pursuant to the Bond Issuance and Disbursement Policy or the Certification of Costs and Reimbursement Policy, as the case may be, subject to **Section 4** of this Agreement, then the Commission may, in its reasonable discretion: (1) not issue a Certificate of Completion and Compliance; and/or (2) issue a partial Certificate of Completion and Compliance for that portion of Public Infrastructure Improvements which the Commission determines is complete; and/or (3) withhold certification of all or a portion of the Redevelopment Project Costs; provided however, that the Commission shall specify in writing the reason or reasons for not issuing a Certificate of Completion and Compliance and/or withholding its certification of Redevelopment Project Costs. Upon the request of the Developer, the Commission shall hold a hearing at which time the Developer may present new and/or additional evidence supporting its request for certification.

e. The issuance of a Certificate of Completion and Compliance by the Commission shall be a conclusive determination of the satisfaction and termination of the covenants in this Agreement with respect to the obligations of the Developer to complete the Public Infrastructure Improvements within the dates for the beginning and completion thereof and in accordance with the criteria applicable thereto as herein set forth.

f. Each such Certificate of Completion and Compliance issued by the Commission shall contain a description of the real property affected thereby and shall be in such form as will enable such certificate to be accepted for recording in the Office of the Recorder of Deeds in the county in which such property is located.

15. Payment of Certified Costs.

a. Subject to all applicable terms and conditions of this Agreement, including the Funding Conditions, pursuant to **Section 4** hereof, the Developer shall be reimbursed by the Commission up to the amounts set forth on **Exhibit B** for Redevelopment Project Costs incurred in connection with the implementation of the Public Infrastructure Improvements; provided, however, notwithstanding the foregoing or anything to the contrary contained herein, the Commission shall have no obligation to reimburse the Developer unless and until (i) the Developer receives a Certificate of Completion and Compliance for the completion of the Public Infrastructure Improvements or a portion thereof and (ii) the Developer, Sporting Fields Northland, LLC, a Missouri Limited Liability Corporation (“SFN”) or their respective designees, and the City, or the City’s designee, enters into an Agreement, which shall provide (A) for Developer, SFN, or their respective designees, to construct the Sports Complex and (B) for the City, or the City’s designee, to pay or reimburse all costs related thereto. If the Commission does not approve all or part of the amount requested for reimbursement, it shall, if requested to do so by the Developer, specify in writing the reason or reasons for withholding its approval. Upon request of the Developer, the Commission shall promptly hold a hearing at which the Developer may present new and/or additional evidence.

b. The Commission may independently verify any request for progress payments, utilizing the services of employees of the City or other qualified individuals. The Developer shall provide such information as is reasonably necessary to facilitate such verification and shall require the same of all its designated contractors and subcontractors. The Commission shall make a good faith effort to complete its verification of progress payment requests prior to the meeting at which a request is to be considered.

c. Recognizing that Developer will incur private interest costs to finance the payment of reimbursable Redevelopment Project Costs prior to the time such costs are certified and reimbursed, construction period interest incurred by Developer on Redevelopment Project Costs, which are to be reimbursed following certification, shall be reimbursed to Developer, provided such Redevelopment Project Costs are presented in accordance with the Certification of Costs and Reimbursement Policy, attached hereto as **Exhibit D**, and the Commission’s Interest Policy, attached hereto as **Exhibit I**. Interest incurred on the financing of Redevelopment Project Costs shall only be certified and reimbursed if the underlying Redevelopment Project Costs on which the interest was charged is also certified.

16. Assignment. The Developer agrees that this Agreement and the rights, duties and obligations hereunder may not and shall not be assigned by the Developer, except upon terms and conditions agreeable to the Commission. In the event this Agreement is assigned in whole or part, the Developer shall not be relieved from any obligations set forth herein unless and until the Commission specifically agrees in writing to release the Developer.

17. MBE/WBE Ordinance. The Developer shall comply with the City’s MBE/WBE Ordinance and contractually require its contractors and subcontractors to comply with the terms and provisions of the City’s MBE/WBE Ordinance, exert good efforts to enforce such provisions to the maximum extent permitted by law and further provide that the Commission shall be a third-party beneficiary with respect to the compliance and enforcement of such provisions. The

MBE/WBE Ordinance is intended to remedy past discrimination in contracts entered in with the City and the agencies enabled by the City, including the Commission by (a) establishing affirmative action goals with respect to the aggregate amount of all costs incurred in connection with the implementation of the Public Infrastructure Improvements, (b) requiring the Developer to exert good faith efforts to meet such goals, (c) requiring the Developer to deliver a professional services utilization plan and construction service utilization plan (the "Utilization Plans") to the Human Relations Department of the City for its approval and (d) requiring the Developer to exert good faith efforts, as determined in accordance with the MBE/WBE Ordinance, to comply with such utilization plan during the implementation of the Public Infrastructure Improvements. The MBE/WBE Ordinance is intended to provide an equal opportunity for minority owned business enterprises, women-owned business enterprises, minorities and women to participate in the development of TIF-assisted redevelopment projects ("Minority Participants"). Prior to or simultaneously with the certification and reimbursement of any Redevelopment Project Costs incurred by the Developer in connection with the implementation of the Public Infrastructure Improvements, the Developer shall report to the Commission the progress of the Developer's utilization of Minority Participants in the implementation of the Public Infrastructure Improvements and, within sixty (60) days of the completion of the Public Infrastructure Improvements, the Developer shall provide a final report, which shall describe the utilization of Minority Participants in connection with the implementation of the Public Infrastructure Improvements. The parties hereto and their successors and assigns expressly agree that the Minority Participants, who shall have demonstrated to the Commission's satisfaction, financial harm or injury as a result of the Developer's failure to comply with the MBE/WBE Ordinance, shall be third-party beneficiaries with respect to the enforcement and performance of this **Section 17**. The Developer will adhere to such reasonable rules, regulations, reporting procedures and forms which the Commission may from time to time promulgate for the purpose of facilitating uniform, orderly and efficient compliance with the MBE/WBE Ordinance and which do not alter the goals established by the City and incorporated within the Utilization Plans. Prior to any costs being incurred with respect to the Public Infrastructure Improvements, Utilization Plans for the Public Infrastructure Improvements will be submitted to and approved by Human Relations.

18. Work Force. Developer shall comply with the Commission's Workforce Policy as amended from time to time and attached hereto as **Exhibit J** (the "Workforce Policy") and incorporated herein by this reference, and cause its contractors and subcontractors to comply with the terms and provisions of the Workforce Policy, exert best efforts to enforce such provisions to the maximum extent permitted by law and further provide that the Commission shall be a third party beneficiary with respect to the compliance and enforcement of such provisions. The Workforce Policy supports and implements the Code of General Ordinances, Chapter 3, Article IV, Division 2, Sections 3-501 through 3-525 (the "Workforce Ordinance"), which creates a construction employment program ("City Construction Employment Program") that establishes goals for the employment of minority, women and resident workers for certain construction contractors engaged by the City, its departments and agencies, including the Commission.

19. Environmental Compliance and Indemnification.

a. The Developer represents and warrants that it shall comply with the Commission's Environmental Policy, attached hereto as **Exhibit K**, and that it has complied at all times with all applicable Environmental Laws with respect to the real property, currently owned or operated by the Developer which is located within the Redevelopment Area (the "Real Estate") (including soils, groundwater, surface water, buildings or other structures) and except as disclosed on **Exhibit L** attached hereto, the Real Estate has not been contaminated with any Hazardous Substances at levels above applicable cleanup standards. The Developer has neither received notice that it is subject to liability for any Hazardous Substance disposal or contamination on the Real Estate, nor has the Developer received notice that it is subject to liability for any release or threat of release of any Hazardous Substance.

b. The Developer hereby agrees to remediate the conditions identified on **Exhibit L** that are required to be in compliance with the Environmental Laws and thereafter submit to the Commission any notice, demand, letter, claim or request for information the Developer receives indicating that it may be in violation of or liable under any Environmental Law with respect to the Real Estate.

c. As used herein, the term "Environmental Law" means any applicable federal, state or local law, regulation, order, decree, permit, authorization, opinion, common law relating to: (1) the protection, investigation or restoration of the environment, health, safety, or natural resources, (2) the handling, use, presence, disposal, release or threatened release of any Hazardous Substance, (3) noise, odor, wetlands, pollution, or contamination or (4) standards of conduct concerning protection of human health (including, without limitation, employee health and safety), in each case as amended and as now or hereafter in effect, and the term "Hazardous Substance" means any substance that is: (A) oil or other petroleum products, (B) "hazardous wastes," as defined by the Resource Conservation and Recovery Act, as amended, (RCRA), 42 U.S.C. §6901 et seq., or similar state or local law, ordinance, regulation or order, (C) "hazardous substances," as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. §9601 et seq., or similar state or local law, ordinance, regulation or order, (D) "hazardous materials," as defined by the Hazardous Materials Transportation Act, as amended (HMTA), 49 U.S.C. §1802, or similar state or local law, ordinance, regulation or order, (E) radioactive materials subject to the Atomic Energy Act, as amended (AEA), 42 U.S.C. §2014 et seq., or similar state or local law, ordinance, regulation or order, and (F) any other pollutant, contaminant, chemical, or substance whose presence creates or could create a hazard to health or the environment or a violation of any federal, state or local Environmental Law.

d. The Developer shall fully protect, defend, indemnify, and hold harmless in full the Commission and the City and their officers, directors, agents and employees, from and against, and shall reimburse the Indemnified Parties for, any and all losses, claims, actions, liabilities, damages, injunctive relief, injuries to persons, property or natural resources, fines, penalties, costs, expenses (including, without limitation, attorneys' fees, consultants' fees, expenditures, expenses and court costs), causes of action and sums paid in settlement of litigation arising directly or indirectly, in whole or in part, from any violation of any Environmental Law with respect to the Real Estate, as well as any Release, threatened Release, presence, Clean-up,

treatment, transport, handling or disposal, of any Hazardous Materials at, on, under, in or from the Real Estate or in the air, land surface, subsurface strata, soil, surface water, groundwater or soil vapor on, under, in or from all or any part of the Real Estate, or resulting from the migration or the alleged or potential migration of Hazardous Materials from the Real Estate (collectively, “Environmental Costs”). Without limiting the foregoing, Environmental Costs shall include (1) all costs of Clean-up, including remediation, testing, monitoring and restoration of any kind, and any disposal of Hazardous Materials, (2) all costs and liabilities associated with claims for, damages to, and remedial action related to Hazardous Materials on, at, in or from the Real Estate, or impacting natural resources wherever located, (3) all fines and other penalties associated with claims of noncompliance with any Environmental Laws which are related to Hazardous Materials at the Real Estate.

(1) “Clean-up” shall mean removal and/or remediation of, or other response to (including, without limitation, testing, monitoring, sampling or investigating of any kind) any Release of Hazardous Materials or contamination, to the satisfaction of all applicable governmental agencies, in compliance with Environmental Laws and in compliance with good commercial practice.

(2) “Release” shall mean the spilling, leaking, disposing, discharging, emitting, depositing, injecting, leaching, escaping, or any other release or threatened release, however defined, and whether intentional or unintentional, of any Hazardous Material.

20. Indemnification.

a. The Developer, to the fullest extent permitted by law, shall indemnify, protect, defend and hold the Commission, the City and their officers, directors, members, commissioners, employees, partners, consultants and agents (collectively, the “Indemnified Parties” or, individually, a “Indemnified Party”) harmless from and against any and all claims, demands, liabilities and costs, including reasonable attorneys’ fees, costs and expenses, arising from damage or injury, actual or claimed, of whatsoever kind or character (including consequential and punitive damages), to persons or property, occurring or allegedly occurring as a result of any acts or omissions of the Developer, its constituent members or partners, its employees, agents, independent contractors, licensees, invitees, or others acting by, through or under the Developer in connection with its or their activities, or the activities of any employees, agents, independent contractors, licensees, invitees, or others employed or engaged by the Developer, conducted pursuant to this Agreement prior to the date upon which the dedication of the Public Infrastructure Improvements is accepted by the City.

b. In the event any suit, action, investigation, claim or proceeding (collectively, an “Action”) is begun or made as a result of which the Developer may become obligated to one or more of the Indemnified Parties hereunder, the Indemnified Party shall give prompt notice to the Developer of the occurrence of such event, but the failure to notify the Developer will not relieve the Developer of any liability that it may have to a Indemnified Party unless the Developer is prejudiced by the Indemnified Parties’ failure to give prompt notice. After receipt of such notice, the Developer may elect to defend, contest or otherwise protect the Indemnified Party against any such Action, at the cost and expense of the Developer, utilizing counsel chosen by

the Developer. The Indemnified Party shall have the right, but not the obligation, to participate, at the Indemnified Party's own cost and expense, in the defense thereof, by counsel of the Indemnified Party's choice. In the event that the Developer shall fail timely to defend, contest or otherwise protect a Indemnified Party against such Action, the Indemnified Party shall have the right to do so, and (if such defense is undertaken by the Indemnified Party after notice to the Developer asserting a failure by the Developer to timely defend, contest or otherwise protect against such Action), the Indemnified Party may submit any bills for fees and costs received from its counsel to the Developer for payment and, within five (5) business days after such submission, the Developer shall transfer to the Indemnified Party sufficient funds to pay such bills. The Developer acknowledges that such bills may be redacted to delete any information which would constitute attorney-client communication or attorney work product.

c. An Indemnified Party shall submit to the Developer any settlement proposal that the Indemnified Party shall receive. The Developer shall be liable for the payment of any amounts paid in settlement of any Action to the extent that the Developer consents to such settlement. Neither the Developer nor the Indemnified Party will unreasonably withhold its consent to a proposed settlement and, to the extent that a proposed settlement obtains a full release of all claims against the Indemnified Parties and is paid entirely by the Developer, such a settlement may be agreed to by the Developer without the consent of the Indemnified Parties.

d. The Developer expressly confirms and agrees that it has provided this indemnification and to assume the obligations under this Agreement imposed upon the Developer in order to induce the Commission to enter into this Agreement. To the fullest extent permitted by law, a Indemnified Party shall have the right to maintain an action in any court of competent jurisdiction to enforce and/or to recover damages for breach of the rights to indemnification created by, or provided pursuant to, this Agreement. If such court action is undertaken, the prevailing party shall be reimbursed by the non-prevailing party for all fees and expenses (including attorneys' fees) actually and reasonably incurred in connection with such action (including, without limitation, the investigation, defense, settlement or appeal of such action).

e. The right to indemnification set forth in this Agreement shall survive the termination of this Agreement.

21. Insurance.

a. The Developer shall procure and maintain, or cause to be procured and maintained, until the Public Infrastructure Improvements are completed, insurance coverage not less than the types and respective amounts as follows:

(1) Commercial General Liability Insurance. Commercial general liability insurance with limits of \$1,000,000 per occurrence and \$1,000,000 aggregate, written on an "occurrence" basis, including the following provisions or endorsements:

- (A) Severability of Interests Coverage applying to additional insureds.
- (B) Contractual liability.

- (C) Per project aggregate liability limit or, where not available, the aggregate limit shall be One Million Dollars (\$1,000,000).
- (D) No Contractual Liability Limitation Endorsement.
- (E) Additional Insured Endorsement, ISO form CG20 10, current edition, or its equivalent.

(2) Workers' Compensation Insurance. Workers' compensation insurance as require under the laws of the State of Missouri, including Employer's Liability coverage, with the following limits:

<u>Workers' Compensation</u>	<u>Statutory</u>
Employer's Liability	\$100,000 accident
With limits of	\$500,000 disease-policy limit/ \$100,000 disease-each employee

(3) Commercial Automobile Liability Insurance. Commercial automobile liability coverage with a limit of \$1,000,000 per occurrence, covering owned, hired and non-owned automobiles. Coverage shall be on an "any auto" basis and written on an "occurrence" basis, written on a Commercial Business Auto Form, or equivalent reasonably acceptable to the City, and will protect against claims arising out of the operation of motor vehicles, as to acts done directly in connection with the operation and/or construction of the Public Infrastructure Improvements.

b. The policies listed above may not be canceled until after thirty (30) days' written notice of cancellation to the City and the Commission, ten (10) days in the event of nonpayment of premium. The Commercial Automobile Liability Insurance specified above shall provide that the City and the Commission and their officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds as their interests appear in connection with this Agreement. The Developer shall provide or cause to be provided to the City and Commission, prior to construction of the Public Infrastructure Improvements, a certificate of insurance (in form satisfactory to the City) showing all required endorsements and additional insureds.

c. All insurance coverage must be written by companies that have an A.M. Best's rating of "B+V" or better, and are licensed or approved by the State of Missouri to do business in Missouri.

d. Regardless of any approval by the City and the Commission, it is the responsibility of the Developer to maintain or cause it's contractors of subcontractors to maintain the required insurance coverage in force at all times; its failure to do so will not relieve it of any contractual obligation or responsibility. In the event of the Developer's failure to maintain the required insurance in effect, the City and the Commission may order the Developer to immediately stop work and, upon ten (10) days' notice and an opportunity to cure, may pursue its remedies for an event of default under this Agreement and at law.

22. Breach; Compliance.

a. If the Developer does not comply with provisions of this Agreement, within the time limits and in the manner for the completion of the Public Infrastructure Improvements as herein stated, except for Excusable Delays, in that the Developer shall do, permit to be done, or fail or omit to do, or shall be about do, or fail or omit to have done, anything contrary to or required of it by this Agreement or the Act, and if, within thirty (30) days after written notice of such default by the Commission to the Developer, and the Developer shall not have cured such default or commenced such cure or be diligently pursuing the same if such cure would take longer than said thirty (30) day period, as reasonably determined by the Commission, then the Commission may institute such proceedings as may be necessary in its opinion to cure the default, including, but not limited to, proceedings to compel specific performance by the Developer of its obligations and the Commission is granted the specific right to terminate this Agreement, the specific right to apply any deposit or other funds submitted by the Developer to the Commission in payment of the damages suffered by it, the specific right to withhold or apply funds claimed by the Developer from the Available Funds (as defined in the Prioritization Agreement) to such extent as is necessary to protect the Commission from loss or to ensure that the Public Infrastructure Improvements are fully and successfully implemented in a timely fashion and the specific right to withhold issuance of a Certificate of Completion and Compliance. If any action is instituted by the Commission hereunder, the non-prevailing party shall pay any and all costs, fees and expenses, including attorneys' fees, incurred by the prevailing party; provided, however, the Commission's obligation to pay such costs, fees and expenses shall be limited to amounts available within the Special Allocation Fund, which have not been previously pledged or otherwise encumbered by contract, and any such amounts so paid shall be in addition to amounts due to Developer to pay Redevelopment Project Costs hereunder.

b. Notwithstanding anything herein to the contrary, upon receipt of any notice given to Developer pursuant to this **Section 22**, the Developer shall give written notice thereof to SFN and SFN shall be given the right to cure any such Event of Default during the applicable cure period so long as SFN is proceeding diligently as reasonably determined by the Commission.

c. If the Commission fails to comply with the provisions of this Agreement, and within thirty (30) days after written notice of such default by the Developer to the Commission, the Commission shall not have cured such default or commenced such cure or be diligently pursuing the same if such cure would reasonably take longer than said thirty (30) day period, then the Developer may institute such proceedings in law or in equity to cure the default. If any action is instituted by the Developer hereunder, the non-prevailing party shall pay any and all costs, fees and expenses, including attorneys' fees, incurred by the prevailing party; provided, however, the Commission's obligation to pay such costs, fees and expenses shall be limited to amounts available within the Special Allocation Fund, which have not been previously pledged or otherwise encumbered by contract, and any such amounts so paid shall be in addition to amounts due to Developer to pay Redevelopment Project Costs hereunder.

d. The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other

remedies for the same default or breach. No waiver made by either party shall apply to obligations beyond those expressly waived.

e. Any delay by any party in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this **Section 22** shall not operate as a waiver of such rights or limit them in any way. No waiver made by any party of any specific default by any other party shall be considered or treated as a waiver of the rights of any party with respect to any other defaults, or with respect to the particular default except to the extent specifically waived.

f. **NOTWITHSTANDING ANYTHING HEREIN STATED IN THIS AGREEMENT TO THE CONTRARY, ANY UNRESOLVED DISPUTE WITH RESPECT TO THIS SECTION SHALL BE SUBMITTED TO BINDING ARBITRATION BY A SINGLE ARBITRATOR.** The arbitrator shall be a person located in the Kansas City metropolitan area agreed to by the parties. If the parties cannot agree to an arbitrator, the selection shall be made by the Presiding Judge of the Circuit Court of Jackson County, Missouri, on the application of either party. All expenses and fees of the arbitration and the arbitrator shall be assessed by the arbitrator as he or she finds equitable and just based on his or her findings with respect to the dispute arbitrated; provided, however, that each party shall bear the expenses and fees of any attorneys, accountants, expert witnesses or others appearing or submitting any materials on such party's behalf. Otherwise, the Commercial Arbitration Rules and Regulations of the American Arbitration Association, or any successor body, shall apply.

23. Modification. The terms, conditions and provisions of this Agreement can be neither modified nor eliminated except by written agreement between the Commission and the Developer. Any such modification to this Agreement as approved shall include an attachment of this Agreement, as approved and executed, for reference.

24. Effective Date. This Agreement shall become effective on the date set forth herein, and shall remain in full force and effect until the completion of the Public Infrastructure Improvements called for in the Plan and this Agreement, and so long thereafter as (i) obligations remain outstanding under this Agreement, or (ii) there are any remaining Certified Costs, which have not been reimbursed to the Developer in accordance with this Agreement. At such time as all of the obligations and costs set forth in the preceding sentence have been satisfied and reimbursed and the Commission has issued a Certificate of Completion and Compliance for the Public Infrastructure Improvements, this Agreement shall terminate, provided that in any event, the obligations of the Developer and Commission arising under the terms and conditions of this Agreement, with respect to the Public Infrastructure Improvements, including, but not limited to, the reimbursement of Certified Costs, shall cease twenty-three (23) years after the date in which the last ordinance approving tax increment financing within the Redevelopment Area was passed by the Council (the "Term").

25. Excusable Delays. The parties understand and agree that the Developer shall not be deemed to be in default or breach of this Agreement because of delays or temporary inability to proceed due in whole or in part to causes beyond the reasonable control or without the material fault of the Developer or its contractors, including without limitation strikes, lockouts, the unavailability of necessary materials or labor, delays in the city inspection process and inclement

weather (collectively “Excusable Delays”). The time of performance hereunder shall be extended for the period of any Excusable Delays caused or resulting from any of the foregoing causes, it being understood that the Developer is entitled to such extensions upon presentation of reasonable evidence and/or documentation of the periods of such Excusable Delays to the Commission.

26. Notice. All notices required by this Agreement shall be in writing and shall be served either personally or by certified mail, or by any other delivery service which obtains a receipt for delivery unless any such notice is required by law and such law provides a different form of delivery or service. Any such notice or demand served personally shall be delivered to the party being served (provided that such notice may be delivered to the receptionist or any other person apparently in charge of such party’s office at its address hereinafter set forth), and shall be deemed complete upon the day of actual delivery or attempted delivery, as shown by an affidavit of the person so delivering such notice. Any notice so served by certified mail shall be deposited in the United States Mail with postage thereon fully prepaid and addressed to the party or parties so to be served at its address hereinafter stated, and service of any such notice by certified mail shall be deemed complete on the date of actual delivery as shown by the certified mail receipt. Service of any such notice by another delivery service shall be deemed complete upon the date of delivery as shown on the receipt obtained by such delivery service.

Any notice to the Commission shall be addressed to:

Tax Increment Financing Commission of Kansas City,
Missouri
300 Wyandotte, Suite 400
Kansas City, Missouri 64105
Attn: Executive Director

with a copy to:

Bryan Cave Leighton Paisner LLP
3800 One Kansas City Place
1200 Main Street
Kansas City, Missouri 64105
Attn: Wesley O. Fields, Esq.

Notices to Developer shall be addressed to:

MD Management, Inc.
Erika Feingold, Vice President
5201 Johnson Drive, Suite 450
Shawnee Mission, Kansas 6620

with a copy to:

Rouse Frets White Goss Gentile Rhodes, P.C,
4510 Belleview, Suite 300
Kansas City, Missouri 64111
Attn: James C. Bowers, Jr., Esq.

Each party shall have the right to specify that notice be addressed to any other address by giving to the other party ten (10) days’ written notice thereof.

27. Administrative Fees and Costs.

a. The Developer has agreed to reimburse the Commission for its administrative costs and expenses (including staff time) and its utilization of any professional service providers in connection with the preparation, development and implementation of the Plan and the performance of its obligations under this Agreement with regards to the Public Infrastructure Improvements within thirty (30) days of having been billed for the same. In the event the Developer disputes any such fees or expenses, such disputes shall be resolved in a manner pursuant to the Commission's Policy on Disputed Charges, attached hereto as **Exhibit M**. If payment of said expenses has not been made in full within thirty (30) days of having been billed, a one and one-half percent (1.5%) fee will be applied to the unpaid balance as a late penalty. A one and one-half percent (1.5%) penalty fee will continue to accumulate monthly thereafter, up to a maximum cumulative penalty of eighteen percent (18%), until payment of all billed expenses and all penalties are paid in full. The parties hereto agree that any penalty for late payment may not be claimed by the Developer as a Redevelopment Cost.

b. Notwithstanding anything herein to the contrary, the Commission shall retain an amount equal to five percent (5%) of the EATS deposited into the special allocation fund of the Plan for the purpose of paying for such other expenses incurred by the Commission that are found by it to be reasonable and necessary for the Commission to discharge its duties with respect to the tax increment financing plans.

28. Headings. The headings or captions of this Agreement are for convenience and reference only, and in no way define, limit, or describe the scope or intent of the contract or any provisions hereof.

29. Validity and Severability. It is the intention of the parties hereto that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of Missouri, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement, other than the Developer's obligation to construct the Public Infrastructure Improvements in accordance with subsection a of **Section 2** of this Agreement, the Commission's obligations set forth in **Section 4** of this Agreement and any other provision containing material benefits bargained for under the Agreement, the exclusion of which or deemed unenforceability of which would constitute a failure of consideration for a party to go forward with its obligations, shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.

If this Agreement contains any unlawful provisions not an essential part of this Agreement and which shall not appear to have a controlling or material inducement to the making thereof, such provisions shall be deemed of no effect and shall be deemed stricken from this Agreement without affecting the binding force of the remainder. In the event any provision of this Agreement is capable of more than one interpretation, one which would render the provision

invalid and one which would render the provision valid, the provision shall be interpreted so as to render it valid.

30. Time is of the Essence. Time and exact performance are of the essence of this Agreement.

31. Sole Agreement. This Agreement, including all exhibits, riders or addenda attached hereto, constitutes the sole agreement between the parties and supersedes any prior understandings or written or oral agreements between the parties.

32. Technical Amendments. In the event that there are minor inaccuracies contained herein or any exhibit attached hereto or any other agreement contemplated hereby, or the parties agree that changes are required due to unforeseen events or circumstances, or technical matters arising during the term of this Agreement, which changes do not alter the substance of this Agreement, the respective presiding officers of the Commission, and the officers of the Developer, are authorized to approve such changes, and are authorized to execute any required instruments, to make and incorporate such amendment or change to this Agreement or any exhibit attached hereto or any other agreement contemplated hereby.

33. Choice of Law. The interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Missouri. Venue for any cause of action arising out of or in connection with this Agreement shall be in Jackson County, Missouri.

34. Multiple Counterparts. This Agreement may be executed in multiple counterpart copies, each of which will be considered an original and all of which constitute but one and the same instrument, binding on all parties hereto, even though all the parties are not signatories to the same counterpart. Any counterpart of this Agreement which has attached to it separate signature pages which together contain the signatures of all parties hereto shall be deemed for all purposes a fully executed original.

35. Continued Cooperation of Parties. Each party agrees that, upon the request of the other, it will provide such other information, documents or instruments and/or undertake such further actions as may be reasonably requested in order to give full force and effect to the intent of the provisions, terms and covenants of this Agreement.

**THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION
WHICH MAY BE ENFORCED BY THE PARTIES HERETO.**

[Remainder of page left intentionally blank. Signatures follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed pursuant to due authority as of the date first above set forth.

**TAX INCREMENT FINANCING
COMMISSION OF KANSAS CITY,
MISSOURI**

ATTEST:

Heather A. Brown, Secretary

By: _____
Alissia R. Canady, Chair

Approved as to form:

Wesley O. Fields
Counsel to the Commission

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this ____ day of _____, 2020, before me, a Notary Public in and for said State, personally appeared Alissia R. Canady of the Tax Increment Financing Commission of Kansas City, Missouri, who is personally known to me to be the same person who executed, as such official, the within instrument on behalf of said Commission and such person duly acknowledged to me that she executed the same for the purposes therein stated, and that the execution of the same was the free act and deed of said Commission.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year above written.

Notary Public

My Commission Expires:

MD MANAGEMENT, INC.

ATTEST:

By: _____
Name: _____
Title: Secretary

By: _____
Name: _____
Title: _____

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this ____ day of _____, 2021, before me, a Notary Public in and for the state and county aforesaid, appeared _____, to me personally known, and who being by me duly sworn, did say that she is President of MD MANAGEMENT, INC., and that the seal affixed to the foregoing instrument is the seal of said company and that said instrument was signed and sealed on behalf of said company by authority of its Board of Directors and said company acknowledged said instrument to be the free act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal in my office the day and year last above written.

Notary Public

My Commission Expires:

Exhibit A

Description of the Public Infrastructure Improvements

Storm Water Detention

Sidewalk Improvements

Road Improvements

Drive/ parking

Drive curb

East access road

Signage

Sitework and Utilities

Demolition/Locates

New Electric Service

Relocate existing overhead power line

Private Sanitary Sewer Main Extension

Water Main Extension

Parking Lot Lighting

Mass Excavation / Earthwork

Wall

Storm sewer

Erosion and Sediment Control

Water service

Public Site Features

Landscaping

Irrigation

Sod

Pedestrian Bridge

Entry Monuments

Public Work Contingency Allocation

Soft Cost Allocation For Public Work

Design / Reimbursables/Management/Interest/Legal

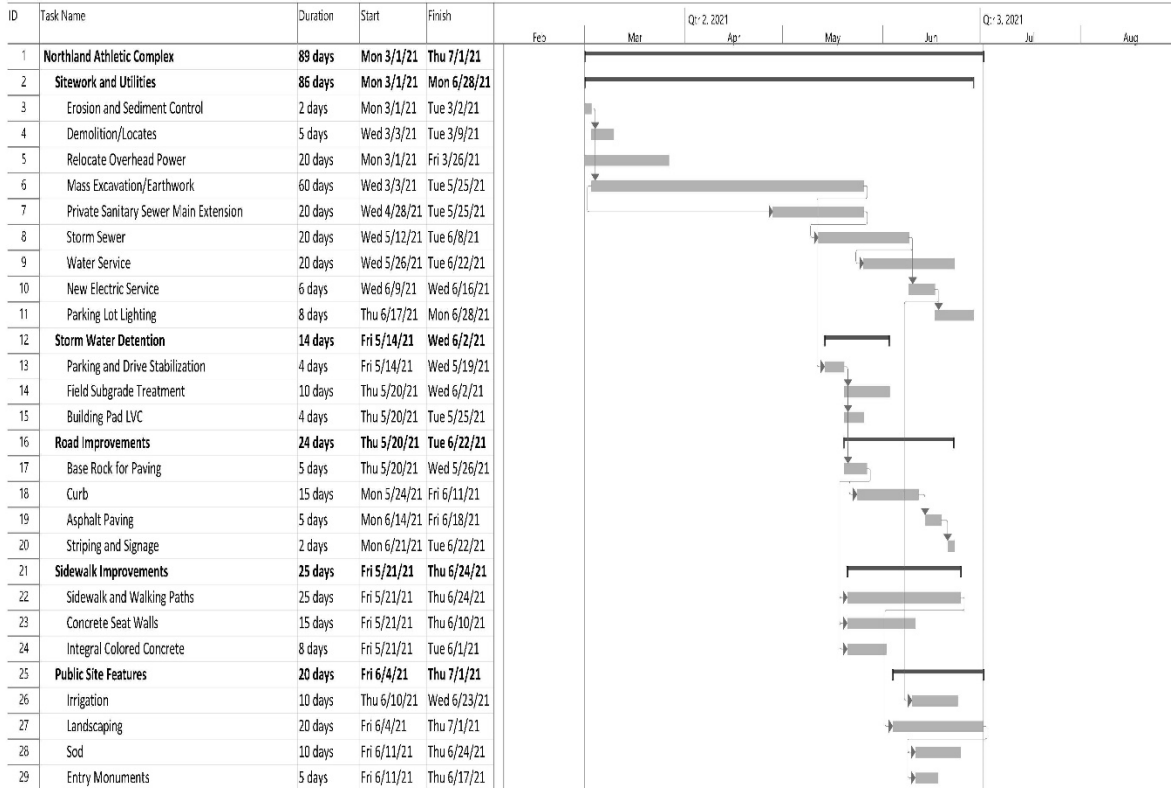
Mobilization, General Conditions, Bonds/Insurance

Exhibit B

Redevelopment Project Costs

Storm Water Detention		\$1,510,000
Sidewalk Improvements		\$1,646,000
Road Improvements		\$2,643,000
Drive/ parking	\$1,657,000	
Drive curb	\$284,000	
East access road	\$620,000	
Signage	\$82,000	
Site work and Utilities		\$4,729,000
Demolition/Locates	\$ 21,500	
New Electric Service	\$339,000	
Relocate existing overhead power line	\$370,500	
Private Sanitary Sewer Main Extension	\$435,000	
Water Main Extension	\$627,500	
Parking Lot Lighting	\$202,000	
Mass Excavation / Earthwork	\$2,085,000	
Wall	\$0	
Storm sewer	\$550,000	
Erosion and Sediment Control	\$27,000	
Water service	\$71,500	
Public Site Features		\$1,414,000
Landscaping	\$467,000	
Irrigation	\$478,500	
Sod	\$268,500	
Pedestrian Bridge	\$50,000	
Entry Monuments	\$150,000	
Public Work Contingency Allocation		\$873,000
Soft Cost Allocation For Public Work		\$2,755,000
Design / Reimbursables/Management/Interest/Legal	\$1,950,000	
Mobilization, General Conditions, Bonds/Insurance	\$805,000	
		<hr/>
TOTAL		\$15,570,000

Exhibit C Development Schedule



Project: KCMO Sport Complex - Infrastructure Schedule
Date: Thu 2/4/21

Task [Gantt bar] Split [Dashed line] Milestone [Diamond] Summary [Thick bar] Project Summary [Thin bar]

Exhibit D

Certification of Costs and Reimbursement Policy

Exhibit E

Economic Activity Tax Documentation and Collection Policy

Exhibit F

Annual Assessment Form

Exhibit G
Funding Schedule

Exhibit H

Procedures for the Payment of Prevailing Wages

Exhibit H-1

Workforce Reporting

Pursuant to City Resolution No. 2000554 (the “Workforce Resolution”), the Developer shall comply with the following reporting requirements:

(A) complete City’s Form 00490 entitled “Pre-contract Certification” that sets forth each contractor’s or subcontractor’s prevailing wage and tax compliance history for the two (2) years prior to any bids for work to be done in furtherance of the Agreement, retain such forms for one (1) year and make them available to the City within five (5) days after written request,

(B) keep and require each of its contractors and subcontractors engaged in the construction of the Public Improvements contemplated by the Agreement and described on **Exhibit B** and for which costs are anticipated to be reimbursed to keep full and accurate records on the City’s “Daily Labor Force Report” Form indicating the worker’s name, occupational title or classification group & skill and the workers’ hours and submit such reports to the City each day,

(C) submit and require each of its contractors and subcontractors engaged in the construction of the Public Improvements contemplated by the Agreement and described on **Exhibit B** and for which costs are anticipated to be reimbursed to submit electronically to submit in a format prescribed by the City, Certified Payroll Report Information indicating the worker’s name, address, social security number, occupation(s), craft(s) of every worker employed in connection with such Public Improvements with the number of hours worked by each worker and the actual wages paid in connection with such Public Improvements and other pertinent information as requested by the City,

(D) submit and require each of its contractors and subcontractors engaged in the construction of the Public Improvements contemplated by the Agreement and described on **Exhibit B** and for which costs are anticipated to be reimbursed to submit electronically, in format prescribed by the City, a Payroll Certification, which must be signed by the employee or agent who pays or supervises the payment of the workers employed by the contractor and each subcontractor (the Daily Labor Force Report, documents used to compile information for the Certified Payroll Report, and Payroll Certification are collectively referred to as the “Records”) and

(E) the Developer and its contractors and subcontractors shall agree that all Records shall be considered a public record and the Developer shall cause its contractors and subcontractors to provide the Records to the City in the format required by the City within three (3) working days of any request by the Commission at the Redeveloper’s cost (collectively, the “Workforce Monitoring Program Provisions”).

Exhibit I
Interest Policy

Exhibit J

Workforce Policy

Exhibit K

Environmental Policy

Exhibit L

Environmental Disclosures

None.

Exhibit M

Policy on Disputed Charges

Exhibit E
CID/TIF Cooperative Agreement

TO BE DRAFTED AND SHALL INCLUDE THE FOLLOWING CONCEPTS:

The Twin Creeks Village West Community Improvement District created by Ordinance No. 200462 (the “District”) shall contribute to the Tax Increment Financing Commission of Kansas City, Missouri fifty (50%) of the CID Sales Tax imposed by the District, which shall constitute “economic activity taxes” under the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865, inclusive, of the Revised Statutes of Missouri, 1982, as amended. It shall also provide that the District is authorized to use CID Sales Tax to pay the costs to form the CID, CID Formation Costs, which shall not exceed \$20,100, and annual administrative costs, CID Administrative Costs, not to exceed \$10,000 annually. CID Administrative Costs shall mean the annual operating costs of the District including, without limitation, the following: (1) reimbursement of the Board of Directors for actual expenditures incurred in the performance of authorized duties on behalf of the CID, (2) costs related to any authorized indebtedness of the CID, including the issuance and repayment of obligation, and (3) any other costs or expenses incurred by the CID in the exercise of the powers granted under the CID Act, including accounting, auditing, legal, insurance, and clerical support, as determined by the CID’s Board of Directors.

Exhibit F
Capital Reserve Schedule

**Northland Sports Complex
Plan of Finance
Pro Forma for City Debt Repayment**

February 8, 2021

Sources of Funds	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030	FY2031	FY2032	FY2033	FY2034	Total
Revenues Available for Debt Service														
CIP Sales Tax (1)	\$ -	\$ 1,118,704	\$ 903,556	\$ 1,520,342	\$ 2,711,600	\$ 2,773,500	\$ 2,827,000	\$ 2,830,500	\$ 2,848,000	\$ 2,848,000	\$ 3,178,400	\$ 3,664,300	\$ 3,677,600	\$ 30,901,502
2nd District Contribution	\$ -	\$ 1,000,000	\$ 1,000,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,000,000
Total Sources of Funds	\$ -	\$ 2,118,704	\$ 1,903,556	\$ 1,520,342	\$ 2,711,600	\$ 2,773,500	\$ 2,827,000	\$ 2,830,500	\$ 2,848,000	\$ 2,848,000	\$ 3,178,400	\$ 3,664,300	\$ 3,677,600	\$ 32,901,502
Uses of Funds														
Debt Service (2)	\$ -	\$ 1,208,545	\$ 1,085,455	\$ 1,213,443	\$ 2,168,003	\$ 2,216,895	\$ 2,260,343	\$ 2,263,395	\$ 2,274,864	\$ 2,275,269	\$ 2,539,704	\$ 459,997	\$ -	\$ 19,965,913
Total Uses of Funds	\$ -	\$ 1,208,545	\$ 1,085,455	\$ 1,213,443	\$ 2,168,003	\$ 2,216,895	\$ 2,260,343	\$ 2,263,395	\$ 2,274,864	\$ 2,275,269	\$ 2,539,704	\$ 459,997	\$ -	\$ 19,965,913
Maintenance Reserve From Revenues (3)	\$ 500,000	\$ 910,159	\$ 818,101	\$ 306,899	\$ 543,597	\$ 556,605	\$ 566,657	\$ 567,105	\$ 573,136	\$ 572,731	\$ 638,696	\$ 3,204,303	\$ 3,677,600	\$ 13,435,589
<i>Cumulative Maintenance Reserve</i>	\$ 500,000	\$ 1,410,159	\$ 2,228,260	\$ 2,535,159	\$ 3,078,756	\$ 3,635,361	\$ 4,202,018	\$ 4,769,123	\$ 5,342,259	\$ 5,914,990	\$ 6,553,686	\$ 9,757,989	\$ 13,435,589	\$ 13,435,589

- (1) Estimate based on scheduled project area terminations for all Barrytowne, KCI Corridor, and Shoal Creek TIF project areas generating taxable sales
- (2) CIP Sales Tax portion was structured for target of 1.25X debt service coverage in order to generate desired cumulative reserve by 2031.
- (3) FY2022 funded from Capital Improvements Sales Tax (submitted)

Exhibit G
Real Estate Sales Contract

REAL ESTATE SALE CONTRACT

THIS REAL ESTATE SALE CONTRACT (“**Contract**”) is made as of the Effective Date (as defined in Section [24]) by and between CITY OF KANSAS CITY, MISSOURI (or assigns) (“**Buyer**”), and BT RESIDENTIAL, LLC, a Missouri limited liability company (“**Seller**”).

1. Subject Property. Seller hereby agrees to sell to Buyer, and Buyer hereby agrees to purchase from Seller, subject to the terms and conditions hereinafter set forth, the specific real property in Kansas City, Jackson County, Missouri described on Exhibit A attached hereto and made a part hereof, together with all improvements, if any, thereon and all appurtenances and easements pertaining thereto, including, without limitation, all of Seller’s right, title and interest in and to all adjacent, streets, alleys, rights-of-way and all strips and gores of all real estate adjacent to such real property, all surface rights, and all subsurface and mineral rights thereunder (all hereinafter referred to as the “**Subject Property**”).

2. Purchase Price. The “**Purchase Price**” is \$2,150,000.00. Buyer agrees to pay the Purchase Price, subject to any proration or other credits, as follows:

(a) \$5,000.00 (the “**Earnest Deposit**”) shall be delivered to Seller within three (3) business days after the Effective Date, in the form of a check payable to, and to be deposited in escrow with _____, _____, Missouri (the “**Title Company**”). The Earnest Deposit shall be applied to the Purchase Price at Closing (defined below) or shall be returned to Buyer or paid to Seller in accordance with this Contract. Buyer and Seller shall each pay one-half of any fee charged by the Title Company for serving as the escrow agent.

(b) On the Closing Date (as defined in Section 3), Buyer shall deliver to the Title Company for distribution to Seller the Purchase Price as follows:

(i) The sum of \$1,425,000.00 (subject to adjustments for proration) shall be delivered by Buyer to the Title Company in cash or by wire transfer for distribution to Seller; and

(ii) The remaining \$720,000.00 shall be evidenced by a Promissory Note executed by Buyer payable to Seller in the form attached hereto as Exhibit B (the “**Note**”). The Note will be secured by a First Deed of Trust on the Subject Property executed by Buyer in favor of Seller in the form attached hereto as Exhibit C.

3. Closing. Subject to the terms and conditions hereof, the “**Closing Date**” for this transaction shall be on or before April 16, 2021, or such other date as mutually agreed to by the Parties. Possession of the Subject Property shall be delivered to Buyer at the “**Closing**” on the Closing Date. The Title Company shall serve as the closing agent and Buyer and Seller shall each pay one-half (½) of any fees charged by the Title Company for such closing services. Each party shall also be responsible for its own customary respective closing costs, except as

otherwise expressly provided in this Contract. Seller shall deliver the deed at closing as provided in Section 8 below. At or prior to Closing, Seller shall pay off and release all deeds of trusts, mechanic's lien claims not caused by Buyer and similar liens against the Subject Property.

4. Taxes. Seller shall pay all taxes, general and special, and all installments of special assessments against the Subject Property which are due and have accrued before the Closing Date and Buyer shall assume all of such taxes and installments of unpaid special assessments becoming due and accruing thereafter, except that all general state, county, school and municipal taxes and installments of unpaid special assessments (exclusive of rebates, penalties and interest) becoming due and accruing during the calendar year in which closing occurs shall be prorated between Seller and Buyer on the basis of said calendar year as of the Closing Date and (if the Subject Property is part of a larger tract for property tax purposes) on the basis of the amount of land and the value of the improvements on the Subject Property versus the amount of land and the value of the improvements on the property being retained by Seller. If the amount of any such tax or assessment to be prorated cannot be then ascertained, proration shall be computed on the basis of the rate(s) for the preceding year applied to the last assessed valuation prior to the Closing Date, without any right to subsequent adjustment once the actual amounts are known.

5. Title Insurance and Survey. As of the Closing Date, Buyer shall cause to be issued and delivered to Buyer, at Buyer's expense (including the costs of any endorsements desired by Buyer and available from the Title Company (defined below)), an ALTA owner's policy of title insurance for standard coverage (the "**Title Policy**") respecting the Subject Property and conforming to the following specifications:

- (a) The form of the Title Policy will be such owner's form as may be available from the Title Company and reasonably acceptable to Buyer;
- (b) The Title Policy will be issued by the Title Company and shall be underwritten by a title insurance company reasonably acceptable to Buyer;
- (c) The insured will be Buyer (or assigns);
- (d) The Title Policy will be in the amount of the Purchase Price; and
- (e) There will be no exceptions to coverage other than the Permitted Exceptions (as defined below).

Buyer will be responsible for paying for the costs of any loan title policy and any endorsements requested by Buyer or any lender.

Without limiting the generality of the foregoing provisions, the Title Policy shall not contain exceptions with respect to any of the following (except to the extent they become Permitted Exceptions):

- A. rights or claims of parties in possession;

- B. encroachments, overlaps, boundary line disputes or any other matters which would be disclosed by an accurate survey or inspection (to the extent the Survey permits the Title Company to delete this standard exception);
- C. easements or claims of easements not shown by the public records (to the extent the Survey permits the Title Company to delete this standard exception);
- D. any lien, or right to a lien, for services, labor or materials furnished (other than those caused by Buyer); or
- E. taxes or installments of assessments due and payable as of the Closing Date (except as prorated under Section 4 above).

Buyer shall obtain, within fifteen (15) days after the Effective Date, a commitment from the Title Company setting forth the basis upon which the Title Company is willing to insure title to the Subject Property, together with legible copies of all documents identified therein as exceptions to title (excluding deeds of trust and similar matters to be released at closing) (collectively, the **“Title Commitment”**).

Buyer shall have the right to obtain a survey of the Land prepared at Buyer’s expense by a registered land surveyor in a form and content that is sufficient to allow the Title Company to issue the Title Policy as provided above (the **“Survey”**). The Survey shall show the location of each exception item listed in the Title Commitment, show the location of all fences, tree rows, and similar boundary matters, and shall be certified to Seller, Buyer and the Title Company.

If the Title Commitment or the Survey discloses any defects, liens or encumbrances objectionable to Buyer, Buyer shall advise Seller of the same in writing within five (5) days after receipt by Buyer of the last to be received of the Title Commitment and the Survey, but in no event more than thirty (30) days after the Effective Date. Matters listed in the Title Commitment or shown on the Survey and not objected to by Buyer within such period and matters later accepted by Buyer shall constitute **“Permitted Exceptions”**. The parties shall cooperate to remedy Buyer’s objections prior to the expiration of the Closing Date. If Buyer’s objections are not remedied by the Closing Date, Buyer may terminate this Contract by giving to Seller written notice of termination prior to the Closing Date. Upon any such termination, the Earnest Deposit shall be returned to Buyer.

6. Right of Entry; Existing Materials.

(a) Seller hereby grants to Buyer, and its owners, contractors and agents, a non-exclusive right and license to enter the Subject Property from time to time prior to the earlier of the Closing or the termination of this Contract for purposes of conducting activities, including, without limitation, site reviewing, engineering, surveying, environmental audits, inspections, photographing, rock borings, soil tests, and utility locating. Buyer shall defend, indemnify, and hold harmless Seller from and against any and all claims, loss, damage and expense related to: (i) damage caused to the Subject Property or any other property by Buyer or its owners, agents or contractors, (ii) loss, damage or injury to any person or property to the extent resulting directly or indirectly from any hazard or other condition created by Buyer or its owners, agents or contractors,

(iii) any injury to Buyer or any of its owners, agents or contractors arising out of the exercise of Buyer's rights under this subsection (a), and (iv) any expenses incurred by or for Buyer, in connection with such planning or other activities. Such indemnification provision shall survive the Closing under or any termination of this Contract; provided, however, that such indemnification provision for matters described in clauses (i) and (ii) above shall survive and give Seller a cause of action against Buyer only to the extent that within one year after the Closing or the termination of this Contract, Seller notifies Buyer in writing of a specific claim specifying the factual basis of that claim in reasonable detail as then known by Seller.

(b) Buyer shall give Seller reasonable advance written notice of its on-site activities on the Subject Property, describing the nature of the work to be undertaken and the estimated duration of the work. Seller shall have the right to designate a representative for purposes of coordinating Buyer's on-site work. Buyer shall use its good faith efforts to not unreasonably disturb or disrupt the Subject Property and in the event the Subject Property is disturbed or altered as a result of such access or work, Buyer shall restore the Subject Property as close as reasonably possible to its condition that existed immediately prior to such access.

(c) Within ten (10) days after the Effective Date, Seller shall deliver to Buyer a copy of each survey, engineering study or report, environmental study or report, cost estimate and similar matters that are presently in Seller's possession or control relating to the Subject Property. Seller hereby grants to Buyer (and its assigns) the right and license to use any or all of such items in connection with the future development of the Subject Property.

7. Due Diligence Review. Buyer shall have thirty (30) days after the Effective Date (the "**Due Diligence Period**") to conduct such due diligence activities and inspections, and conduct such other activities and reviews with respect to the Subject Property and Buyer's intended use thereof as Buyer shall deem appropriate. Seller shall cooperate in a reasonable manner with Buyer in connection with such activities but will not be required to expend any monies or incur any liability in connection therewith. If Buyer determines, in its sole and absolute discretion, that the Subject Property cannot be feasibly developed by Buyer in the manner intended, Buyer shall have the right to terminate this Contract by giving written notice of termination to Seller on or before the end of the Due Diligence Period. If such a notice of termination is not given by Buyer to Seller by the end of the Due Diligence Period, the contingency set forth in this Section 7 shall be deemed satisfied or waived by Buyer. If this Contract is terminated by Buyer during the Due Diligence Period in accordance with this Section 7, \$100.00 of the Earnest Deposit shall be delivered to Seller in consideration for having entered into this Contract and the balance of the Earnest Deposit shall be immediately returned to Buyer.

8. Deed. Seller shall deliver to Buyer on the Closing Date at the office of the Title Company a special warranty deed, in a form reasonably acceptable to Buyer and the Title Company, properly executed and conveying marketable fee simple title to the Subject Property, subject only to the Permitted Exceptions.

9. Condemnation. Seller represents that it has no actual knowledge of any pending or threatened condemnation, eminent domain or equivalent proceeding or action which would affect the Subject Property. If, after the Effective Date and before the date and time of Closing under this Contract, any such official proceeding or action is commenced or threatened against the Subject Property or Seller decides to sell any part of the Subject Property in lieu of condemnation, Seller shall provide Buyer with written notice thereof promptly after Seller has knowledge thereof or makes such decision, as applicable, and Buyer shall have the option of (i) continuing with this Contract (subject to such condemnation or sale in lieu thereof) and receiving, upon Closing by Buyer and payment of the Purchase Price under this Contract, all proceeds of such action or proceedings (or sale in lieu thereof) received by Seller along with an assignment of Seller's rights in and to any such condemnation proceeds with respect to the Subject Property, or (ii) terminating this Contract. Buyer shall elect between clauses (i) and (ii) above by giving written notice to Seller within twenty (20) days after receiving such written notice from Seller. If Buyer fails to give such election notice to Seller within such twenty (20) day period, Buyer shall be deemed to have elected the alternative under clause (i). If this Contract is terminated by Buyer under this Section, all of the Earnest Deposit shall be immediately returned to Buyer.

10. Representations and Warranties.

(a) Each party represents and warrants to the other party, as of the Effective Date and as of the Closing Date, that:

(i) this Contract has been duly executed and delivered by such party, and constitutes the valid and binding obligation of such party, enforceable against it in accordance with the terms hereof;

(ii) the execution, delivery and performance of this Contract does not violate or breach the terms of any agreement to which it is a party or by which it or its property may be bound; and

(iii) **[except as provided in Section 20 below,]** no real estate commission or finder's fee is payable with respect to this transaction as a result of any agreement or arrangement between the party making this representation and any third party.

(b) Seller further represents and warrants to Buyer, as of the Effective Date and as of the Closing Date, that:

(i) there are no recorded or unrecorded leases, contracts and/or options for purposes of farming, grazing or otherwise pertaining to or affecting ownership or possession of the Subject Property or any part thereof (other than this Contract and any other arrangements to be terminated by Seller at or prior to Closing) and there is no party other than Seller in possession or with a claim of possession of the Subject Property or any part thereof (other than pursuant to an arrangement to be terminated by Seller at or prior to Closing);

(ii) the Subject Property complies with all federal, state and local laws, regulations or orders and common and case law pertaining to health, safety, sanitation or environmental protection (including, without limitation, the surface water, ground water, drinking water supply, land, surface and subsurface strata and ambient air);

(iii) to Seller's actual knowledge, no hazardous or similar wastes, materials, products or byproducts have been manufactured, stored or placed upon or leaked into the Subject Property or any part thereof by Seller;

(iv) to Seller's actual knowledge, there are no "wetlands", burial grounds, cemeteries, archeology sites, landfills, or underground storage tanks on the Subject Property;

(v) Seller has paid or at or prior to Closing shall pay all engineering, architectural, land planning and similar fees and expenses incurred by Seller relating to the Subject Property;

(c) So long as this Contract remains in effect, Seller shall not do any of the following, without the written consent of Buyer:

(i) Sell, grant, convey or dispose of, or negotiate or contract to sell, grant, convey or dispose of the Subject Property or any part thereof;

(ii) Grant any easement, license or right-of-way in, to or through the Subject Property or any part thereof, or any leases with respect to the Subject Property; or

(iii) Create, nor allow to be created, any use restriction or covenant of any kind, character or nature whatsoever with respect to the Subject Property.

11. Federal Government Matters.

(a) Seller agrees to execute and deliver any instrument, affidavit and statement and to perform any acts reasonably necessary to comply with the provisions of the Foreign Investment in Real Property Act.

(b) Seller represents and warrants that (i) Seller and each person or entity owning an interest in Seller is (A) not currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation (collectively, the "List"), and (B) not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, (ii) none of the funds or other assets of Seller constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person (as hereinafter defined), (iii) no Embargoed Person has any interest of any nature whatsoever in Seller

(whether directly or indirectly), (iv) Seller has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times. The term “**Embargoed Person**” means any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §1701 *et seq.*, The Trading with the Enemy Act, 50 U.S.C. App. 1 *et seq.*, and any Executive Orders or regulations promulgated thereunder, with the result that the investment in Seller is prohibited by law or Seller is in violation of law. Seller also shall require, and shall take reasonable measures to ensure compliance with the requirement, that no person who owns any other direct interest in Seller is or shall be listed on any of the Lists or is or shall be an Embargoed Person. This Section shall not apply to any person to the extent that such person’s interest in the Seller is through a U.S. Publicly-Traded Entity. As used in this Contract, “**U.S. Publicly-Traded Entity**” means a person (other than an individual) whose securities are listed on a national securities exchange, or quoted on an automated quotation system, in the United States, or a wholly-owned subsidiary of such a person. Upon request of Buyer, Seller shall provide to Buyer a written list of the names of the persons holding an ownership interest in Seller, for purposes of compliance with Presidential Executive Order 13224 (issued September 24, 2001).

(c) Buyer represents and warrants that (i) Buyer and each person or entity owning an interest in Buyer is (A) not currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the OFAC and/or on any other List, and (B) not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, (ii) none of the funds or other assets of Buyer constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person, (iii) no Embargoed Person has any interest of any nature whatsoever in Buyer (whether directly or indirectly), (iv) Buyer has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times. Buyer also shall require, and shall take reasonable measures to ensure compliance with the requirement, that no person who owns any other direct interest in Buyer is or shall be listed on any of the Lists or is or shall be an Embargoed Person. This Section shall not apply to any person to the extent that such person’s interest in the Buyer is through a U.S. Publicly-Traded Entity. Upon request of Seller, Buyer shall provide to Seller a written list of the names of the persons holding an ownership interest in Buyer, for purposes of compliance with Presidential Executive Order 13224 (issued September 24, 2001).

12. Breach at or prior to Closing.

(a) If Buyer should fail to consummate the transaction contemplated in Section 1 of this Contract for any reason other than a default or misrepresentation by Seller under this Contract or the exercise by Buyer of a right to terminate this Contract as provided herein, then the Earnest Deposit shall be paid to Seller as liquidated damages (due to the difficulty and uncertainty of measuring actual damages and the fact that the Earnest Deposit represents as fair an approximation of actual damages as the parties can now determine) and in full satisfaction of all of Buyer’s obligations hereunder. If Buyer

breaches any of its pre-closing obligations under this Contract (other than its purchase obligation, which is otherwise covered above by this subsection (a)), Seller shall have all of its rights and remedies available to it with respect to such breach.

(b) If Buyer has performed all of its obligations under this Contract and Seller is obligated under this Contract to close but Seller has breached such obligation, then Buyer may, at its option, (i) specifically enforce Seller's obligation to deliver the deed and other necessary closing documents under this Contract, or (ii) terminate this Contract in which case all of the Earnest Deposit shall be immediately returned to Buyer. If Seller breaches any of its pre-closing obligations under this Contract (other than its closing obligation, which is otherwise covered above by this subsection (b)), Buyer shall have all of its rights and remedies available to it with respect to such breach.

13. Survival. Except as otherwise herein expressly provided, all the promises, representations, warranties and undertakings expressed in this Contract shall be deemed made on and as of the Closing Date, as well as on the date hereof, and shall survive consummation of this Contract and delivery and recording of the deed to the Subject Property.

14. Notices. All notices required or permitted hereunder shall be in writing and shall be deemed made when delivered in person or by delivery service or confirmed telecopier transmission or when mailed by certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Seller: BT Residential, LLC

Telephone: _____
Telecopier: _____
E-mail: _____

With a copy to: James C. Bowers
Rouse Frets White Goss Gentile Rhodes, P.C.
4510 Belleview Avenue, Suite 300
Kansas City, Missouri 64111
Telephone: (816) 753-9200
E-mail: jbowers@rousepc.com

If to Buyer: _____

With a copy to: _____

15. Miscellaneous. This Contract (i) supersedes any letter of intent or prior agreement between the Buyer and Seller and constitutes the entire agreement between Buyer and Seller relating to the subject matter hereof and there are no other terms, conditions, promises, understandings, statements or representations, express or implied, concerning the sale contemplated hereunder, (ii) shall be governed by the laws of Missouri, (iii) shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, and (iv) shall not be modified or amended other than by a written instrument executed by both parties hereto.

16. Assignment. Buyer may assign this Contract, without the prior written consent of Seller, only to an entity controlled by Buyer. All other assignments shall require the prior written consent of Seller.

17. Attorneys' Fees. In case a lawsuit shall be brought because of the breach or alleged breach of any agreement or obligation contained in this Contract on the part of either party to be kept or performed, the prevailing party shall be entitled to recover its reasonable attorneys' fees and expenses in connection with such lawsuit.

18. Partial Invalidity. If any provisions of this Contract or the application thereof to any party or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Contract shall not be affected thereby and each provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

19. [Commission. Upon Closing, Seller agrees to pay a real estate commission one-half to _____ and one-half to _____ in accordance with the separate listing agreement between Seller and _____. The Agency Disclosure Addendum attached hereto is an integral part of this Contract.]

20. Waiver of Jury Trial. BUYER AND SELLER HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING, COUNTERCLAIM OR DEFENSE BASED ON THIS CONTRACT, OR ARISING OUT OF, UNDER OR IN ANY CONNECTION WITH THIS CONTRACT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO RELATING TO THIS CONTRACT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BUYER AND SELLER ENTERING INTO THIS CONTRACT.

21. Legal Holidays and Business Days. If any date herein set forth for the performance of any obligations by Seller or Buyer or for the delivery of any instrument or notice as herein provided should be on a Saturday, Sunday or legal holiday, the compliance with such obligations or delivery shall be deemed acceptable on the next business day following such Saturday, Sunday or legal holiday. As used herein, the term "legal holiday" means any federal holiday for which financial institutions or post offices in Lee's Summit, Missouri are generally

closed for observance thereof. As used herein, the term “business day” shall mean a day which is not a Saturday, Sunday or legal holiday.

22. Construction of Contract. This Contract shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties. Both Seller and Buyer have contributed or had the opportunity to contribute substantially and materially to the preparation of this Contract.

23. Execution in Counterparts. This Contract may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. A photocopied, scanned, telecopied, or other electronic signature of any party to this Contract shall have the same force and effect as an original signature for all purposes.

24. Effective Date. The “**Effective Date**” of this Contract shall be the date this Contract is fully executed by the last of Seller and Buyer to sign and deliver this Contract to the other party.

[Remainder of page left blank intentionally. Signature page follows.]

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed.

BUYER:

CITY OF KANSAS CITY, MISSOURI

Dated: _____, 2021

By: _____

Name: _____

Title: _____

SELLER:

BT RESIDENTIAL, LLC

Dated: _____, 2021

By: _____

Name: _____

Title: _____

ACCEPTANCE OF ESCROW:

The undersigned hereby accepts the escrow referred to in the foregoing Contract.

_____ TITLE

Dated: _____, 2021

By: _____

Name: _____

Title: _____

EXHIBIT A

DESCRIPTION OF SUBJECT PROPERTY

EXHIBIT B

FORM OF PROMISSORY NOTE

EXHIBIT C
FORM OF DEED OF TRUST