

## **AGREEMENT**

This Agreement is made by and between the City of Independence, Missouri (hereinafter “City”), and McCownGordon Construction, L.L.C., (hereinafter “Project Team”) for construction management services.

### **WITNESSETH:**

**WHEREAS**, City requires construction management services in connection with the construction of a Farmers Market at 201 W. Truman Rd. and 211 W. Truman Rd., Independence, Missouri (hereinafter “Project”), and

**WHEREAS**, Project Team is prepared to provide these services,

**NOW, THEREFORE**, City and Project Team in consideration of the mutual covenants contained in this Agreement, agree as follows:

### **ARTICLE 1. DEFINITIONS.**

1.1 Agreement means this Agreement and the Exhibits and Attachments made part of this Agreement upon its execution.

1.2 Architect/Engineer means the licensed Architect, Architect/Engineer or Engineer and its consultants, included in the Project Team, to perform design services for the Project.

1.3 A Change Order is a written order signed by the City and the Project Team after execution of this Agreement, indicating changes in the scope of the Work, the Contract Sum and Guaranteed Maximum Price (GMP) and Date of Substantial Completion or Date of Final Completion, including substitutions proposed by the Project Team and accepted by the City.

1.4 Changed Work means work that is different from the original scope of Work; or work that changes the GMP or Date of Substantial Completion or Date of Final Completion.

1.5 The Contract Documents consist of this Agreement, the drawings, specifications, addenda issued prior to execution of this Agreement, approved submittals, information furnished by the City under Paragraph 3.2, other documents listed in this Agreement and any modifications issued after its execution period.

1.6 The term Day shall mean calendar days of twenty-four (24) hours unless otherwise specifically defined.

1.7 Defective Work is any portion of the Work that is not in conformance with the Contract Documents, as submitted by the Project Team and approved by the City.

1.8 The Drawings and Specifications described in this document are the plans and accompanying documentation as mutually agreed upon by the Project Team and the City.

1.9 Final Completion occurs on the date when the Project Team's obligations under this Agreement (other than obligations that continue after Final Completion) are complete and final payment becomes due and payable. This date shall be confirmed by a Certificate of Final Completion signed by the City and the Project Team.

1.10 A Material Supplier is a person or entity retained by the Project Team to provide material and equipment for the Work.

1.11 Others means other contractors, material suppliers, and persons at the Worksite who are not employed by the Project Team, or Subcontractors.

1.12 The term Overhead shall mean 1) payroll costs and other compensation of Project Team employees in the Project Team's principal and branch offices; 2) general and administrative expenses of the Project Team's principal and branch offices including deductibles paid on any insurance policy, charges against the Project Team for delinquent payments, and costs related to the correction of defective work; and, 3) the Project Team's capital expenses, including interest on capital used for the Work.

1.13 The Project is the construction of a Farmers Market at 201 W. Truman Rd. and 211 W. Truman Rd., Independence, Missouri.

1.14 The Project Team consists of the partnered companies as defined in the request for qualifications response.

1.15 The Schedule of the Work is the document prepared by the Project Team that specifies the dates on which the Project Team plans to begin and complete various parts of the Work, including dates on which information and approvals are required from the City.

1.16 A Subcontractor is a person or entity retained by the Project Team as an independent contractor to provide the labor, materials, equipment or services necessary to complete a specific portion of the Work. The term Subcontractor does not include the Architect/Engineer or Others.

1.17 Substantial Completion of the Work, or of a designated portion, occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that the City may occupy or utilize the Work, or a designated portion, for the use for which it is intended. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion. This date shall be confirmed by a certificate of Substantial Completion signed by the City and Project Team.

1.18 A Subsubcontractor is a person or entity who has an agreement with a Subcontractor to perform any portion of the Work.

1.19 Work means the construction and services necessary or incidental to fulfill the Project Team's obligations for the Project in conformance with this Agreement and the other Contract Documents.

1.20 Worksite means the location of the Project where the Work is to be performed.

## **ARTICLE 2. PROJECT TEAM'S RESPONSIBILITIES**

### **2.1 GENERAL RESPONSIBILITIES**

2.1.1 The Project Team shall provide all labor, materials, equipment and services necessary to complete the Work, all of which shall be provided in full accord with from the Contract Documents as being necessary to produce the indicated results.

2.1.2 The Project Team shall be responsible for the supervision and coordination of the performance of the Work, including the construction means, methods, techniques, sequences and procedures utilized. Project Team shall complete the Work in accordance with the Contract Documents. If the Contract Documents specify, by the direction of the City, that particular construction means, methods, techniques, sequences and procedures be utilized, the Project Team shall not be liable to the City for damages resulting from compliance with such instructions unless the Project Team recognized and failed to timely report to the City any error, inconsistency, omission or unsafe practice that it discovered in the specified construction means, methods, techniques, sequences or procedures.

2.1.3 The Project Team shall perform Work only within locations allowed by the Contract Documents, applicable permits and applicable law.

2.1.4 The Project Team acknowledges that it has visited, or has had the opportunity to visit, the Worksite to visually inspect the general and local observable conditions which could affect the Work and has provided input to ensure optimized constructability, scheduling, and cost efficiencies.

2.1.5 The Project Team's authorized representative is Matt Glenn. The Project Team's Representative shall possess full authority to receive instructions from the City and to act on those instructions. The Project Team shall notify the City in writing of a change in the designation of the Project Team's Representative.

2.1.6 The Project Team shall be required to procure professional services in order to carry out its responsibilities for construction means, methods, techniques, sequences and procedures or as such services are specifically called for by the Contract Documents. The Project Team shall obtain these professional services and any design certifications required from licensed design

professionals. All drawings, specifications, calculations, certifications and submittals prepared by such design professionals shall bear the signature and seal of such design professionals and the City shall be entitled to rely upon the adequacy, accuracy, and completeness of such design services. The Project Team shall not be required to provide such services in violation of existing laws, rules and regulations in the jurisdiction where the Project is located.

2.1.7 All preliminary or final designs, engineering data and conclusions, drawings, specifications, and all other documents and electronic data furnished by Architect/Engineer to the City under this Agreement (“Work Product”) are deemed to be instruments of service and Architect/Engineer shall retain ownership and property interests therein provided, however, that Architect/Engineer hereby grants the City, upon City’s payment to Design-Builder of amounts properly due under this Agreement, a limited license to use the Work Product in connection with completing this project.

## 2.2 GUARANTEED MAXIMUM PRICE (GMP)

2.2.1 The Guaranteed Maximum Price is \$2,997,445.00.

2.2.2 The GMP proposal includes the sum of the estimated cost of the Work, the Project Team's Fee, the lump sum amount for general conditions, the clarifications and assumptions upon which it is based, and allowances and reasonable contingencies. The Project Team does not guarantee any specific line item provided as part of the GMP, but agrees that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted and as required in accordance with this Agreement.

2.2.3 The Project Team guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Executed Guaranteed Maximum Price Proposal, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price; the Contractor shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner. To the extent the Cost of the Work is less than the Guaranteed Maximum Price, the Owner and the Contractor shall share in such savings on a 50/50 basis.

2.2.4 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

## 2.3 BASIS OF GUARANTEED MAXIMUM PRICE.

2.3.1 The GMP is based upon the following Exhibits:

Exhibit A – GMP Proposal

Exhibit B – Notice to Owner

Exhibit C – Project Team Staff Hourly Rates

## Exhibit D – Rental Rates for Design-Builder’s Equipment

2.3.2 Allowances shall include the costs of materials, supplies and equipment delivered to the Worksite less applicable trade discounts and including requisite taxes, unloading and handling at the Worksite, and labor and installation, unless specifically stated otherwise. The Project Team's overhead and profit for the allowances shall be included in the GMP, but not in the allowances. The GMP shall be adjusted by Change Order to reflect the actual costs when they are greater than or less than the allowances.

### 2.4 CONSTRUCTION SERVICES AND ADMINISTRATION

2.4.1 In order to facilitate its responsibilities for completion of the Work in accordance with the Contract Documents, prior to commencing the Work the Project Team shall examine and compare the drawings and specifications with information furnished by the City pursuant to Paragraph 3.2, relevant field measurements made by the Project Team and any visible conditions at the Worksite affecting the Work.

2.4.2 Project Team and all Subcontractors shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily possessed and exercised by a peer professional under similar circumstances.

2.4.3 If, in the course of the performance of the obligations in Subparagraph 2.4.1, the Project Team discovers any errors, omissions or inconsistencies in the Contract Documents, the Project Team shall promptly report them to the City along with recommended solutions. Following receipt of written notice from the Project Team of defects, the City shall promptly inform the Project Team what action, if any, the Project Team shall take with regard to the defects.

2.4.4 The Project Team shall conduct the appropriate utility coordination meetings and coordinate any potential utility conflicts, extensions, realignments, and other activities identified as necessary for the completion of the project.

2.4.5 The Project Team shall be adequately knowledgeable of the requirements associated with the Community Development Block Grants to be utilized for this project and shall consult with the City regarding equal employment opportunity and affirmative action programs.

2.4.5.1 The Project Team agrees to comply with the requirements of Title 24 Code of Federal Regulations, Part 570 of the Housing and Urban Development regulations concerning Community Development Block Grants (CDBG) and all Federal regulations and policies issued pursuant to these regulations as outlined in Addendum 1 and applicable to CDBG-eligible Work.

2.4.6 The Project Team shall assist the City in selecting, retaining and coordinating the professional services of a surveyor, testing laboratories and special consultants as needed.

2.4.7 Prior to the commencement of Construction Activities, a Pre-Construction Meeting shall be held. Attendees are to include the Project Team, Architect/Engineer, City, and Subcontractors.

2.4.8 The Project Team shall submit to the City a schedule for procurement of long-lead-time

items which will constitute part of the Work as required to meet the Schedule of the Work. The Project Team shall work to expedite the delivery of long-lead-time items.

2.4.9 The Project Team shall make recommendations, for approval by the City, regarding temporary construction facilities, equipment, materials and services for common use by the Project Team, its Subcontractors, Sub-subcontractors and Material Suppliers.

2.4.10 COST REPORTING. The Project Team shall keep such full and detailed accounts as are necessary for proper financial management under this Agreement. Project Team shall maintain a complete set of all books and records prepared or used by the Project Team with respect to the Project. The Project Team's records supporting its performance and billings under this Agreement shall be current, complete and accurate. During construction and for a period of one year after Substantial Completion, the City shall be afforded access to all the Project Team's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Agreement except for confidential, attorney-client privileged, or work product data, and except that, notwithstanding anything herein to the contrary, if City and Project Team have already agreed on a fixed price, lump sum, rates, or multipliers for any item, such items are not subject to audit. The Project Team shall preserve all such records for a period of three years after the final payment or longer where required by law.

#### 2.4.11 CONSTRUCTION PERSONNEL AND SUPERVISION

2.4.11.1 The Project Team shall provide competent supervision for the performance of the Work. Before commencing the Work, Project Team shall notify City in writing of the name and qualifications of its proposed superintendent(s) and project manager, so City may review the individual's qualifications. If, for reasonable cause, the City refuses to approve the individual, or withdraws its approval after once giving it, Project Team shall name a different superintendent for City's review. Any disapproved superintendent shall not perform in that capacity thereafter at the Worksite.

2.4.11.2 The Project Team shall be responsible to the City for acts or omissions of Parties or entities performing portions of the Work for or on behalf of the Project Team or any of its Subcontractors. The City shall be responsible to the Project Team for acts or omissions of Others performing work or services on the Project on behalf of the City.

2.4.11.3 The Project Team shall permit only fit and skilled persons to perform the Work. The Project Team shall enforce safety procedures, strict discipline and good order among persons performing the Work. If the City determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned work, the Project Team shall immediately reassign the person on receipt of the City's written notice to do so.

#### 2.4.12 SUBMITTALS

2.4.12.1 The Project Team shall submit to the City for review and the City's approval all shop drawings, samples, product data and similar submittals required by the Contract Documents. Submittals may be submitted in electronic form if required in accordance with Subparagraph 3.6. The Project Team shall be responsible to the City for the accuracy and conformity of its submittals to the Contract Documents. The Project Team shall prepare and deliver its submittals to the City in such time and sequence so as not to delay the performance of the Work or the work of the City and Others. When the Project Team delivers its submittals to the City, the Project Team shall identify in writing for each submittal all changes, deviations or substitutions from the requirements of the Contract Documents. The review and approval of any Project Team submittal shall not be deemed to authorize changes, deviations or substitutions from the requirements of the Contract Documents unless express written approval is obtained from the City specifically authorizing such deviation, substitution or change. To the extent a change, deviation or substitution causes an impact to the Contract Price or Contract Time, such approval shall be promptly memorialized in a Change Order. Further, the City shall not make any change, deviation or substitution through the submittal process without specifically identifying and authorizing such deviation to the Project Team. In the event that the Contract Documents do not contain submittal requirements pertaining to the Work, the Project Team agrees upon request to submit in a timely fashion to the City for review and approval any shop drawings, samples, product data, manufacturers' literature or similar submittals as may reasonably be required by the City.

2.4.12.2 The City shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay.

2.4.12.3 The Project Team shall perform all Work strictly in accordance with approved submittals. Approval does not relieve the Project Team from responsibility for Defective Work resulting from errors or omissions of any kind on the approved Shop Drawings.

2.4.12.4 Record copies of the following, incorporating field changes and selections made during construction shall be maintained at the Worksite and available to the City upon request: drawings, specifications, addenda and other modifications, and required submittals including product data, samples and shop drawings.

2.4.12.5 No substitutions shall be made in the Work unless permitted in the Contract Documents and then only after the Project Team obtains all approvals required under the Contract Documents for substitutions. All such substitutions shall be memorialized promptly in a Change Order no later than seven (7) Days following approval by the City and, if applicable, provide for an adjustment in the Contract Price or Contract Time.

2.4.13 The Project Team shall prepare and submit electronically to the City final marked-up as-built drawings in general documenting how the various elements of the Work were actually constructed or installed. Final payment will not be made by the City until all as-built drawings are

received.

2.4.13.1 The Project Team is responsible for the accumulation of necessary information required to develop final drawings and specifications.

#### 2.4.14 COOPERATION WITH WORK OF CITY AND OTHERS

2.4.14.1 The City may perform work at the Worksite directly or by Others. Any agreements with Others to perform construction or operations related to the Project shall include provisions pertaining to insurance, indemnification, waiver of subrogation, coordination, interference, clean up and safety which are substantively the same as the corresponding provisions of this Agreement.

2.4.14.2 In the event that the City elects to perform work at the Worksite directly or by Others, the Project Team and City shall coordinate the activities of all forces at the Worksite and agree upon fair and reasonable schedules and operational procedures for Worksite activities. The shall require each separate contractor to cooperate with the Project Team and assist with the coordination of activities and the review of construction schedules and operations. The GMP or the Date of Substantial Completion or the Date of Final Completion shall be equitably adjusted, as mutually agreed by the Parties, for changes made necessary by the coordination of construction activities, and the Schedule of the Work shall be revised accordingly. The Project Team, City and Others shall adhere to the revised Schedule of the Work until it may subsequently be revised.

2.4.14.3 With regard to the work of the City and Others, the Project Team shall (a) proceed with the Work in a manner which does not hinder, delay or interfere with the work of the City or Others or cause the work of the City or Others to become defective, (b) afford the City or Others reasonable access for introduction and storage of their materials and equipment and performance of their activities, and (c) coordinate the Project Team's construction and operations with theirs as required by this Subparagraph 2.4.14.

2.4.14.4 Before proceeding with any portion of the Work affected by the construction or operations of the City or Others, the Project Team shall give the City prompt, written notification of any defects the Project Team discovers in their work which will prevent the proper execution of the Work. The Project Team's obligations in this Subparagraph 2.4.14 do not create a responsibility for the work of Others, but are for the purpose of facilitating the Work. If the Project Team does not notify the City of patent defects interfering with the performance of the Work, the Project Team acknowledges that the work of the City or Others is not defective and is acceptable for the proper execution of the Work. Following receipt of written notice from the Project Team of defects, the City shall promptly inform the Project Team what action, if any, the Project Team shall take with regard to the defects.

#### 2.4.15 CUTTING, FITTING AND PATCHING



2.4.15.1 The Project Team shall perform cutting, fitting and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of the City or Others.

2.4.15.2 Cutting, patching or altering the work of the City or Others shall be done with the prior written approval of the City. Such approval shall not be unreasonably withheld.

#### 2.4.16 CLEANING UP

2.4.16.1 The Project Team shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, the Project Team shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste and surplus materials. The Project Team shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, the Project Team shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials and debris.

2.4.16.2 If the Project Team fails to commence compliance with cleanup duties within two (2) business Days after written notification from the City of non-compliance, the City may implement appropriate cleanup measures without further notice and the cost shall be deducted from any amounts due or to become due the Project Team in the next payment period.

2.4.17 ACCESS TO WORK. The Project Team shall facilitate the access of the City and Others to Work in progress.

#### 2.4.18 MATERIALS FURNISHED BY THE CITY OR OTHERS

2.4.18.1 In the event the Work includes installation of materials or equipment furnished by the City or Others, it shall be the responsibility of the City or Others to examine the items so provided and upon City's approval, Project Team shall thereupon handle, store and install the items, unless otherwise provided in the Contract Documents, with such skill and care as to provide a satisfactory and proper installation. Damage that occurs to materials furnished by the City as a result of the improper handling or care of the materials by the Design-Builder will be the responsibility of the Design-Builder and, when applicable, its subcontractors, or sub-subcontractors. Loss or damage to such items prior to City's approval shall be the responsibility of the City. Any defects discovered in such materials or equipment shall be reported at once to the City. Following receipt of written notice from the Project Team of defects, the City shall promptly inform the Project Team what action, if any, the Project Team shall take with regard to the defects.

#### 2.4.19 TESTS AND INSPECTIONS

2.4.19.1 The Project Team shall schedule all required tests, approvals and inspections of the Work or portions thereof at appropriate times so as not to delay the progress of the Work or other work related to the Project. The Project Team shall give proper notice to all required Parties of such tests, approvals and inspections. If feasible, the City and Others may timely observe the

tests at the normal place of testing. Except as provided in Clause 2.4.19.3, the City shall bear all expenses associated with tests, inspections and approvals required by the Contract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity retained by the City. Unless otherwise required by the Contract Documents, required certificates of testing, approval or inspection shall be secured by the Project Team and promptly delivered to the City.

2.4.19.2 If the City or appropriate authorities determine that tests, inspections or approvals in addition to those required by the Contract Documents will be necessary, the Project Team shall arrange for the procedures and give timely notice to the City and Others who may observe the procedures. Costs of the additional tests, inspections or approvals are at the City's expense except as provided in Clause 2.4.19.3.

2.4.19.3 If the procedures described in Clauses 2.4.19.1 and 2.4.19.2 indicate that portions of the Work fail to comply with the Contract Documents due to the negligence of the Project Team, the Project Team shall be responsible for costs of correction and retesting.

## 2.5 WORKMANSHIP

2.5.1 The Work shall be executed in accordance with the Contract Documents in a workmanlike manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work and shall be new except such materials as may be expressly provided in the Contract Documents to be otherwise.

## 2.6 WARRANTY

2.6.1 The Project Team warrants that all materials and equipment furnished under the Construction Phase of this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. At the City's request, the Project Team shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. The Project Team further warrants that the Work shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. The Project Team's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by the City or Others, or abuse. The Project Team's warranty pursuant to this Paragraph 2.6 shall commence on the Date of Substantial Completion and continue for a period of two years thereafter. Project Team hereby assigns to City all specific written warranties provided by subcontractors, vendors, and manufacturers and all such specific warranties shall continue as noted herein. No other warranties, including implied warranties, are provided.

2.6.2 With respect to any portion of Work first performed after Substantial Completion, the Project Team's warranty obligation shall be extended by the period of time between Substantial Completion and the actual performance of the later Work.

2.6.3 The Project Team shall obtain from its Subcontractors and Material Suppliers any special or extended warranties required by the Contract Documents. All such warranties shall be listed in an attached exhibit to this Agreement. Project Team's liability for such warranties shall be limited to the two-year correction period referred to in Paragraph 2.7. After that period Project Team shall assign them to the City and provide reasonable assistance to the City in enforcing the obligations of Subcontractors or Material Suppliers.

## 2.7 CORRECTION OF WORK WITHIN TWO YEAR

2.7.1 If prior to Substantial Completion and within two year after the date of Substantial Completion of the Work any Defective Work is found, the City shall promptly notify the Project Team in writing. Unless the City provides written acceptance of the condition, the Project Team shall promptly correct the Defective Work. If within the two-year correction period the City discovers and does not promptly notify the Project Team or give the Project Team an opportunity to test or correct Defective Work as reasonably requested by the Project Team, the City waives the Project Team's obligation to correct that Defective Work as well as the City's right to claim a breach of the warranty with respect to that Defective Work. City agrees to provide Contractor with notice of and opportunity to correct any defective Work which is the responsibility of Contractor before incurring any costs in connection therewith.

2.7.2 With respect to any portion of Work first performed after Substantial Completion, the two-year correction period shall be extended by the period of time between Substantial Completion and the actual performance of the later Work. Correction periods shall not be extended by corrective work performed by the Project Team.

2.7.3 If the Project Team fails to correct Defective Work within a reasonable time after receipt of written notice from the City prior to final payment, the City may correct it in accordance with the City's right to carry out the Work in Paragraph 11.2. In such case, an appropriate Change Order shall be issued deducting the cost of correcting such deficiencies from payments then or thereafter due the Project Team. If payments then or there after due Project Team are not sufficient to cover such amounts, the Project Team shall pay the difference to the City.

2.7.4 If the Project Team's correction or removal of Defective Work causes damage to or destroys other completed or partially completed work or existing building, the Project Team shall be responsible for the cost of correcting the destroyed or damaged property.

2.7.5 The two-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of the Project Team's other obligations under the Contract Documents.

2.7.6 Prior to final payment, at the City's option and with the Project Team's agreement, the City may elect to accept Defective Work rather than require its removal and correction. In such cases the GMP shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.

## 2.8 CORRECTION OF COVERED WORK

2.8.1 On request of the City, Work that has been covered without a requirement that it be inspected prior to being covered may be uncovered for the City's inspection. The City shall pay for the costs of uncovering and replacement if the Work proves to be in conformance with the Contract Documents, or if the defective condition was caused by the City or Others. If the uncovered Work proves to be defective, the Project Team shall pay the costs of uncovering and replacement.

2.8.2 If contrary to specific requirements in the Contract Documents or contrary to a specific request from the City, a portion of the Work is covered, the City, by written request, may require the Project Team to uncover the Work for the City's observation. In this circumstance the Work shall be replaced at the Project Team's expense and with no adjustment to the Dates of Substantial or Final Completion.

2.8.3 The Project Team is required to correct in a timely fashion any Work rejected by the City which fails to comply with the Contract Documents prior to the commencement of the warranty period(s) or during the correction period(s) established under Paragraph 2.7. The Project Team shall correct at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible.

## 2.9 SAFETY OF PERSONS AND PROPERTY

2.9.1 SAFETY PRECAUTIONS AND PROGRAMS. The Project Team shall have overall responsibility for safety precautions and programs in the performance of the Work. While this Paragraph 2.9 establishes the responsibility for safety between the City and Project Team, it does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with the provisions of applicable laws and regulations.

2.9.2 The Project Team shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect:

2.9.2.1 its employees and other persons at the Worksite;

2.9.2.2 materials and equipment stored at on-site or off-site locations for use in the Work;  
and

2.9.2.3 property located at the Worksite and adjacent to Work areas, whether or not the property is part of the Work.

2.9.3 PROJECT TEAM'S SAFETY REPRESENTATIVE. The Project Team shall identify and submit in writing to the City the Worksite Safety Representative prior to the commencement of Work. The Worksite Safety Representative shall act as the Project Team's authorized safety representative with a duty to prevent accidents in accordance with Subparagraph 2.9.2. The Project Team shall designate an individual at the Worksite in the employ of the Project Team who shall act as the Project Team's authorized safety representative with a duty to prevent accidents in accordance with Subparagraph 2.9.2. If no individual is identified in this Subparagraph 2.9, the authorized safety representative shall be the Project Team's Representative. The Project Team shall report immediately in writing all accidents and injuries occurring at the Worksite. When the Project Team is required to file an accident report with a public authority, the Project Team shall furnish a copy of the report to the City.

2.9.4 The Project Team shall provide the City with copies of all notices required of the Project Team by law or regulation. The Project Team's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction.

2.9.5 Damage or loss not insured under property insurance which may arise from the Work, to the extent caused by negligent acts or omissions of the Project Team, or anyone for whose acts the Project Team may be liable, shall be promptly remedied by the Project Team. With regard to damage or loss attributable to the acts or omissions of the City or Others and not to the Project Team, the City may either (a) promptly remedy the damage or loss; or (b) accept the damage or loss.

2.9.6 If the City deems any part of the Work or Worksite unsafe, the City, without assuming responsibility for the Project Team's safety program, may require the Project Team to stop performance of the Work or take corrective measures satisfactory to the City and Project Team. If the Project Team does not adopt such mutually agreed to corrective measures, the City may perform them and deduct their cost from the GMP. The Project Team agrees to make no claim for damages, or an increase in the GMP, or for a change in the Dates of Substantial or Final Completion based on the Project Team's compliance with the City's reasonable request.

2.9.7 When on site, City, Others and City's or Other's invitees agree to abide by Project Team's reasonable Project site safety rules and directives. In the event City or Others desires to bring its invitees or other guests to the site prior to substantial completion of the Work, City agrees to:

- (i) indemnify Project Team from any claims made by City, Others, or their invitees for property damage or personal injury, and
- (ii) provide or cause to be provided to Project Team with a release on Project Team's approved release form prior to entry on the site.

2.10 EMERGENCIES. In an emergency, the Project Team shall act in a reasonable manner to prevent personal injury or property damage. If appropriate, an equitable adjustment in GMP or Date of Substantial Completion or Date of Final Completion shall be determined in a Change Order.

## 2.11 HAZARDOUS MATERIALS

2.11.1 A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal or clean-up. The Project Team shall not be obligated to commence or continue work until any Hazardous Material discovered at the Worksite has been removed, rendered or determined to be harmless by the City as certified by an independent testing laboratory and approved by the appropriate government agency. City and Project Team acknowledge and understand that the presence of Hazardous Materials at the site prior to Project Team mobilizing on to the Worksite were not caused by nor are they the responsibility of Project Team, and that the Contract Documents do not and are not intended to transfer liability for Hazardous Materials to Project Team. The City shall retain title to all Hazardous Materials originating at or removed from the Project or the Worksite. Under no circumstances shall Project Team assume ownership of, or legal liability for, City's Hazardous Materials under CERCLA (42 USCA §9601, et seq.) or other laws pertaining to Hazardous Materials or assume the status of generator, storer, treater, or disposal facility, or arranger of transport, storage, or disposal, for City's Hazardous Materials.

2.11.2 If after the commencement of the Work, Hazardous Material is discovered at the Worksite, the Project Team shall be entitled to immediately stop Work in the affected area. The Project Team shall report the condition to the City and, if required, the government agency with jurisdiction.

2.11.3 The Project Team shall not be required to perform any Work relating to or in the area of Hazardous Material without written mutual agreement.

2.11.4 The City shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether the material requires corrective measures or remedial action. Such measures shall be the sole responsibility of the City, and shall be performed in a manner minimizing any adverse effects upon the Work. The Project Team shall resume Work in the area affected by any Hazardous Material only upon written agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction.

2.11.5 If the Project Team incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, the Project Team shall be entitled to an equitable adjustment in the GMP, the Dates of Substantial and Final Completion.

2.11.6 To the fullest extent permitted by law, the City shall defend, indemnify and hold harmless the Project Team, its Subcontractors and Subsubcontractors, and the agents, officers, directors and employees of each of them, from and against any and all direct claims, damages, losses, costs and expenses, including but not limited to attorneys' fees, costs and expenses arising out of or incurred in connection with any and all Hazardous Material, except to the extent the damages are not caused by the gross negligence or reckless disregard by Project Team, its Subcontractors, and Subsubcontractors.

2.11.7 The terms of this Paragraph 2.11 shall survive the completion of the Work or any termination of this Agreement.

## 2.12 MATERIALS BROUGHT TO THE WORKSITE

2.12.1 Material Safety Data (MSD) sheets as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by the Project Team, Subcontractors, the City or Others, shall be maintained at the Worksite by the Project Team and made available to the City, Subcontractors and Others.

2.12.2 The Project Team shall be responsible for the proper delivery, handling, application, storage, removal and disposal of all materials and substances brought to the Worksite by the Project Team in accordance with the Contract Documents and used or consumed in the performance of the Work.

2.12.3 To the extent (i) caused by the negligent acts or omissions of the Project Team but (ii) subject to Paragraph 5.7, its agents, officers, directors and employees, the Project Team shall indemnify and hold harmless the City, its agents, officers, directors and employees, from and against claims, damages, losses, costs and expenses, including but not limited to reasonable attorneys' fees, costs and expenses incurred in connection with any dispute resolution process arising out of or relating to the delivery, handling, application, storage, removal and disposal of all materials and substances brought to the Worksite by the Project Team in accordance with the Contract Documents.

2.13 CONCEALED OR UNKNOWN WORKSITE CONDITIONS. If the conditions at the Worksite are (a) subsurface or other physical conditions which are materially different from those indicated in the Contract Documents, or (b) unusual or unknown physical conditions which are materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, the Project Team shall stop Work and give written notice of the condition to the City. Any change in the GMP, estimated Cost of the Work, Project Team's Fee, Date of Substantial Completion or Date of Final Completion and, if appropriate, the Compensation for Preconstruction Services as a result of the unknown condition shall be determined as provided in Article 8. The Project Team shall provide the City with written notice of any claim as a result of unknown conditions within the time period set forth in Paragraph 8.4.

## 2.14 PERMITS AND TAXES

2.14.1 Project Team shall give public authorities all notices required by law that are applicable to the performance of the Work and, except for permits and fees which are the responsibility of the City pursuant to Paragraph 3.4, shall obtain and pay for all necessary permits, licenses and renewals pertaining to the Work. Project Team shall provide to City copies of all notices, permits, licenses and renewals required under this Agreement.

2.14.2 Project Team shall pay all applicable taxes legally enacted when bids are received or negotiations concluded for the Work provided by the Project Team.

2.14.3 The GMP shall be adjusted for additional costs resulting from laws, ordinances, rules and regulations enacted after the date of this Agreement, including increased taxes.

2.14.4 If, in accordance with the City's direction, the Project Team claims an exemption for taxes, the City shall indemnify and hold the Project Team harmless from any liability, penalty, interest, fine, tax assessment, attorney's fees or other expense or cost incurred by the Project Team as a result of any such action.

## **ARTICLE 3. CITY'S RESPONSIBILITIES**

3.1 INFORMATION AND SERVICES. Any information or services to be provided by the City shall be provided in a timely manner so as not to delay the Work.

3.2 WORKSITE INFORMATION. Except to the extent that the Project Team knows of any inaccuracy, the Project Team is entitled to rely on Worksite information furnished by the City pursuant to this Paragraph 3.2. To the extent the City has obtained, or is required elsewhere in the Contract Documents to obtain, the following Worksite information, the City shall provide at the City's expense and with reasonable promptness:

3.2.1 information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data or drawings depicting existing conditions, subsurface conditions and environmental studies, reports and investigations;

3.2.2 tests, inspections and other reports dealing with environmental matters, Hazardous Material and other existing conditions, including structural, mechanical and chemical tests, required by the Contract Documents or by law; and

3.2.3 any other information or services requested in writing by the Project Team which are relevant to the Project Team's performance of the Work and under the City's control.

The information required by this Paragraph 3.2 shall be provided in reasonable detail. Legal descriptions shall include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions shall include existing buildings and other construction and all other pertinent site conditions. Adjacent property descriptions shall include structures, streets,



sidewalks, alleys, and other features relevant to the Work. Utility details shall include available services, lines at the Worksite and adjacent thereto and connection points. The information shall include public and private information, subsurface information, grades, contours, and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used by the Project Team in laying out the Work.

**3.3 BUILDING PERMIT, FEES AND APPROVALS.** Except for those permits and fees related to the Work which are the responsibility of the Project Team pursuant to Paragraph 2.14, the City shall secure and pay for all other permits, approvals, easements, assessments and fees required for the development, construction, use or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.

**3.4 MECHANICS AND CONSTRUCTION LIEN INFORMATION.** Within seven (7) Days after receiving the Project Team's written request, the City shall provide the Project Team with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include the City's interest in the real property on which the Project is located and the record legal title.

**3.5 CONTRACT DOCUMENTS.** Unless otherwise specified, City shall provide a reasonable number of hard copies of the Contract Documents to the Project Team without cost.

**3.6 ELECTRONIC DOCUMENTS.** Use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

**3.7 CITY'S REPRESENTATIVE.** The City's authorized representative shall be fully acquainted with the Project, and shall have authority to bind the City in all matters requiring the City's approval, authorization or written notice. If the City changes its representative or the representative's authority as listed above, the City shall immediately notify the Project Team in writing.

**3.8 CITY'S CUTTING AND PATCHING.** Cutting, patching, or altering the Work by the City or Others shall be done with the prior written approval of the Project Team, which approval shall not be unreasonably withheld.

**3.9 CITY'S RIGHT TO CLEAN UP.** In case of a dispute between the Project Team and Others with regard to respective responsibilities for cleaning up at the Worksite, the City may implement appropriate cleanup measures after two (2) business days' notice and allocate the cost among those responsible during the following pay period.

**3.10 COST OF CORRECTING DAMAGED OR DESTROYED WORK.** With regard to damage or loss attributable to the acts or omissions of the City or Others and not to the Project Team, the City may either (a) promptly remedy the damage or loss or (b) accept the damage or loss. If the Project Team incurs additional costs or is delayed due to such loss or damage, the Project Team

shall be entitled to an equitable adjustment in the GMP, general conditions costs, estimated Cost of the Work, Project Team's Fee, Date of Substantial Completion or Date of Final Completion.

#### **ARTICLE 4. SUBCONTRACTS**

4.1 SUBCONTRACTORS. The Work not performed by the Project Team with its own forces shall be performed by Subcontractors. All subcontracts shall be issued on a lump sum basis unless the City has given prior written approval of a different method of payment to the Subcontractor.

#### **4.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

4.2.1 As soon after the execution of this Agreement as possible the Project Team shall provide the City, with a written list of the proposed subcontractors and significant material suppliers. If the City has a reasonable objection to any proposed subcontractor or material supplier, the City shall notify the Project Team in writing. Failure to promptly object shall constitute acceptance.

4.2.2 If the City has reasonably and promptly objected as provided in Subparagraph 4.2.1, the Project Team shall not contract with the proposed subcontractor or material supplier, and the Project Team shall propose another acceptable to the City. An appropriate Change Order shall reflect any increase or decrease in the GMP or Dates of Substantial or Final Completion because of the substitution.

4.3 BINDING OF SUBCONTRACTORS AND MATERIAL SUPPLIERS. The Project Team agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its subcontractors and Material Suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the Subcontractor's and Material Supplier's portions of the Work.

#### **4.4 LABOR RELATIONS:**

4.4.1 The Project Team shall include in all subcontracts, and require that subcontractors include in all subsubcontracts the Wage Order as is required by Missouri law and ensure that all subcontractors and subsubcontractors on the Project pay workmen not less than the prevailing hourly rate of wages, including the prevailing rate for legal holidays and overtime work, for each craft or type of workman required to complete the project, as now or hereafter established by the Missouri Department of Labor and Industrial Relations. The Project Team shall post a legible list of all prevailing wage rates in a prominent and easily accessible location at the Project site. The Project Team shall forfeit as a penalty to the City One Hundred Dollars (\$100.00) for each workman employed, for each calendar day, or portion thereof, such workman is paid less than the said stipulated rates for any work done under said contract.

4.4.1.1 For Work receiving federal money, as indicated by the City, the Design-Builder

shall ensure that all federal labor law requirements are followed in accordance with applicable regulations associated with said funding sources. Requirements include, but are not limited to, federal registration of all companies performing work or providing materials to be paid for with federal monies, wage rate requirements, and adherence to competitive bidding processes and oversight.

4.4.2 Neither the Project Team nor any subcontractor or subsubcontractor may directly or indirectly receive a wage subsidy, bid supplement, or rebate for employment on the Project if such wage subsidy, bid supplement, or rebate has the effect of reducing the wage rate paid by the employer on a given occupational title below the prevailing wage rate. In the event a wage subsidy, bid supplement, or rebate is lawfully provided or received, the entity receiving such subsidy, supplement, or rebate shall report the date and amount of such subsidy, supplement, or rebate to the City within thirty days of receipt of payment. If the Project Team violates this requirement, it shall owe to the City double the dollar amount per hour that the wage subsidy, bid supplement, or rebate has reduced the wage rate paid by the Project Team or subcontractor below the prevailing wage rate for each hour that work was performed.

4.4.3 The Project Team shall ensure that it and all subcontractors and subsubcontractors on the Project have:

4.4.3.1 An ERISA-qualified medical welfare benefit plan or health insurance in some form, and

4.4.3.2 A training program approved by and registered with the U.S. Department of Labor's Bureau of Apprenticeship and Training or equivalent and

4.4.3.3 An ERISA-qualified pension plan or a retirement benefit program

4.4.4 The Project Team shall ensure that it and all subcontractors and subsubcontractors are enrolled and participate in a federal work authorization program with respect to the employees that will perform work under the Agreement and that it and no subcontractor or subsubcontractors knowingly employs to perform work under this Agreement any person who is an unauthorized alien.

4.4.5 The Project Team shall ensure that it and all subcontractors and subsubcontractors have provided a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved which is at least as stringent as an approved OSHA program prior to being on the Project site.

#### 4.5 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

4.5.1 If this Agreement is terminated, each subcontract agreement shall be assigned by the Project Team to the City, subject to the prior rights of any surety, provided that:

4.5.1.1 this Agreement is terminated by the City pursuant to Paragraphs 11.3 or 11.4; and

4.5.1.2 the City accepts such assignment after termination by notifying the Subcontractor and Project Team in writing, and assumes all rights and obligations of the Project Team pursuant to each subcontract agreement.

4.5.2 If the City accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive Days, following termination, the Subcontractor's compensation shall be equitably adjusted as a result of the suspension.

## **ARTICLE 5. TIME**

### **5.1 PERFORMANCE OF THE WORK**

5.1.1 DATE OF COMMENCEMENT. The Date of Commencement is the date mutually agreed to the parties. The Work shall proceed in general accordance with the Schedule of Work as such schedule may be amended from time to time, subject to other provisions of this Agreement.

5.1.2 SUBSTANTIAL/FINAL COMPLETION. Unless the Parties agree or otherwise, the Date of Substantial Completion or the Date of Final Completion shall be mutually established by the Parties, and subject to adjustments as provided for in the Contract Documents. The City and the Project Team may agree not to establish such dates, or in the alternative, to establish one but not the other of the two dates. If such dates are not established upon the execution of this Agreement, at such time as GMP is accepted a Date of Substantial Completion or Date of Final Completion of the Work shall be established in Amendment No.1. If a GMP is not established and the Parties desire to establish a Date of Substantial Completion or Date of Final Completion, it shall be set forth in Amendment No.1.

5.1.3 The Project Team shall not knowingly commence the Work before the effective date of insurance to be provided by the Project Team and City as required by the Contract Documents.

### **5.2 SCHEDULE OF THE WORK**

5.2.1 Before submitting the first application for payment, the Project Team shall submit to the City a Schedule of the Work that shall show the dates on which the Project Team plans to commence and complete various parts of the Work, including dates on which information and approvals are required from the City. On the City's written approval of the Schedule of the Work, the Project Team shall comply with it unless directed by the City to do otherwise or the Project Team is otherwise entitled to an adjustment in the Contract Time. The Project Team shall update the schedule on a monthly basis or at appropriate intervals as required by the conditions of the Work and the Project to indicate proposed activity sequences, durations, or milestone dates for such activities as receipt and approval of pertinent information, issuance of the drawings and specifications, the preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, City's occupancy requirements

and estimated date of Substantial Completion of the Project. If Schedule of the Work updates indicate that milestone dates contained in prior Schedules of the Work will not be met, the Design-Builder shall notify and make recommendations to the City.

5.2.2 The City may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the approved project schedule. The City may require the Project Team to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by the City or Others. To the extent such changes increase Project Team's time and costs the GMP, general conditions, and Dates of Substantial or Final Completion shall be equitably adjusted.

### 5.3 DELAYS AND EXTENSIONS OF TIME

5.3.1 If the Project Team is delayed at any time in the commencement or progress of the Work by any cause beyond the control of the Project Team, the Project Team shall be entitled to an equitable extension of the Date of Substantial Completion and Date of Final Completion. In addition, if the Project Team incurs additional costs as a result of such delay, the Project Team shall be entitled to an equitable adjustment in the GMP and general conditions costs. Examples of causes beyond the control of the Project Team include, but are not limited to the following: acts or omissions of the City or Others; changes in the Work or the sequencing of the Work ordered by the City, or arising from decisions of the City that impact the time of performance of the Work; labor disputes; fire; encountering Hazardous Materials; material shortages; price escalations; adverse weather conditions not reasonably anticipated; concealed or unknown conditions; delay authorized by the City pending dispute resolution and suspension by the City under Paragraph 11.1. The Project Team shall submit any requests for equitable extensions of Contract Time or equitable adjustment in Contract Price in accordance with the provisions of Article 8.

5.3.2 In addition, if the Project Team incurs additional costs as a result of a delay by any cause beyond the control of Project Team as set forth in Paragraph 5.3.1, the Project Team shall be entitled to an equitable adjustment in the GMP subject to Paragraph 5.7.

5.3.3 NOTICE OF DELAYS In the event delays to the Work are encountered for any reason, the Project Team shall provide prompt written notice to the City of the cause of such delays after Project Team first recognizes the delay.

5.4 NOTICE OF DELAY CLAIMS If the Project Team requests an equitable extension of Contract Time or an equitable adjustment in Contract Price as a result of a delay described in Subparagraph 5.3.1, the Project Team shall give the City written notice of the claim in accordance with Paragraph 8.4. If the Project Team causes delay in the completion of the Work, the City shall be entitled to recover its additional costs subject to Paragraph 10.2. The City shall process any such claim against the Project Team in accordance with Article 8.

5.5 MONITORING PROGRESS AND COSTS Following acceptance by the City of the GMP, the Project Team shall establish a process for monitoring actual costs against the GMP and actual progress against the Schedule of Work. The Project Team will provide written reports to the City at intervals as agreed to by the Parties on the status of the Work, showing variances between actual costs and the GMP and actual progress as compared to the Schedule of Work, including estimates of future costs and recovery programs if actual progress indicates that the Dates of Substantial Completion or Final Completion may not be met.

## 5.6 LIQUIDATED DAMAGES

5.6.1 SUBSTANTIAL COMPLETION The City and the Project Team agree that this Agreement shall provide for the imposition of liquidated damages based on the Date of Substantial Completion.

5.6.1.1 The Project Team understands that if the Date of Substantial Completion established by this Agreement, as may be amended by subsequent Change Order, is not attained, the City will suffer damages which are difficult to determine and accurately specify. The Project Team agrees that if the Date of Substantial Completion is not attained the Project Team shall pay the City One Thousand Five Hundred Dollars (\$1,500.00) as liquidated damages and not as a penalty for each Day that Substantial Completion extends beyond the Date of Substantial Completion.

5.6.1.2 The liquidated damages provided herein shall be the sole and exclusive remedy and in lieu of all liability, whether and law or in equity, for any and all extras costs, losses, expenses, claims, penalties and any other damages of whatsoever nature incurred by the City which are occasioned by any delay. All other claims, damages or other remedies relating to timely performance and completion, however caused, are expressly waived by the City against Project Team, for and on behalf of itself, its successors, assigns and any and all other parties claiming by, through or under the City.

5.6.1.3 If Project Team is required to pay liquidated damages to the City pursuant to this Paragraph, such amounts shall be paid by offset against any retention amounts or other sums remaining to be paid to the Project Team by the City which are still retained by the City, and the balance, if any, shall be paid to the City by the Project Team at the time final payment is otherwise required to be made to the Project Team under this Agreement.

5.6.1.4 If the Project Team believes that the Work will not be substantially complete on or before the Date of Substantial Completion, the Project Team shall have the right to remedy such anticipated delay, to prevent the imposition of liquidated damages as provided herein. Such costs shall be included in the Cost of the Work as defined in Article 7. The City and Others, if any, shall cooperate fully with the Project Team and shall take any action reasonably requested by the Project Team.

5.6.2 FINAL COMPLETION The City and the Project Team agree that this Agreement shall not provide for the imposition of liquidated damages based on the Date of Final Completion.

5.7 MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Notwithstanding anything in the Contract Documents to the contrary other than liquidated damages in Paragraph 5.6, the City and the Project Team hereby waive all claims against each other for any exemplary, indirect, special, incidental, punitive, and consequential damages, including without limitation, loss of use of the Project or other property, lost, reduced or deferred sales or rents or other revenues, any rental expenses incurred, loss of income, profit or financing related to the Project, as well as the loss of business, loss of financing, loss of use of property, principal office overhead and expenses, additional interest, penalties, taxes, insurance, or other carry costs, marketing or management costs, loss of profits not related to this Project, diminution or other reduction in or loss of value, loss of reputation, or insolvency, that may arise out of or relate to this Agreement. The provision of this Paragraph 5.7 shall also apply to the termination of this Agreement and shall survive such termination.

## **ARTICLE 6. COMPENSATION AND GUARANTEED MAXIMUM PRICE**

6.1 The compensation to be paid shall be limited to the GMP mutually agreed upon, as the GMP may be adjusted under Article 8.

6.1.1 Payment for Work performed shall be as set forth in Article 9.

6.2 PROJECT TEAM'S FEE The Project Team's Fee shall be as follows, subject to adjustment as provided in Paragraph 6.3 five percent (5%).

6.3 ADJUSTMENT IN THE PROJECT TEAM'S FEE Adjustment in the Project Team's Fee shall be made as follows:

6.3.1 for changes in the Work as provided in Article 8, the Design-Builder's Fee shall remain equal to 5.00% of the cost of the work. The total amount of the Design-Builder's Fee may increase or decrease depending on the nature of any change in the work, but the basis of the Project Team's Fee shall remain at 5.00%.

6.3.2 for delays in the Work not caused by the Project Team the Project Team's Fee shall be adjusted as set forth in Paragraph 6.3.1; and

6.3.3 if the Project Team is placed in charge of managing the replacement of an insured or uninsured loss, the Project Team shall be adjusted as set forth in Paragraph 6.3.1

## **ARTICLE 7. COST OF THE WORK**

7.1 The City agrees to pay the Project Team for the Cost of the Work as defined in this Article. This payment shall be in addition to the Project Team's Fee and general condition costs stipulated in Paragraph 6.2.

## 7.2 COST ITEMS

7.2.1 Wages paid for labor in the direct employ of the Project Team in the performance of the Work and certified payroll must be submitted for all activities performed by Project Team, Subcontractors, and Subsubcontractors every one week for review and confirmation by the City.

7.2.2 Salaries of the Project Team's employees, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and employees from the principal or branch office at the agreed rates as listed in Exhibit D for actual hours related to the Project. Any audit of wages or salaries of Project Team's supervisory and administrative personnel shall be limited to confirmation of actual hours related to the Project.

7.2.3 Cost of all employee benefits and taxes, including but not limited to, workers' compensation, unemployment compensation, Social Security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under the Project Team's standard personnel policy, insofar as such costs are paid to employees of the Project Team who are included in the Cost of the Work under Subparagraph 7.2.1.

7.2.4 Reasonable transportation, travel, hotel and moving expenses of the Project Team's personnel incurred in connection with the Work.

7.2.5 Cost of all materials, supplies and equipment incorporated in the Work, including costs of inspection and testing if not provided by the City, transportation, storage and handling.

7.2.6 Payments made by the Project Team to or for Subcontractors for work performed under this Agreement.

7.2.7 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value or residual value; and cost less salvage value on such items used, but not consumed that remain the property of the Project Team.

7.2.8 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from the Project Team or Others, including installation, repair and replacement, dismantling, removal, maintenance, transportation and delivery costs. Rental shall be reimbursed at agreed upon rates set forth in Exhibit D. Rentals from the Project Team or its affiliates, subsidiaries or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to eighty-five percent (85%) of the value of the piece of equipment.

7.2.9 Cost of the premiums for all insurance and surety bonds which the Project Team is required to procure, including any additional premium incurred as a result of any increase in the GMP.



7.2.10 Sales, use, gross receipts or other taxes, tariffs or duties related to the Work for which the Project Team is liable.

7.2.11 Permits, fees, licenses, tests, royalties, damages for infringement of patents or copyrights, including costs of defending related suits for which the Project Team is not responsible as set forth in Paragraph 3.7, and deposits lost for causes other than the Project Team's negligence.

7.2.12 Losses, expenses or damages to the extent not compensated by insurance or otherwise, and the cost of defective, damaged or corrective work during the Construction Phase and for a period of one year following the Date of Substantial Completion, provided that such losses, expenses, damages or defective, damaged or corrective work did not arise from the negligence of the Project Team.

7.2.13 All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office.

7.2.14 All costs associated with demobilizing and remobilizing the field office and the Project Team's workforce, including Subcontractor workforces, as a result of a suspension of the Work by the City.

7.2.15 Reproduction costs, photographs, facsimile transmissions, long-distance telephone calls, data processing costs and services, postage, express delivery charges, data transmission, telephone service and computer-related costs to the extent such items are used in the performance of the Work.

7.2.16 All water, power and fuel costs necessary for the Work.

7.2.17 Cost of removal of all nonhazardous substances, debris and waste materials.

7.2.18 Costs incurred due to an emergency affecting the safety of persons or property.

7.2.19 Legal, mediation and arbitration fees and costs, other than those arising from disputes between the City and the Project Team, reasonably and properly resulting from the Project Team's performance of the Work.

7.2.20 Additional costs resulting from laws, ordinances, rules, regulations and taxes enacted after the date of this Agreement.

7.2.21 All costs directly incurred in the performance of the Work or in connection with the Project, and not included in the Project Team's Fee as set forth in Article 6, which are reasonably inferable from the Contract Documents as necessary to produce the intended results.

7.2.22 Data processing costs related to the Work.

7.3 DISCOUNTS All discounts for prompt payment shall accrue to the City to the extent such payments are made directly by the City. To the extent payments are made with funds of the Project Team, all cash discounts shall accrue to the Project Team. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

## **ARTICLE 8. CHANGES**

Changes in the Work that are within the general scope of this Agreement shall be accomplished, without invalidating this Agreement, by Change Order and Interim Directed Change.

### **8.1 CHANGE ORDER**

8.1.1 A Change Order is a written instrument signed by the City and Project Team stating their agreement upon a change in the work or adjustment to the GMP, general condition costs, and/or Contract Time, if any. The Project Team may request or the City may order changes in the Work or the timing or sequencing of the Work that impacts the GMP, general condition costs, or the estimated Cost of the Work, Project Team's Fee, Date of Substantial Completion or Date of Final Completion and, if appropriate, the Compensation for Preconstruction Services. All such changes in the Work shall be formalized in a Change Order. Any such requests for changes in the Work shall be processed in accordance with this Article 9.

8.1.2 The City and the Project Team shall negotiate in good faith an equitable adjustment to the GMP or the Date of Substantial Completion or Date of Final Completion and shall conclude these negotiations as expeditiously as possible. Acceptance of the Change Order and any equitable adjustment in the GMP or Date of Substantial Completion or Date of Final Completion shall not be unreasonably withheld.

8.1.3 Minor changes in the Work do not involve an adjustment in the GMP or the Project schedule and do not materially and adversely affect the Work, including the design, quality, performance, and workmanship required by this Agreement. Project Team may make minor changes in the Work consistent with the intent of this Agreement, provided, however that Project Team shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by the Project Team and obtain prior approval from the City's authorized representative.

### **8.2 INTERIM DIRECTED CHANGES**

8.2.1 An Interim Directed Change is a written instrument signed by the City directing a change in the Work. The City may issue a written Interim Directed Change directing a change in the Work prior to reaching agreement with the Project Team on the adjustment, if any, in the GMP or the Date of Substantial Completion or Date of Final Completion.

8.2.2 The City and the Project Team shall negotiate expeditiously and in good faith for

appropriate adjustments, as applicable, to the GMP or the Date of Substantial Completion or Date of Final Completion arising out of Interim Directed Changes. As the changed Work is performed, the Project Team shall submit its costs for such Work with its application for payment beginning with the next application for payment within thirty (30) Days of the issuance of the Interim Directed Change. If there is a dispute as to the cost to the City, the City shall pay the Project Team's direct, actual out of pocket cost in performing such work. In such event, the Parties reserve their rights as to the disputed amount, subject to the requirements of Article 11.

8.2.3 When the City and the Project Team agree upon the adjustments in the GMP or the Date of Substantial Completion or Date of Final Completion, for a change in the Work directed by an Interim Directed Change, such agreement shall be the subject of an appropriate Change Order.

### 8.3 DETERMINATION OF COST

8.3.1 An increase or decrease in the GMP or the Date of Substantial Completion or Date of Final Completion resulting from a change in the Work shall be determined by one or more of the following methods:

8.3.1.1 unit prices set forth in this Agreement or as subsequently agreed;

8.3.1.2 a mutually accepted, itemized lump sum;

8.3.1.3 costs calculated on a basis agreed upon by the City and Project Team plus a Fee (either a lump sum or a fee based on a percentage of cost) to which they agree; or

8.3.1.4 if an increase or decrease cannot be agreed to as set forth in Clauses .1 through .3 above, and the City issues an Interim Directed Change, the cost of the change in the Work shall be determined by the reasonable actual expense and savings of the performance of the Work resulting from the change. If there is a net increase in the GMP, the Project Team's Fee shall be adjusted accordingly. In case of a net decrease in the GMP, the Project Team's Fee shall not be adjusted. The Project Team shall maintain a documented, itemized accounting evidencing the expenses and savings.

8.3.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to the City or the Project Team, such unit prices shall be equitably adjusted.

8.3.3 If the City and the Project Team disagree as to whether work required by the City is within the scope of the Work, the Project Team shall furnish the City with an estimate of the costs to perform the disputed work in accordance with the City's interpretations.

8.3.4 If the City issues a written order for the Project Team to proceed, the Project Team shall perform the disputed work and the City shall pay the Project Team's actual, direct out of pocket

cost in performing such work. In such event, both Parties reserve their rights as to whether the work was within the scope of the Work. The City's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of Work. The Project Team's receipt of payment for the disputed work does not prejudice its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work.

8.4 CLAIMS Except as provided in Subparagraph 5.3.2 and Paragraph 5.4 for any claim for an increase in the GMP, general condition costs, or the Date of Substantial Completion or Date of Final Completion, the Project Team shall give the City written notice of the claim within twenty-one (21) Days after the occurrence giving rise to the claim or within fourteen (14) Days after the Project Team first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. City shall provide written notice of any claim against Project Team within twenty-one (21) Days after the occurrence giving rise to the claim or within fourteen (14) Days after the City first recognizes the condition giving rise to the claim, whichever is later. Thereafter, the City shall submit written documentation of its claim, including appropriate supporting documentation, within a reasonable time after giving notice to Project Team. The Project Team shall respond in writing denying or approving the City's claim no later than fourteen (14) Days after receipt of the City's documentation of claim. Project Team's failure to so respond shall be deemed a denial of the City's claim. Any change in the GMP or the Date of Substantial Completion or Date of Final Completion resulting from such claim shall be authorized by Change Order.

## **ARTICLE 9. PAYMENT**

9.1 SCHEDULE OF VALUES Prior to the submittal of the first application for payment, the Project Team shall prepare and submit to the City a schedule of values apportioned to the various divisions or phases of the Work. Each line item contained in the schedule of values shall be assigned a value such that the total of all items shall equal the GMP.

### **9.2 PROGRESS PAYMENTS**

9.2.1 APPLICATIONS The Project Team shall submit to the City a monthly application for payment no later than the first Day of the calendar month for the preceding month; or Project Team's applications for payment shall be itemized and supported by the Project Team's schedule of values and any other substantiating data as required by this Agreement. Certified Payrolls and Lien Waivers for any completed work shall be included with each payment application if not already submitted to City. Payment applications shall include payment requests on account of properly authorized Change Orders or Interim Directed Changes. The City shall pay the amount otherwise due on any payment application, no later than thirty (30) Days after the Project Team has submitted a complete and accurate payment application. The City may deduct from any progress payment amounts as may be retained pursuant to Subparagraph 9.2.4.

9.2.1.1. The Project Team shall be responsible for recording progress on the Project. On a monthly basis, the Project Team shall submit progress reports to the City and, if directed, City's Representative, showing the percentages of completion of various aspects of the Project. This will include a daily log containing a record for each Day of weather, Work in progress, number of workers and classifications on site, equipment on site, problems which might affect progress of the Work, injuries or accidents, and other information required by the City. The Project Team shall be responsible for reviewing all certified payrolls before they are submitted to the City for payment.

9.2.2 STORED MATERIALS AND EQUIPMENT Unless otherwise provided in the contract documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored on-site or off-site including applicable insurance, storage and costs incurred transporting the materials to an off-site including applicable insurance, storage and costs incurred transporting the materials to an off-site storage facility. Approval of payment applications for stored materials and equipment stored off-site shall be conditioned on submission by the Project Team of bills of sale and proof of required insurance, or such other procedures satisfactory to the City to establish the proper valuation of the stored materials and equipment, the City's title to such materials and equipment, and to otherwise protect the City's interests therein, including transportation to the Worksite.

### 9.2.3 LIEN WAIVERS AND LIENS

9.2.3.1 PARTIAL LIEN WAIVERS AND AFFIDAVITS As a prerequisite for payment, the Project Team shall provide partial lien waivers, in the amount of the application for payment and signed settlements of claims and affidavits of compliance from its Subcontractors and Material Suppliers for the completed Work. Such waivers shall be conditional upon payment. In no event shall the Project Team be required to sign an unconditional waiver of lien or claim, either partial or final, prior to receiving payment or in an amount in excess of what it has been paid.

9.2.3.2 RESPONSIBILITY FOR LIENS If City has made payments in the time required by this Article 19, the Project Team shall, within thirty (30) Days after filing, cause the removal of any liens filed against the premises or public improvement fund by any party or parties performing labor or services or supplying materials in connection with the Work. If the Project Team fails to take such action on a lien, the City may cause the lien to be removed at the Project Team's expense, including bond costs and reasonable attorneys' fees. This Clause shall not apply if there is a dispute pursuant to Article 12 relating to the subject matter of the lien.

9.2.4 RETAINAGE From each progress payment made prior to Substantial Completion, the City may retain five percent (5 %), of the amount otherwise due after deduction of any amounts as provided in Paragraph 9.3 and in no event shall such percentage exceed any applicable statutory requirements. If the City chooses to use this retainage provision, then:

9.2.4.1 after the Work is fifty percent (50%) complete, the City shall pay Project Team half of all retainage then held and thereafter shall withhold additional retainage at half the previous rate and upon substantial completion shall pay the Project Team the Full amount of all retainage then held;

9.2.4.2.2 the City may, in its sole discretion, reduce the amount to be retained at any time;

9.2.4.3.3 the City may release retainage on that portion of the Work a Subcontractor has completed in whole or in part, and which the City has accepted;

9.2.4.4 In lieu of retainage, the Project Team may furnish a retention bond or other security interest, acceptable to the City, to be held by the City.

9.2.4.5 Notwithstanding any other provision in this Agreement, the Project Team's Fee, general conditions costs including personnel, insurance, bonds, taxes, and costs of permits, fees, testing, inspections and similar items paid by the Project Team, self-performed work and materials costs, shall not be subject to retainage.

9.2.4.6 Notwithstanding the foregoing, upon mutual agreement by City and Project Team, payment in full may be made to those Subcontractors whose Work is fully completed during the early stages of the Project, or any retained amounts reduced with respect to Subcontractors at such times as the parties may mutually agree, which agreement will not be unreasonably withheld. Agreement to any such reduction in retained amounts will not constitute a waiver of or otherwise prejudice the City's right to subsequently reinstate full retainage as to that Subcontractor should circumstances justify such action in the City's sole judgment.

9.3 ADJUSTMENT OF PROJECT TEAM'S PAYMENT APPLICATION The City may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect the City from loss or damage based upon the following, to the extent that the Project Team is responsible under the Agreement:

9.3.1 the Project Team's repeated failure to perform the Work as required by the Contract Documents;

9.3.2 loss or damage arising out of or relating to this Agreement and caused by the Project Team to the City or Others to whom the City may be liable;

9.3.3 the Project Team's failure to properly pay Subcontractors and Material Suppliers following receipt of such payment from the City;

9.3.4 Defective Work not corrected in a timely fashion;

9.3.5 reasonable evidence of delay in performance of the Work such that the Work will not be completed by the Dates of Substantial or Final Completion; and

9.3.6 reasonable evidence demonstrating that the unpaid balance of the GMP is insufficient to fund the cost to complete the Work.

9.3.7 third-party claims involving the Project Team or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the Project Team furnishes the City with adequate security in the form of a surety bond, evidence of insurance, letter of credit or other collateral or commitment sufficient to discharge such claims if established.

No later than twenty one (21) Days after receipt of an application for payment, the City shall give written notice to the Project Team, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by the Project Team in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

9.4 ACCEPTANCE OF WORK Neither the City's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents.

9.5 PAYMENT DELAY If for any reason not the fault of the Project Team the Project Team does not receive a progress payment from the City within thirty (30) Days after the time such payment is due as defined in Subparagraph 9.2.1 , then the Project Team, upon giving seven (7) Days' written notice to the City, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to the Project Team has been received, including interest from the date payment was due. The GMP and Dates of Substantial or Final Completion shall be equitably adjusted by a Change Order for reasonable cost and delay resulting from shutdown, delay and start-up plus interest.

#### 9.6 SUBSTANTIAL COMPLETION

9.6.1 The Project Team shall notify the City when it considers Substantial Completion of the Work or a designated portion to have been achieved. The City shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or utilized for its intended use by the City without excessive interference in completing any remaining unfinished Work by the Project Team. If the City determines that the Work or designated portion has not reached Substantial Completion, the City shall promptly compile a list of items to be completed or corrected so the City may occupy or utilize the Work or designated portion for its intended use. The Project Team shall promptly complete all items on the list.

9.6.2 When Substantial Completion of the Work or a designated portion is achieved, the Project Team shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, and the respective responsibilities of the City and Project Team for

interim items such as security, maintenance, utilities, insurance and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by the Project Team to the City, and if directed, to its Architect/Engineer for the City's written acceptance of responsibilities assigned in the Certificate.

9.6.3 Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

9.6.4 Upon Substantial Completion, the City shall pay to the Project Team the remaining retainage held by the City for the Work that is Substantially Complete less a sum equal to two percent (2%) of the total project cost plus one hundred fifty percent (150%) of the estimated cost of completing or correcting remaining items on that part of the Work, as agreed to by the City and Project Team as necessary to achieve Final Completion. Uncompleted items shall be completed by the Project Team in a mutually agreed time frame. The City shall pay the Project Team monthly the amount retained for unfinished items as each item is completed.

#### 9.7 PARTIAL OCCUPANCY OR USE

9.7.1 The City may occupy or use completed or partially completed portions of the Work when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) consent to the occupancy or use, and (c) public authorities authorize the occupancy or use. The Project Team shall not unreasonably withhold consent to partial occupancy or use. City shall not unreasonably refuse to accept partial occupancy.

#### 9.8 FINAL COMPLETION AND FINAL PAYMENT

9.8.1 Upon notification from the Project Team that the Work is complete and ready for final inspection and acceptance, the City shall promptly conduct an inspection to determine if the Work has been completed and is acceptable under the Contract Documents.

9.8.2 When the Work is complete, the Project Team shall prepare for the City's acceptance a final application for payment stating that to the best of the Project Team's knowledge, and based on the City's inspections, the Work has reached final completion in accordance with the Contract Documents.

9.8.3 Final payment of the balance of the GMP shall be made to the Project Team within thirty (30) Days after the Project Team has submitted an application for final payment, including submissions required under Subparagraph 9.8.4, and a Certificate of Final Completion has been executed by the City and Project Team.

9.8.4 Final payment shall be due on the Project Team's submission of the following to the City:



9.8.4.1 as-built drawings, manuals, copies of warranties and all other close-out documents required by the Contract Documents;

9.8.4.2 release of any liens as set forth in Section 8.2.3.2, conditioned on final payment being received; and

9.8.4.3 consent of any surety if required.

9.8.4.4 any outstanding submissions as described in this Agreement.

9.8.4 If, after Substantial Completion of the Work, the Final Completion of a portion of the Work is materially delayed through no fault of the Project Team, the City shall pay the balance due for portion(s) of the Work fully completed. If the remaining contract balance for Work not fully completed and accepted is less than the retained amount prior to payment, the Project Team shall submit to the City the written consent of any surety to payment of the balance due for portions of the Work that are fully completed and accepted. Such payment shall not constitute a waiver of claims, but otherwise shall be governed by Paragraph 9.8.

9.8.5 Claims not reserved in writing with the making of final payment shall be waived except for claims relating to liens or similar encumbrances, and warranties for latent defects.

9.8.6 ACCEPTANCE OF FINAL PAYMENT Unless the Project Team provides written identification of unsettled claims with an application for final payment, its acceptance of final payment constitutes a waiver of such claims.

9.9 LATE PAYMENT Payments due but unpaid shall bear interest from the date payment is due at the rate of 1.5% per month, compounded monthly.

## **ARTICLE 10. INDEMNITY, INSURANCE, WAIVERS AND BONDS**

### **10.1 INDEMNITY**

10.1.1 To the fullest extent permitted by law, the Project Team shall indemnify and hold harmless the City, City's officers, directors, members, consultants and employees, (the Indemnities) from all claims for bodily injury and property damage, other than to the Work itself and other property insured under Subparagraph 11.3, including reasonable attorneys' fees, costs and expenses, that may arise from the performance of the Work, but only to the extent caused by the negligent acts or omissions of the Project Team, Subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. The Project Team shall be entitled to reimbursement of any defense costs paid above Project Team's percentage of liability for the underlying claim to the extent provided for under Subparagraph 10.1.2.

10.1.2 To the fullest extent permitted by law, the City shall indemnify and hold harmless the Project Team, its officers, directors, members, consultants, and employees, Subcontractors or

anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured under Subparagraph 10.4.1, that may arise from the Project or the performance of work or services by City or Others to the extent of the negligence attributed to such acts or omissions by City or Others or by anyone for whose acts any of them may be liable. The Project Team shall be entitled to reimbursement of any defense costs paid above Project Team's percentage of liability for the underlying claim to the extent provided for under Subparagraph 10.1.1.

10.1.3 NO LIMITATION ON LIABILITY In any and all claims against the Indemnities by any employee of the Project Team or City, anyone directly or indirectly employed by the Project Team or City or anyone for whose acts they may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Project Team or City under workers' compensation acts, disability benefit acts or other employee benefit acts.

## 10.2 INSURANCE

10.2.1 Prior to the start of the Work, the Project Team shall procure and maintain in force Workers Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, contractual liability, and broad form property damage. If requested, the Project Team shall provide the City with certificates of the insurance coverages required.

The Project Team's Employers' Liability, Business Automobile Liability and Commercial General Liability policies, as required in this Subparagraph 10.2.1, shall be written with the following limits of liability:

### 10.2.1.1 Employers' Liability

- a. \$1,000,000 Bodily Injury by Accident Each Accident
- b. \$1,000,000 Bodily Injury by Disease Policy Limit
- c. \$1,000,000 Bodily Injury by Disease Each Employee

### 10.2.1.2 Business Automobile Liability Insurance

- a. \$1,000,000 Each Accident

### 10.2.1.3 Commercial General Liability Insurance

- a. \$2,000,000 Each Occurrence

- b. \$3,000,000 General Aggregate
- c. \$1,000,000 Products/Completed Operations Aggregate
- d. \$1,000,000 Personal and Advertising Injury Limit

10.2.2 Employers' Liability, Business Automobile Liability and Commercial General Liability coverages required under Subparagraph 10.3.1 may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by Excess or Umbrella Liability policies.

10.2.3 The Project Team shall maintain in effect all insurance coverage required under Subparagraph 10.2.1 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located during performance of the Work. If the Project Team fails to obtain or maintain any insurance coverage required under this Agreement, the City may purchase such coverage and charge the expense to the Project Team, or terminate this Agreement.

10.2.4 The certificates of insurance required under Subparagraph 10.2.1 shall contain a provision that the coverages afforded under the policies will not be cancelled or allowed to expire until at least thirty Days prior written notice has been given to the City. The Project Team shall maintain completed operations liability insurance for one year after Substantial Completion of the Work. Prior to commencement of the Work, Project Team shall furnish the City with certificates evidencing the required coverages.

### 10.3 PROPERTY INSURANCE

10.3.1 Before the start of the Work, the Project Team shall obtain and maintain a Builder's Risk Policy upon the entire Work for the full cost of replacement at the time of loss. This insurance shall also name the City, Subcontractors and Sub-subcontractors and Material Suppliers as insureds. This insurance shall be written as a Builder's Risk Policy or equivalent form to cover all risks of physical loss to the Work, and shall insure including, but not limited to, against the perils of fire, lightning, explosion, windstorm, and hail, smoke,, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse however caused. The City shall be solely responsible for any deductible amounts or coinsurance penalties. This policy shall provide for a waiver of subrogation in favor of the City, Project Team, Subcontractors, Subsubcontractors and Material Suppliers. This insurance shall remain in effect until Substantial Completion of the Work. Partial occupancy or use of the Work shall not commence until the City has secured the consent of the insurance company or companies providing the coverage required in this Subparagraph 10.3.1. Prior to commencement of the Work, the Project Team shall provide an insurance certificate for such insurance obtained in compliance with this Subparagraph

10.3.2 City and Project Team waive all rights against each other and their respective employees, agents, contractors, subcontractors and sub-subcontractors, and the Architect/Engineer, for damages caused by fire or other loss if the peril is insured in whole or in part by property insurance except such rights as they may have to the proceeds of such insurance. The City or Project Team, as appropriate, shall require the Others, Subcontractors, Sub-subcontractors, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. If required by the terms of the policies, the policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification (including if the loss was caused by that person's or entity's negligence), contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

#### 10.4 CITY'S INSURANCE

10.4.1 The City shall either self-insure or obtain and maintain its own liability insurance for protection against claims arising out of the performance of this Agreement, including without limitation, loss of use and claims, losses and expenses arising out of the City's errors or omissions.

10.5 ROYALTIES, PATENTS AND COPYRIGHTS The Project Team shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Project Team and incorporated in the Work. The Project Team shall indemnify and hold the City harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The City agrees to indemnify and hold the Project Team harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods or systems specified by the City.

#### 10.6 BONDS

10.6.1 Performance and Payment Bonds are required of the Project Team. Such bonds shall be issued by a surety admitted in the State of Missouri and must be acceptable to the City. The penal sum of the bonds shall be 100% of the GMP. Any increase in the GMP that exceeds 10% in the aggregate shall require a rider to the Bonds increasing penal sums accordingly. Up to such 10% amount, the penal sum of the bond shall remain equal to 100% of the original GMP. The Project Team shall endeavor to keep its surety advised of changes potentially impacting the GMP and Contract Time, though the Project Team shall require that its surety waives any requirement to be notified of any alteration or extension of time within the scope of the initial Agreement. The Project Team's payment bond for the Project shall be made to the City for review and copying by the Subcontractor. The City's acceptance shall not be reasonably withheld.

10.7 PROFESSIONAL LIABILITY INSURANCE To the extent the Project Team is required to procure design services under this agreement, in accordance with Paragraph 2.1.6, the Project Team shall require the architects or engineers to obtain professional liability insurance for claims arising from the negligent performance of professional services under this Agreement, with a company reasonably satisfactory to the City, including coverage for all professional liability caused by any of the architects' or engineers' consultants, written for not less than \$1,000,000 per claim. The deductible shall be paid by the architect or engineer.

## **ARTICLE 11. SUSPENSION, NOTICE TO CURE AND TERMINATION OF THE AGREEMENT**

### 11.1 SUSPENSION BY CITY FOR CONVENIENCE

11.1.1 CITY SUSPENSION. Should the City order the Project Team in writing to suspend, delay, or interrupt the performance of the Work for such period of time as may be determined to be appropriate for the convenience of the City and not due to any act or omission of the Project Team or any person or entity for whose acts or omissions the Project Team may be liable, then the Project Team shall immediately suspend, delay or interrupt that portion of the Work as ordered by the City. The GMP and the Dates of Substantial or Final Completion shall be equitably adjusted by Change Document for the cost and delay resulting from any such suspension.

11.1.2 Any action taken by the City that is permitted by any other provision of the Contract Documents and that results in a suspension of part or all of the Work does not constitute a suspension of Work under this Paragraph 11.1.

11.2 NOTICE TO CURE A DEFAULT If the Project Team persistently refuses or fails to supply enough properly skilled workers, proper materials, or equipment, to maintain the approved Schedule of the Work in accordance with Article 5, or fails to make prompt payment to its workers, Subcontractors or Material Suppliers, disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, the Project Team may be deemed in default. If the Project Team fails within seven (7) Days after receipt of written notification to commence and continue satisfactory correction of such default with diligence and promptness, then the City shall give the Project Team a second notice to correct the default within a three (3) Day period. If the Project Team fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, the City without prejudice to any other rights or remedies may:

11.2.1 supply workers, equipment and other facilities as the City deems necessary for the satisfactory correction of the default and charge the cost to the Project Team, who shall be liable for the payment of same including reasonable overhead, profit and attorneys' fees;

11.2.2 contract with Others to perform such part of the Work as the City determines shall provide the most expeditious correction of the default, and charge the cost to the Project Team; who shall be liable for the payment of same including reasonable overhead, profit and attorneys' fees;

11.2.3 withhold payment due the Project Team in accordance with Paragraph 9.3; and

11.2.4 in the event of an emergency affecting the safety of persons or property, immediately commence and continue satisfactory correction of such default as provided in Subparagraphs 11.2.1 and 11.2.2 without first giving written notice to the Project Team, but shall give prompt written notice of such action to the Project Team following commencement of the action.

### 11.3 CITY'S RIGHT TO TERMINATE FOR DEFAULT

11.3.1 TERMINATION BY City FOR DEFAULT If, within seven (7) Days of receipt of a notice to cure pursuant to Paragraph 11.2, the Project Team fails to commence and satisfactorily continue correction of the default set forth in the notice to cure, the City may notify the Project Team that it intends to terminate this Agreement for default absent appropriate corrective action within fourteen additional Days. After the expiration of the additional fourteen-day (14) period, the City may terminate this Agreement by written notice absent appropriate corrective action. Termination for default is in addition to any other remedies available to City under Paragraph 11.2. If the City's cost arising out of the Project Team's failure to cure, including the cost of completing the Work and reasonable attorney fees, exceeds the unpaid GMP, the Project Team shall be liable to the City for such excess costs. If the City's costs are less than the unpaid GMP the City shall pay the difference to the Project Team. In the event the City exercises its rights under this Paragraph, upon the request of the Project Team the City shall furnish to the Project Team a detailed accounting of the cost incurred by the City.

11.3.2 If the City or Others perform Work under this Paragraph 11.3, the City shall have the right to take and use any materials, supplies and equipment belonging to the Project Team and located at the Worksite for the purpose of completing any remaining Work. Immediately upon completion of the Work, any remaining materials, supplies or equipment not consumed or incorporated in the Work shall be returned to the Project Team in substantially the same condition as when they were taken, reasonable wear and tear excepted.

11.3.3 If the Project Team files a petition under the Bankruptcy Code, this Agreement shall terminate if the Project Team or the Project Team's trustee rejects the Agreement or, if there has been a default, the Project Team is unable to give adequate assurance that the Project Team will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

11.3.4 The City shall make reasonable efforts to mitigate damages arising from Project Team's default, and shall promptly invoice the Project Team for all amounts due pursuant to Paragraph 11.2 and 11.3.

#### 11.4 TERMINATION BY CITY FOR CONVENIENCE

11.4.1 Upon written notice to the Project Team, the City may, without cause, terminate this Agreement. The Project Team shall immediately stop the Work, follow the City's instructions regarding shutdown and termination procedures, and strive to minimize any further costs.

11.4.2 If the City terminates this Agreement pursuant to this Paragraph 11.4, the Project Team shall be paid:

11.4.2.1 for the Work performed to date including overhead and profit;

11.4.2.2 for all demobilization costs and costs incurred as a result of the termination but not including overhead or profit on work not performed;

11.4.3 If the City terminates this Agreement pursuant to Paragraphs 11.3 or 11.4, the Project Team shall:

11.4.3.1 execute and deliver to the City all papers and take all action required to assign, transfer and vest in the City the rights of the Project Team to all materials, supplies and equipment for which payment has or will be made in accordance with the Contract Documents and all subcontracts, orders and commitments which have been made in accordance with the Contract Documents;

11.4.3.2 exert reasonable efforts to reduce to a minimum the City's liability for subcontracts, orders and commitments that have not been fulfilled at the time of the termination;

11.4.3.3 cancel any subcontracts, orders and commitments as the City directs; and

11.4.3.4 sell at prices approved by the City any materials, supplies and equipment as the City directs, with all proceeds paid or credited to the City.

#### 11.5 PROJECT TEAM'S RIGHT TO TERMINATE

11.5.1 Upon seven (7) Days' written notice to the City, the Project Team may terminate this Agreement if the Work has been stopped for a thirty (30) Day period through no fault of the Project Team for any of the following reasons:

11.5.1.1 under court order or order of other governmental authorities having jurisdiction;

11.5.1.2 as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the Project Team, materials are not available; or

11.5.1.3 suspension by City for convenience pursuant to Paragraph 11.1.

11.5.2 In addition, upon seven (7) Days' written notice to the City, the Project Team may terminate the Agreement if the City:

11.5.2.1 assigns this Agreement over the Project Team's reasonable objection, or

11.5.2.3 fails to pay the Project Team in accordance with this Agreement and the Project Team has complied with Paragraph 9.6,

11.5.2.4 otherwise materially breaches this Agreement.

11.5.3 Upon termination by the Project Team in accordance with Paragraph 11.5, the Project Team shall be entitled to recover from the City payment for all Work executed and for any proven loss, cost or expense in connection with the Work, including all demobilization costs plus reasonable overhead and profit on Work not performed and general conditions costs.

11.6 OBLIGATIONS ARISING BEFORE TERMINATION Even after termination pursuant to Article 11, the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred or obligations arising before the termination date.

## **ARTICLE 12. DISPUTE RESOLUTION**

12.1 WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, the Project Team shall continue the Work and maintain the Schedule of the Work during any dispute resolution proceedings. If the Project Team continues to perform, the City shall continue to make payments in accordance with this Agreement.

12.2 DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of the Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) business Days from the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute resolution procedures selected herein.

12.3 MEDIATION If direct discussions pursuant to Paragraph 12.2 do not result in resolution of the matter, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association, or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within thirty (30)



business Days following the procedure outlined in Section 12.2 and shall conclude 15 Days thereafter. Either Party may terminate the mediation at any time after the first session, but the decision to terminate shall be delivered in person by the terminating Party to the non-terminating Party and to the mediator. The costs of the mediation shall be shared equally by the Parties.

**12.4 BINDING DISPUTE RESOLUTION** If the matter remains unresolved after submission of the matter to a mitigation procedure or to mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected herein by litigation in the 16<sup>th</sup> Judicial Circuit of the State of Missouri.

**12.4.1** The costs of any binding dispute resolution procedure shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

**12.5 MULTIPARTY PROCEEDING** The Parties agree that all Parties necessary to resolve a claim shall be Parties to the same dispute resolution proceeding. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution procedures.

## **ARTICLE 13. MISCELLANEOUS PROVISIONS**

**13.1 ASSIGNMENT** Neither the City nor the Project Team shall assign their interest in this Agreement without the written consent of the other except as to the assignment of proceeds. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns and legal representatives.

**13.2 GOVERNING LAW** This Agreement shall be governed by the law of the State of Missouri.

**13.2.1** Project Team agrees to perform all services in accordance with all applicable federal, state, and local laws, codes, ordinances, rules, regulations, orders, and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project, or Site, or any Services.

**13.3 SEVERABILITY** The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

**13.4 NO WAIVER OF PERFORMANCE** The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance or any other term, covenant, condition or right.

**13.5 TITLES AND GROUPINGS** The titles given to the articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose. The grouping of the articles in this Agreement and of the City's specifications under the various headings is solely for

the purpose of convenient organization and in no event shall the grouping of provisions, the use of paragraphs or the use of headings be construed to limit or alter the meaning of any provisions.

13.6 RIGHTS AND REMEDIES The Parties' rights, liabilities, responsibilities and remedies with respect to this Agreement, whether in contract, tort, negligence or otherwise, shall be exclusively those expressly set forth in this Agreement.

## **ARTICLE 14. CONTRACT DOCUMENTS**

14.1 The Contract Documents in existence at the time of execution of this Agreement are as follows:

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### **14.2 INTERPRETATION OF CONTRACT DOCUMENTS**

14.2.1 The drawings and specifications are complementary. If Work is shown only on one but not on the other, the Project Team shall perform the Work as though fully described on both consistent with the Contract Documents.

14.2.2 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings or specifications, the Project Team shall immediately submit the matter to the City for clarification. The City's clarifications are final and binding on all Parties, subject to an equitable adjustment in Dates of Substantial or Final Completion or Price pursuant to Article 8 or dispute resolution in accordance with Article 12.

14.2.3 Where figures are given, they shall be preferred to scaled dimensions.

14.2.4 Any terms that have well-known technical or trade meanings, unless otherwise specifically defined in this Agreement, shall be interpreted in accordance with their well-known meanings.

14.2.5 In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) the Agreement; (c) subject to Subparagraph 14.2.2, the drawings, specifications and addenda issued prior to the execution of this Agreement; (d) approved submittals; (e) information furnished by the City pursuant to Paragraph 3.3; (f) other documents listed in this Agreement. Among all the Contract Documents, the term or provision that is most specific or includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered to be a conflict or inconsistency. If any provision of this Agreement conflicts with or is inconsistent with any other provision of other Contract Documents, the provision of this Agreement governs, unless the other provision specifically refers to the provision it supersedes and replaces in this Agreement.

IN WITNESS WHEREOF, CITY and PROJECT TEAM, by and through their authorized officers, have made and executed this AGREEMENT.

**CITY**

**PROJECT TEAM**

By \_\_\_\_\_

By: \_\_\_\_\_

Zachary Walker, City Manager

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Approved as to form:

\_\_\_\_\_

City Counselor