



*Note – This meeting may be transmitted via Facebook Live on the City of Tonganoxie page

Honorable Jason K. Ward, Mayor

Council Members

David Bennett

Rocky Himpel

Curtis Oroke

Kara Reed

Loralee Stevens

Open Regular Meeting – 7:00 p.m.

I. Pledge of Allegiance

II. Approval of Minutes – Regular meeting dated September 17, 2018

III. Consent Agenda

- a) Review bill payments

IV. Open Agenda

Members of the public are welcome to use this time to comment about any matter relating to City business. The comments that are discussed under Open Agenda may or may not be acted upon by the Council during this meeting. In order to speak during open agenda, you must sign up with your name and address with the city clerk or designee **before the meeting**. Comments will be limited to 3 minutes. Please wait to be recognized by the Mayor and **state your name and address** for the record.

V. Old Business

VI. New Business

- a) Resolution 10-18-01: Authorizing Execution of a Design Build Agreement between the City of Tonganoxie and J.E. Dunn Construction Company
- b) Resolution 10-18-02: First Amendment to the Memorandum of Understanding between the City of Tonganoxie and Tonganoxie Public Library Board
- c) Presentation by the Alliance Against Family Violence
- d) Ordinance 1448: An Ordinance Approving and Accepting a Permanent Utility Easement from Evans Family Trust
- e) Ordinance 1449: An Ordinance Approving and Accepting a Permanent Utility Easement from Ryan Hutton
- f) Resolution 10-18-03: Authorizing Asphalt Rejuvenation Contract with Proseal, Inc.
- g) Consider approval of request to purchase 2017 Dodge Charger in an amount not to exceed \$20,000
- h) City Manager Agenda
 - 1. Water Usage Update
 - 2. Library Construction Status
- i) City Attorney Agenda

j) Mayor Pro Tem Agenda

k) City Council Agenda

l) Mayor Agenda

1. Executive session for consultation with an attorney for the public body or agency which would be deemed privileged in the attorney-client relationship

VII. Information & Communications (No Action Required)

VIII. Adjourn

CITY COUNCIL MEETING DRAFT MINUTES

September 17, 2018

7:00 p.m. Regular Meeting



Open Regular Meeting – 7:00 p.m.

I. PLEDGE OF ALLEGIANCE

- Mayor Ward opened the meeting at 7:00 p.m.
- Roll Call: Council members present were Mayor Ward, Mr. Himpel, Ms. Reed, Ms. Stevens, Mr. Oroke, and Mr. Bennett. City Manager George Brajkovic, City Attorney Shannon Marcano, Public Works Director Kent Heskett, Fire Chief John Zimbelman, Police Chief Greg Lawson, and Assistant City Manager Dan Porter were also in attendance.
- Mayor Ward led the Pledge of Allegiance.

II. APPROVAL OF MINUTES – REGULAR MEETING DATED SEPTEMBER 4, 2018

- Ms. Reed made a motion to approve the minutes from the September 4, 2018 City Council meeting.
- Mr. Bennett seconded.
- Vote of all ayes, motion carried.

III. CONSENT AGENDA

- a) Review bill payments
- Mr. Bennett made a motion to approve the consent agenda.
- Mr. Oroke Seconded.
- Vote of all ayes, motion carried.

IV. OPEN AGENDA

Members of the public are welcome to use this time to comment about any matter relating to City business. The comments that are discussed under Open Agenda may or may not be acted upon by the Council during this meeting. In order to speak during open agenda, you must sign up with your name and address with the city clerk or designee **before the meeting**. Comments will be limited to 3 minutes. Please wait to be recognized by the Mayor and **state your name and address** for the record.

- Cecelia Pruitt, 21800 Parallel Road, addressed the Council and offered suggestions of how to market the City of Tonganoxie's development opportunities and be proactive.
- Mr. Brajkovic described two recent programs described as leads by LCDC, the relocation of National Institute of Food and Agriculture (NIFA) and the Economic Research Services (ERS) operations and the site review for a pet food processing facility.
- Mayor Ward described the LCDC as a marketing arm who serves as the City's initial contact for potential investors in the community.
- Alice DeMoss, 20241 State Avenue, described her own past negative experience with odors associated with a pet food company.

- Mr. Brajkovic commented that contact with LCDC regarding a pet food processing plant has included the City indicating that due to proximity with neighbors any odor emanating from a facility would not be acceptable for the site.
- Mary Gergich, 21610 Kansas Avenue, addressed the Council with concerns about any pet food company coming in with odor issues.

V. OLD BUSINESS

- No Items

VI. NEW BUSINESS

a) Resolution 09-18-01: Auto Aid I-70 Response Plan

- Mr. Brajkovic introduced the item.
- Mr. Zimbelman described the proposed agreement, which is in place and being participated in across Leavenworth County. The City is only responsible for mile markers 206-213, and would still have the authority to not respond to an automatic aid situation.
- **Ms. Reed made a motion to approve Resolution 09-18-01.**
- **Ms. Stevens seconded.**
- **Vote of all ayes, motion carried.**

b) Consider approval of CMB License for C-Store Operations, LLC d/b/a/ Fastrax 1

- Mr. Brajkovic introduced the item.
- **Ms. Stevens made a motion to approve a CMB License for C-Store Operations, LLC d/b/a Fastrax 1.**
- **Ms. Reed seconded.**
- **Vote of all ayes, motion carried.**

c) Consider approval of waiver of Sanitary Sewer Tap Fee for Casey's General Store

- Mr. Brajkovic introduced the item.
- **Mr. Oroke made a motion to deny a waiver of Sanitary Sewer Tap Fee for Casey's General Store.**
- **Mr. Bennett seconded.**
- **Vote of all ayes, motion carried.**

d) Consider approval of donation of family season pool pass for St. John's School Benefit Auction

- Mr. Brajkovic introduced the item.
- **Mr. Himpel made a motion to approve the donation of a family season pool pass for St. John's School's benefit auction.**
- **Ms. Reed seconded.**
- **Vote of all ayes, motion carried.**

e) Consider approval of salt purchase in the maximum amount of \$6,710

- Mr. Brajkovic introduced the item.
- **Ms. Stevens made a motion to authorize a salt purchase in the maximum amount of \$6,710.**
- **Mr. Oroke seconded.**
- **Vote of all ayes, motion carried.**

f) City Manager Agenda

1. City Council Vacancy Advertisement Update

- Mr. Brajkovic presented the contents of a memo included in the packet to the City Council.
- Mr. Oroke commented that he didn't believe it was enough time for the advertisement period.
- Ms. Reed commented that she believed the publication of her impending resignation gave sufficient notice to the community about the opportunity.
- Mr. Himpel commented that October 26 would be a good end of the application process.
- Mayor Ward thanked Ms. Reed for her dedicated record of service to the City through the City Council and commented that he supported posting an earlier deadline.
- **Mr. Himpel made a motion to direct staff to advertise the City Council vacancy with a deadline of October 26, review the applications at the City Council meeting on November 5, and plan to appoint someone to fill the vacancy on the Council meetings held on November 19 or December 3.**
- **Mr. Bennett seconded.**
- **Roll Call requested by the Mayor, Vote of 4 ayes, 1 nay (Reed), motion carried.**

g) City Attorney Agenda

h) Mayor Pro Tem Agenda

i) City Council Agenda

- Mr. Oroke commented about the progress of the Library committee and expressed hope that the project could move forward at a more rapid pace and at the current level of funding allocated by the City Council.
- Mr. Brajkovic noted that a draft design-build document with JE Dunn is close to completion, but additional verification of the provision of furniture, furnishing, and equipment necessary to ensure the facility would be turn-key was still being finalized.
- Mr. Himpel asked that the design-build contract be provided as part of the agenda packet earlier than usual.
- Ms. Stevens notified the Council about an upcoming trick or treating event downtown on Friday, October 26 organized by the Tonganoxie Business Association.
- Mr. Porter described the planning efforts going into the Mayor's Tree Lighting event, which is scheduled for November 17, 2018.
- Mayor Ward welcomed County Commissioner Doug Smith and Kansas Representative Jim Karleskint, who were in attendance at the meeting.

j) Mayor Agenda

VII. INFORMATION & COMMUNICATIONS (NO ACTION REQUIRED)

VIII. ADJOURN

- **Ms. Reed made a motion to adjourn the meeting.**
- **Mr. Oroke seconded the motion.**
- **Vote of all ayes, motion carried.**
- **Meeting adjourned at 7:59 p.m.**

Respectfully submitted,



Dan Porter, Assistant City Manager



City of Tonganoxie, KS

My Check Report

By Check Number

Date Range: 09/14/2018 - 09/27/2018

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
Bank Code: AP Bank-AP Bank						
0189	FIRST STATE BANK & TRUST	09/14/2018	Regular	0.00	494.52	45392
0542	QUILL	09/14/2018	Regular	0.00	374.45	45393
0001	911 CUSTOM	09/20/2018	Regular	0.00	6,771.77	45394
0826	ANNA WOLF	09/20/2018	Regular	0.00	775.00	45395
0051	BG CONSULTANTS INC	09/20/2018	Regular	0.00	924.00	45396
0056	BLUE CROSS AND BLUE SHIELD	09/20/2018	Regular	0.00	28,880.78	45397
0059	BOARD OF PUBLIC UTIL.-WATER	09/20/2018	Regular	0.00	21,317.91	45398
0111	COLEMAN EQUIPMENT INC	09/20/2018	Regular	0.00	51.78	45399
0113	COMMERCIAL AQUATIC SERVICES	09/20/2018	Regular	0.00	124.16	45400
0196	FORTILINE WATERWORKS	09/20/2018	Regular	0.00	1,600.00	45401
0813	FREESTATE ELECTRIC COOPERATIVE	09/20/2018	Regular	0.00	1,426.00	45402
0224	HAMM QUARRIES & LANDFILL	09/20/2018	Regular	0.00	682.00	45403
0229	HAYNES EQUIPMENT CO	09/20/2018	Regular	0.00	2,410.00	45404
0360	KEY EQUIPMENT & SUPPLY CO	09/20/2018	Regular	0.00	116.08	45405
0415	LITTLE JOE'S ASPHALT, INC.	09/20/2018	Regular	0.00	248,896.32	45406
0857	MIDCONTINENT COMMUNICATIONS	09/20/2018	Regular	0.00	915.40	45407
1003	NAVY BRAND MFG CO	09/20/2018	Regular	0.00	242.46	45408
0959	OFFICE OF THE KANSAS STATE TREASURER	09/20/2018	Regular	0.00	1,109.50	45409
0491	OLATHE WINWATER WORKS	09/20/2018	Regular	0.00	870.00	45410
0500	OREILLY AUTO PARTS	09/20/2018	Regular	0.00	375.27	45411
0522	POLYDYNE INC	09/20/2018	Regular	0.00	1,161.00	45412
0555	RICOH USA, INC.	09/20/2018	Regular	0.00	149.40	45413
0578	SECURITY BENEFIT	09/20/2018	Regular	0.00	338.33	45414
0579	SECURITY BENEFIT - 457	09/20/2018	Regular	0.00	2,556.92	45415
0621	THE LIFEGUARD STORE, INC.	09/20/2018	Regular	0.00	12.86	45416
0775	WINTERGREEN CORPORATION	09/20/2018	Regular	0.00	2,024.96	45417

Bank Code AP Bank Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	31	26	0.00	324,600.87
Manual Checks	0	0	0.00	0.00
Voided Checks	0	0	0.00	0.00
Bank Drafts	0	0	0.00	0.00
EFT's	0	0	0.00	0.00
	31	26	0.00	324,600.87

All Bank Codes Check Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	31	26	0.00	324,600.87
Manual Checks	0	0	0.00	0.00
Voided Checks	0	0	0.00	0.00
Bank Drafts	0	0	0.00	0.00
EFT's	0	0	0.00	0.00
	31	26	0.00	324,600.87

Fund Summary

Fund	Name	Period	Amount
998	Gen Fund-Pooled Cash	9/2018	324,600.87
			324,600.87



Office of the City Manager
AGENDA STATEMENT

DATE: October 1, 2018
To: Honorable Mayor Jason K. Ward and Members of the City Council
FROM: George Brajkovic, City Manager
SUBJECT: Resolution 10-18-01, Authorizing Design Build Agreement with JE Dunn for the construction of a new Public Library

DISCUSSION:

In June of 2017, the Tonganoxie Public Library issued a Request for Qualifications/Proposals for the services of a design build team to construct a new Public Library. That notice was sent to 26 firms, with 8 proposals, short listed 3 teams for interviews, and selected JE Dunn. Although I participated in the final interviews, this process was not led by City, so it was reviewed by both Bond Counsel prior to issuing bonds for the project, and by the City Attorney to ensure that the process achieved the City-Code described competitive process; both reviews affirmed the appropriateness of the process.

The Design-Build process is a method to deliver a project in which the design and construction services are contracted by a single entity, known as the design-build contractor. JE Dunn is extremely qualified in this method of delivery, and City staff is pleased to be engaged with them.

The Agreement submitted for your consideration accounts for two phases to the project: 1) Pre-construction and Design, and 2) Construction. On December 18, 2017, the City Council authorized \$3.75M, via Resolution 12-17-04, for the acquisition and construction of the facility. The site was acquired by the City on August 10, 2018, for the sum of \$195,149. Additional costs including geotechnical testing, Topo Survey, and Special Inspections during construction are estimated to be \$46,000. This would leave an available balance of \$3,508,851 for the Design-build process; of which \$386,000 is estimated for pre-construction and design, and \$3,122,851 for construction.

Additionally, the Furniture, Fixtures and Equipment (FF&E) for this project are being addressed in an amendment to the MOU with the Tonganoxie Public Library.

BUDGET IMPACT:

Bonds have been issued for this project, with an authorized total cost of \$3,750,000.

ACTION NEEDED:

Make a motion to Adopt Resolution 10-18-01, approving and authorizing A Design Build Agreement between JE Dunn and the City of Tonganoxie.

ATTACHMENTS:

Resolution 10-18-01
Draft Design Build Agreement

cc: Dan Porter, Assistant City Manager

RESOLUTION NO. 10-18-01

A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF THAT CERTAIN AGREEMENT BETWEEN THE CITY OF TONGANOXIE, KANSAS, AND DESIGN-BUILDER, J.E. DUNN FOR THE TONGANOXIE PUBLIC LIBRARY PROJECT

WHEREAS, the City of Tonganoxie, Kansas, and J.E. Dunn wish to enter into that certain Agreement between City of Tonganoxie, Kansas, and Design-Builder, regarding the design and construction of a new Tonganoxie Public Library, attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF TONGANOXIE, KANSAS:

Section 1. That the Governing Body approves and hereby authorizes the Mayor to execute that certain Agreement between City of Tonganoxie, Kansas, and Design-Builder, regarding the design and construction of a new Tonganoxie Public Library, attached hereto as Exhibit A.

Section 2. That this resolution shall become effective upon passage.

ADOPTED by the Governing Body this 1st day of October, 2018.

SIGNED by the Mayor this 1st day of October, 2018.

SEAL

Jason K. Ward, Mayor

ATTEST:

Patricia C. Hagg, City Clerk

APPROVED AS TO FORM:

Shannon M. Marcano, City Attorney

EXHIBIT A
Agreement between City of Tonganoxie, Kansas, and Design-Builder

CITY OF TONGANOXIE, KANSAS
AGREEMENT BETWEEN
CITY OF TONGANOXIE, KANSAS AND DESIGN-BUILDER

**Tonganoxie Public Library
J.E. Dunn Project Number 17069300**

City of Tonganoxie, Kansas
9001 W. 62nd Street
Tonganoxie, Kansas 66202

Design Builder:
J.E. Dunn Construction Company
1001 Locust St.
Kansas City, MO 64106

DESIGN-BUILD AGREEMENT

THIS AGREEMENT is made and entered into this Eigtheenth day of September, 2018, by and between the City of Tonganoxie, Kansas (the "City"), and J.E. Dunn Construction Company (the "Design-Builder") (collectively the "Parties").

This Guaranteed Maximum Price Agreement shall govern all Work undertaken by Design-Builder on the Project. Such work will consist of both a Pre-Construction Pharse and a Construction Phase. The Construction Phase will be incorporated into this Agreement and the cumulative sum of which shall not exceed the Guaranteed Maximum Price, nor shall the schedule exceed the date of Substantial Completion listed below.

1.0 Preconstruction Phase Services:

1.1 Timing

The Design-Builder shall complete Preconstruction Phase Services including submittal of the GMP by no later than December 31, 2018.

1.2 Payment

Payment for Design-Builder's Design and Preconstruction Phase Work shall be in accordance with Sections 2.1, 2.2 and Article 4 of the General Conditions. Design-Builder's compensation shall be calculated as follows:

1.2.1 A lump sum payment of Three Hundred Eighty-Six Thousand Dollars (\$386,000).

2.0 Construction Phase Services

2.1 Timing: Design-Builder's Construction Phase Work shall achieve Substantial Completion of the entire Work not later than the date stated in the applicable Design-Build Amendment subject to adjustments of this Substantial Completion Date as provided in the Contract Documents.

2.2 Payment: The Design-Builder's Fee which will be incorporated into each GMP Proposal shall be three and three fourths percent (3.75%) of the estimated Cost of the Work.

3.0 Liquidated Damages

Pursuant to Section 8.29 of the General Conditions, Design-Builder and City expressly agree that time is of the essence in this Contract, and that if Design-Builder fails to complete the Construction Phase Work as required herein, the City may incur damages as a result of such delay. The Parties further agree that such damages are difficult to calculate with exact precision at the time of the signing of this Agreement. Therefore, the parties agree to liquidate such damages, and agree that the amount listed below is a fair and accurate estimation of the damages the City is likely to incur as the result of any delay.

These liquidated damages are to be only compensatory in nature and shall not be interpreted to be a penalty for late completion of the Work.

3.1 Construction Phase:

Design-Builder's failure to achieve the Substantial Completion by the date stated in the applicable Design-Build Amendment (subject to the adjustments of the Contract Time as provided in the Contract Documents), will result in the application of liquidated damages at the following rates: An amount to be set forth in the Design-Build Amendment per calendar day after the contractually required date of Substantial Completion, provided the total amount of liquidated damages for which Design-Builder may be held liable under this Agreement shall not exceed in the aggregate an amount equal to fifty percent (50%) of Design-Builder's Fee.

4.0 Designated Representatives

Each party shall designate a representative (the "Designated Representative") who shall have express authority to bind their respective party with respect to all matters related to the Project.

4.1 The City's Designated Representative shall be:

George Brajkovic
City Manager
City of Tonganoxie, Kansas
9001 W. 62nd Street
Tonganoxie, Kansas 66202

4.2 The Design-Builder's Designated Representative shall be:

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

5.0 Shared Savings Provision: This Project will not be subject to a Shared Savings Provision. To the extent the Contract Sum is less than the GMP, after the Project has reached final completion, this savings will accrue solely to the benefit of Owner.

6.0 Contract Documents:

This Design-build Agreement consists of this Agreement between Owner and Design-Builder along with the following attached exhibits:

Exhibit A General Conditions

Exhibit B City's Program

- Exhibit C Design-Builder's Hourly Rates
- Exhibit D Affidavit of Partial Payment and Conditional Release and Waiver of Claims (form)
- Exhibit E Bill of Sale (form)
- Exhibit F Bailment Agreement (form)
- Exhibit G Affidavit of Final Payment and Conditional Release and Waiver of Claims (form)
- Exhibit H Insurance Requirements
- Exhibit I Performance Bond (form)
- Exhibit J Labor and Material Payment Bond (form)
- Exhibit K Consent of Surety (Form)
- Exhibit L General Conditions Distribution Matrix

CITY OF TONGANOXIE, KANSAS

JE Dunn Construction Company

By _____
 Mayor

By _____
 Print _____
 Title _____

ATTEST:

 City Clerk

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

GENERAL CONDITIONS
(Exhibit "A")

ARTICLE 1 GENERAL PROVISIONS

1.1 Definitions

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

- 1.1.1 "Acceptance" means agreement by the City to put the Work into use, but no acceptance by the City shall, at any time, constitute approval or acceptance of Work that is not in accordance with the terms of this Agreement or the Contract Documents, unless such acceptance is specifically described in writing as applying to Work that is not in accordance with this Agreement or the Contract Documents.
- 1.1.2 "Applicable Laws" means all laws, statutes, ordinances, codes, regulations, rules, orders and resolutions of all national, administrative, state, local, municipal, and other governing bodies relating to the Project or to the performance of the Services or the Work.
- 1.1.3 "Application for Payment" means a written request for compensation for Work performed submitted per City-issued form.
- 1.1.4 "Approve" shall mean review by the City, which may be given solely for the benefit of the City but no approval by the City shall, at any time, constitute approval or acceptance of Work that is not in accordance with the terms of this Agreement or the Contract Documents.
- 1.1.5 "Certificate of Substantial Completion" means written certification from the City which establishes the date of Substantial Completion, responsibilities of the City and the Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and fixes the time within which the Design-Builder shall finish all items on the list accompanying the Certificate.
- 1.1.6 "Change Order" means a written order issued after the Agreement is executed by which the City and the Design-Builder agree to construct additional items of Work, to modify the Contract Time, or to change the character and scope of Work shown in the Drawings and Specifications. Change Orders must be signed by the City and the Design-Builder to be binding.
- 1.1.7 "City" means the City of Tonganoxie, Kansas, or its designated representatives.
- 1.1.8 "Construction Phase" means the phase of the Project commencing upon completion of the Pre-Construction Phase, or upon award of the first Subcontract related to construction of the Project, whichever occurs first, and ending upon Final Completion. The parties acknowledge that the Design Phase and the Construction Phase may overlap.

- 1.1.9 "Construction Documents" means documents prepared by licensed design professionals under the employ and control of Design-Builder issued to contractors and subcontractors for construction of the Work, including but not limited to the Plans and Specifications.
- 1.1.10 "Consultant" or "Designer" or "Design Consultant" shall mean such persons or firms retained or employed by Design-Builder who shall be appropriately licensed and responsible for generating the Design and Construction Documents and performing design services in accordance with the Contract Documents.
- 1.1.11 "Contingency" shall mean a sum of money, equal to four percent (4%) of the estimated Cost of the Work and shall be included within the Guaranteed Maximum Price, available to Design-Builder for Design-Builder's exclusive use for unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents. Contingency funds shall not be used in an effort to correct defective, or otherwise nonconforming, Work when such fault by virtue of the Design-Builder's non-compliance with the Contract Documents. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration (c) escalation of materials; (d) correction of defective, damaged or nonconforming Work, or design errors or omissions, if such damage, defect, or nonconformity is caused by a factor other than those within the control of Design-Builder or those for whom Design-Builder is responsible; (e) Subcontractor defaults; or (f) those events that result in an extension of the Contract Time but do not result in an increase in the GMP. Unless agreed to by the Parties in writing, the Contingency is not available to Owner for any reason, including, but not limited to changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents. Except in the case of emergency or other extraordinary circumstance, Design-Builder shall provide Owner advance notice of all anticipated charges against the Contingency, and shall provide Owner a monthly accounting of the Contingency. Design-Builder agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency. Upon completion of the Project, any remaining Contingency sums shall be returned to the City.
- 1.1.12 "Contract Documents" shall consist of the Agreement between the City and the Design-Builder (sometimes referred to herein as the "Agreement"), including all addenda issued prior to execution of the Agreement; the Design-Builder's Proposal and written modifications to the Proposal accepted by the City; Design and Construction Documents at such time as they are incorporated into the Agreement; Changes to the Work effected by proper Change Orders, if any; and any other documents attached to this Agreement as Exhibits, or subsequently made part of the Agreement by written agreement of the parties.
- 1.1.13 "Contract Sum" means the Cost of the Work plus Design-Builder's Fee, subject to the GMP.
- 1.1.14 "Contract Time" means the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

- 1.1.15 "Cost of the Work" means costs necessarily incurred by the Design-Builder in the proper performance of the Work as defined in Article 6 herein.
- 1.1.16 "Defective Work" means Work not conforming to the Contract Documents and substitutions not properly approved and authorized.
- 1.1.17 "Design-Builder" means the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative. The Design-Builder's representative is authorized to act on the Design-Builder's behalf with respect to the Project.
- 1.1.18 "Design Build Amendment" means any change order which includes a GMP Proposal for a particular Sub-Phase of the Work.
- 1.1.19 "Design-Builder's Fee" means an amount of money added to the Cost of the Work in accordance with Section 2.2 of the Agreement, which includes all costs not otherwise itemized by line item on the Schedule of Values or specifically chargeable to this Project, whether occurring on site or at Design-Builder's home office, and includes the entire mark-up payable to Design-Builder for any Work performed.
- 1.1.20 "Design-Documents" means plans, specifications and other documents prepared by licensed design professionals, reflecting the design developed by Design-Builder and accepted by the City. The Design Documents shall include Schematic and Design Development documents, sketches and other refinements Design-Builder shall produce until a final design is generated which is acceptable to the City.
- 1.1.21 "Drawings" means the graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.
- 1.1.22 "Final Certificate for Payment" means written certification from the City stating that to the best of the City's knowledge, information and belief, and on the basis of the City's on-site visits and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Design-Builder and noted in the final Certificate is due and payable.
- 1.1.23 "Guaranteed Maximum Price for the Project" or "GMP" as subsequently established in a Change Order and as adjusted in any subsequent Change Orders is equal to the sum of the estimated Cost of the Work, Design-Builder's Fee and Contingency. The Design-Builder guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price, as adjusted per the terms of this Agreement. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Design-Builder shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.
- 1.1.24 "Life Cycle Costs" means the sum of all costs of the Project over its useful life, and includes the cost of design, construction, acquisition, operation, maintenance and salvage/resale value.

- 1.1.25 "Preconstruction Phase" shall mean the phase during which the Design-Builder shall perform Value Engineering and constructability services in working with the City, and generate the Design Documents and Construction Documents. Preliminary scheduling and cost estimate activities shall also take place during this phase.
- 1.1.26 "Program" shall mean the City's overall land use, facilities use and other considerations of which the Project and the Work are a part. The City's Program shall be described on **Exhibit "B"** hereto.
- 1.1.27 "Project" shall mean the overall construction program of the City, which may include work by contractors other than Design-Builder.
- 1.1.28 "Schedule of Values" means a document accurately and in good faith allocating all of the budgeted Cost of the Work and Contingency among the various portions of the Work, using Design-Builder's best efforts to avoid disproportionate allocation of funds to early completing items.
- 1.1.29 "Shop Drawings" are drawings, diagrams, schedules, and other data specially prepared for the Work by the Design-Builder or a Subcontractor, Sub-Subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.
- 1.1.30 "Specifications" means that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards, and workmanship for the Work, and performance of related services.
- 1.1.31 "Subcontractor" means an individual, firm, or corporation having a direct contract with the Design-Builder or with another subcontractor for the performance or supply of any part of the Work required by the Contract Documents or the supply of any materials, services, equipment, or installation services required by the Contract Documents.
- 1.1.32 "Substantial Completion or Substantially Complete" means the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the City can occupy or utilize the Work, or that portion thereof, for its intended use and a temporary certificate of occupancy and any other permits and orders necessary for occupancy have been issued by the proper governmental authority, unless such temporary certificate of occupancy or permits are not issued for reasons beyond Design-Builder's control. Warranties called for by this Agreement or by the Contract Documents shall commence on the Substantial Completion date.
- 1.1.33 "Sub-Phase" means a distinct segment of the Construction Phase Work.
- 1.1.34 "Value Engineering" means the detailed analysis of systems, equipment, materials, services, facilities, and supplies required by the Contract Documents for the purpose of achieving the desired and essential functions of the Project at the lowest Life Cycle Cost consistent with required and necessary performance, reliability, quality, and safety. Value Engineering is to be performed during the Preconstruction Phase as a part of the services required to reach a GMP acceptable to all parties.

1.1.35 "Warranties" means warranties obtained from the Design-Builder, Subcontractors, and all other sub-subcontractors and vendors pursuant to this Agreement covering the Work performed or materials furnished to the Project or any portion thereof by the Design-Builder.

1.1.36 "Work" means the work to be done necessary to complete the design and construction required of the Design-Builder by the Contract Documents, and includes all design, construction, labor, materials, tools, equipment, services, and transportation necessary in accordance with the Contract Documents to fulfill the Design-Builder's obligations.

1.2 Relationship of Parties

The Design-Builder accepts the relationship of trust and confidence established with the City by this Agreement, and covenants with the City to furnish the Design-Builder's reasonable skill and judgment and to cooperate in furthering the interests of the City. The Contract Documents shall not be construed to create a contractual relationship of any kind (a) between Design-Builder's Design Consultants and the City, (b) between the City and a Subcontractor of Design-Builder, or (c) between any persons or entities other than the City and the Design-Builder, including but not limited to any consultant retained by the City to prepare or review the Work, nor shall anything contained in the Contract Documents create any obligation on the part of the City to pay to or to see to the payment of any sums due any Subcontractor or supplier or Designer. It is understood that the Work shall be carried out and the Work shall be constructed fully in accordance with the Contract Documents.

ARTICLE 2 DESIGN-BUILDER'S RESPONSIBILITIES

The City has established a budget of _____ for the Work, which does not include a budget for furniture, fixtures, and equipment ("FF&E) of \$300,298, and Design-Builder shall use good faith efforts to establish a GMP in accordance with the City's budget, provided that the City recognizes reductions in the scope of Work may be necessary to achieve this goal. Unless otherwise directed by the City in writing, the budget for FF&E will not be increased, and City and Design-Builder acknowledge that (i) the budget for FF&E may be insufficient to fully furnish the Project and (ii) to the extent additional FF&E is needed to fully furnish the Project, such furnishing is not provided for within this Agreement and shall be the responsibility of others. The Design-Builder shall furnish construction administration, management services, Value Engineering services, and constructability services to perform the Project in an expeditious and economical manner consistent with the interests of the City. The Design-Builder shall act as consultant to the City in the Preconstruction Phase and as the equivalent of a general contractor during the Construction Phase. The Design-Builder shall perform the Work in accordance with the Contract Documents and as reasonably inferable therefrom. If the City and the Design-Builder agree, the Construction Phase may commence before the Preconstruction Phases are completed, in which case both phases may proceed concurrently.

2.1 Design Services and Responsibilities

2.1.1 When Applicable Law requires that services be performed by licensed design professionals, the Design-Builder shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions. Design-Builder is not a licensed or authorized architect or engineer and Owner acknowledges that it is contracting with Design-Builder to merely furnish, but not to perform, design services. Owner further acknowledges that

Design-Builder will subcontract all design services and such services shall be performed by licensed design professionals, duly authorized and registered to render such services in the state in which the Project is located. With this understanding, Owner waives any defense to an action by Design-Builder to enforce this Agreement which defense relates to Design-Builder's authorization to render design services in the state in which the Project is located.

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

2.1.8 Design-Builder shall obtain from each of the Design-Builder's professionals and furnish to the City certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services provided by such professionals (i) are consistent with the Project set forth in the Contract Documents, except to the extent specifically identified in such certificate, (ii) comply with applicable professional practice standards, and (iii) comply with Applicable Laws, ordinances, codes, rules, and regulations governing the design of the Project; and (b) that the City and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications. For the purposes of this Section 2.1.8, stamped drawings shall be deemed appropriate certification.

2.2 Preconstruction Phase Services

2.2.1 Preliminary Evaluation

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

2.2.2 Consultation

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

2.2.3 Preliminary Project Schedule

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

2.2.4 Phased Construction

The Design-Builder shall make recommendations to the City regarding the phased issuance of Drawings and Specifications to facilitate phased construction

of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

2.2.5 Preliminary Cost Estimates

2.2.5.1 When the City has sufficiently identified the Project requirements and the Design-Builder has prepared other basic design criteria, the Design-Builder shall prepare, for the approval of the City, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

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

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

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

2.2.6 Long Lead Time Items

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

2.3 Guaranteed Maximum Price Proposal and Contract Time

2.3.1 When the Drawings and Specifications are sufficiently complete, the Design-Builder shall propose a GMP, which shall be the sum of the estimated Cost of Work, Design-Builder's Fee and the Contingency. The GMP shall be composed of the Design-Builder's Cost of the Work (including the General Conditions Lump Sum as described in Section 6.1.8 herein), plus Design-Builder's Fee and Contingency as identified in the Contract Documents.

2.3.2 At such time the Design-Builder proposes its GMP, the City may, but is not obligated, to enter into a Design-Build Amendment committing the parties to go forward with Construction. If the City declines to execute a Design-Build

Amendment for whatever reason, the City's sole obligation to the Design-Builder shall be payment for the Pre-Construction Services as stated in Article 4.1, below, and payment for any other costs incurred that the City authorized in accordance with Section 2.4.4

- 2.3.3 . Should the City elect to execute a Design-Build Amendment, this sum shall be considered to be part of the total Cost of the Work.
- 2.3.4 If the Drawings and Specifications for a certain Sub-Phase are intended to be complete, but subsequent Sub-Phases may not be finished at the time a Sub-Phase GMP proposal is prepared, the Design-Builder shall provide in the GMP for further development of the Drawings and Specifications that are consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds, and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.
- 2.3.5 At the time of the final GMP amendment to the Agreement, a Substantial Completion date and Final Completion date shall be agreed upon, if different than that stated in Section 2.1 of the Agreement.

2.4 Basis of GMP

- 2.4.1 The Design-Builder shall include with each GMP proposal a written statement of its basis, which shall include:
 - 2.4.1.1 A list of the Drawings and Specifications, including all addenda thereto and the conditions of the Agreement, which were used in the preparation of the GMP proposal.
 - 2.4.1.2 A list of allowances and a statement of their basis.
 - 2.4.1.3 A list of the clarifications and assumptions made by the Design-Builder in the preparation of the GMP proposal to supplement the information contained in the Drawings and Specifications.
 - 2.4.1.4 The proposed GMP, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the fee that comprise the GMP.
 - 2.4.1.5 The date of Substantial Completion upon which the proposed GMP is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.
 - 2.4.1.6 Detailed construction schedule.
- 2.4.2 The Design-Builder shall meet with the City to review each GMP proposal and the written statement of its basis. In the event that the City discovers any inconsistencies or inaccuracies in the information presented, the City shall promptly notify the Design-Builder, who shall make appropriate adjustments to the GMP proposal.

- 2.4.3 Unless the City accepts a GMP proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Design-Builder, that GMP proposal shall not be effective without written acceptance by the Design-Builder.
- 2.4.4 Prior to the City's acceptance of one of the Design-Builder's GMP proposals and issuance of a Notice to Proceed, the Design-Builder shall not incur any costs to be reimbursed as part of the Cost of the Work, except as the City may specifically authorize in writing.
- 2.4.5 Upon acceptance by the City of a GMP proposal, the GMP and its basis shall be set forth in a Design-Build Amendment. That GMP shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.
- 2.4.6 The Design-Builder shall promptly notify the City if previously-issued Drawings and Specifications are inconsistent with the assumptions and clarifications contained in a Design-Build Amendment. After consultation with the City, the Design-Builder shall revise any previously issued Drawings and Specifications to the extent necessary to reflect agreed upon assumptions and clarifications contained in the Design-Build Amendment.

2.5 Construction Phase

2.5.1 General

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

2.5.2 Administration

The Design-Builder shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall review such bids with the City. All subcontracts and purchase orders for major equipment shall contain a provision assigning the rights of Design-Builder to the City in the event of termination of this Agreement by the City. Design-Builder shall retain the right to self-perform concrete, including foundations, curbs, paving and sidewalks, precast, steel, masonry, and carpentry work. Self-performed work shall be charged as a Cost of the Work on a lump sum basis and Design-Builder shall be required to bid such self-performed Work and Design-Builder's bids for such Work shall be submitted directly to the City.

2.5.2.1 A list of approved/prequalified bidders will be established between the City and the Design-Builder prior to commencement of bidding. The City shall have the right to approve or reject proposed subcontractors, but any approval by the City of a subcontractor shall not be deemed to be a representation by the City that any particular firm is more qualified than another firm nor result in any liability to the City.

2.5.2.2 With prior consent of the City, mechanical, plumbing, and electrical Subcontractors may be selected during the Preconstruction Phase

based upon a qualification-based selection process administered by the Design-Builder. The selection process will evaluate experience with similar types of projects/systems and an evaluation of proposed fee structures. Subcontractors may enter into an “open book” GMP contract but only with the approval of both the City and Design-Builder.

- 2.5.2.3 If a GMP has been established and a specific bidder among those whose bids are delivered by the Design-Builder to the City; (a) is recommended to the City by the Design-Builder; (b) is qualified to perform that portion of the Work; and (c) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the City requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the contract time and the GMP by the difference between the bid of the person or entity recommended to the City by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the City. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has reasonable objection.
- 2.5.2.4 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Article 7 and shall not be awarded on the basis of cost plus a fee without the prior consent of the City.
- 2.5.2.5 The Design-Builder shall schedule and conduct meetings at which the City and the Design-Builder, and appropriate Subcontractors can discuss the status of the Work. The Design-Builder shall prepare and promptly distribute meeting minutes.
- 2.5.2.6 Promptly after execution of a Design-Build Amendment, the Design-Builder shall prepare a schedule for that Sub-Phase of the Work, as necessary. This schedule must be prepared in accordance with Article 2.5.3, including the City’s occupancy requirements.
- 2.5.2.7 The Design-Builder shall provide monthly written reports to the City on the progress of each Phase of the Work. The Design-Builder shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the City may reasonably require. The log shall be available to the City.
- 2.5.2.8 The Design-Builder shall develop a system of cost control for the Work which is subject to review and approval by the City as a condition of executing this contract, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Design-Builder shall identify variances between actual and estimated costs and report the variances to the City at regular intervals.

2.5.3 Construction Schedules

The Design-Builder shall, concurrent with the execution of a Design-Build Amendment, shall furnish the City with a detailed Critical Path Method (CPM) schedule as set forth below, giving the dates on which it expects to start and to complete separate portions of the particular Sub-Phase of the Work. No Work shall begin until said schedule is reviewed by the City. The City reserves the right to adjust the Design-Builder's schedule to coordinate with any other projects in the same area, subject to Design-Builder's ability to get an equitable adjustment in its GMP and time for completion. Once established, the schedule shall be strictly adhered to unless agreed to in writing by all parties or modified by an extension or extensions of time as hereinafter provided. The Schedule of Values shall not be front-end loaded so as to disproportionately shift payment for later-performed Work to earlier periods of time.

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

2.5.3.2 Schedule Requirements:

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

2.5.3.2.2 The CPM schedule shall include, construction tasks, Shop Drawing submittal and approval process, material and equipment ordering and delivery, submittal of as-built drawings, clean up and punch-list, inspection coordination activities, utility relocation, final inspection and certificate of completion, and final payment. Submittals to the City of initial and monthly CPM schedule charts shall include three (3) sets of all reports as outlined below. Plots shall be color, blue-line, printed or photocopied prints and, if segmentally generated, fully assembled. Highlight the critical path when the critical path is not clearly defined.

Submittal activities shall be scheduled to allow sufficient time for materials and equipment to be procured and installed, even if the submittal is unacceptable and resubmittal to the Designers is required. The CPM schedule shall include anticipated delays, such as weather delays.

2.5.3.2.3 The Design-Builder shall submit the initial schedule, complete revisions, and periodic reports in an electronic format to be agreed upon between the Parties. This schedule shall include the completed network program consisting of GANTT chart and mathematical analysis within ten (10) days of receiving the executed Design-Build Amendment. Allow five (5) days for the City to comment. The Design-Builder will participate in the City's review and evaluation of submitted network diagrams and mathematical analysis of diagrams. Resubmit revisions necessary due to review within five (5) days after the review. The Design-Builder and major Subcontractors shall review the network CPM schedule before final submittal.

2.5.3.2.4 The Design-Builder shall submit the schedule of submittal activities extracted from the master schedule within ten (10) days after receipt of a Design-Build Amendment. During the preparation period, the Design-Builder shall review this information with the City.

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

2.5.3.2.5.1 Initial/submittal schedule shall include a list of responsible contractors and suppliers, task description, duration, start date, end date, latest start date, latest end date, total slack or float time in calendar days and current schedule bar in Gantt view.

2.5.3.2.5.2 Progress schedule updates shall include a list of responsible contractors and suppliers, task description, duration, actual start date, actual finish date, percentage completion, remaining duration in calendar days and current schedule bar in Gantt view.

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

2.5.3.2.6.1 Sheet size of diagram shall be 11 by 17 inches minimum and time scaled in months as the major timescale and weeks as the minor timescale unless approved otherwise.

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

- 1) Project Title
- 2) Project Number
- 3) Design-Builder's Business Name
- 4) Date of Submittal and Revision (the date shown must clearly show the current preparation date and separately the revision date of the current schedule - this is a hard date entered and not an auto or status date)
- 5) Submit a separate Legend Page of Symbols and Abbreviations as applicable.

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

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

2.5.5 Schedule Changes and Updates: At a minimum the Design-Builder shall update and submit the CPM Schedule for review monthly. Monthly submittal of the CPM schedule to the City is required prior to payment for Work completed. Activities added to the CPM schedule shall be submitted by the Design-Builder on schedule charts. It is the City's intent that the Project be managed and operated according to the CPM schedule.

Once the CPM schedule is received, the City shall identify any concerns which it shall transmit to Design-Builder for its consideration. Such adjustments shall not impact the contracted completion date. Requests for time extensions are addressed in Section 5.4 Change Orders.

ARTICLE 3 CITY'S RESPONSIBILITIES

3.1 Information and Services

- 3.1.1 The City has provided full information in a timely manner regarding the requirements of the Project, on **Exhibit "B"** including a program which sets forth the City's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.
- 3.1.2 The City has established an overall budget for the Project, based on consultation with the Design-Builder, which includes contingencies for changes in the Work and other costs which are the responsibility of the City, contained in **Exhibit "B"**. Design-Builder commits to using good faith efforts to develop a complete design and construct the Project within this Budget.
- 3.1.3 The City shall endeavor to promote harmony and cooperation among the City, the Design-Builder, and other persons or entities employed by the City for the Project.
- 3.1.4 Prior to commencement of the Work, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

3.2 Structural and Environmental Tests, Surveys, and Reports

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

- 3.2.1 Reports, surveys, Drawings, and tests concerning the conditions of the site which are required by Applicable Law or which City has in its possession.
- 3.2.2 Surveys describing physical characteristics (including a geotechnical report), legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services

and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a Project benchmark.

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

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

3.3 City's Designated Representative

The City's representative designated in Section 4.1 of the Agreement has express authority to bind the City with respect to all matters requiring the City's approval or authorization. This representative shall have the authority to make decisions on behalf of the City concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Design-Builder. Additional representatives may be designated in writing by the City.

ARTICLE 4 COMPENSATION AND COMPLETION DATE FOR DESIGN AND PRECONSTRUCTION PHASE SERVICES

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

4.1 Compensation

4.1.1 For the services described in Sections 2.1 and 2.2 above, the Design-Builder's compensation shall be as described in Section 1.2 of the Agreement.

4.1.2 For modifications to the scope or time required for Preconstruction Phase services, Design-Builder will be compensated at the rates attached in Exhibit C for Design-Builder's personnel engaged on the Project, which rates shall include the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions, and similar contributions and benefits and other costs incurred for such additional services, including, without limitation, additional amounts for costs of Design-Builder's consultants. Such modifications shall be made through a written Change Order or amendment to this Agreement.

4.2 Payments

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

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

4.3 City's Right to Withhold Payment

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

ARTICLE 5 COMPENSATION AND COMPLETION DATE FOR DESIGN-BUILDER'S CONSTRUCTION PHASE PERFORMANCE

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

5.1 Compensation

For the Design-Builder's performance of the Construction Phase Work as described in Article 2 herein, the City shall pay the Design-Builder in current funds the Contract Sum consisting of the Cost of Work, Design-Builder's Fee and that part of the Contingency expended as defined in Article 1 and further clarified in Article 6.

5.2 GMP

Design-Builder agrees that the Contract Sum payable to Design-Builder shall not exceed the GMP provided in the Design-Build Amendment, subject to additions and deductions by changes in the Work as provided in the Contract Documents and approved in writing by the City. Costs which would cause the GMP to be exceeded shall be paid by the Design-Builder without reimbursement by the City. Notwithstanding the foregoing, the GMPs for each Sub-Phase may be rolled into one overall GMP for Design-Builder's entire Work by amendment, at which time there will no longer be individual GMPs for each Sub-Phase.

5.3 Change Orders

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

5.3.1 Except for Work done as a result of an emergency endangering life or property or following Design-Builder's notice of a claim for an increase in the GMP or extension of time and the Design-Builder ultimately prevailing on such claim, no activity resulting in an increase in the GMP or extension of the Construction Schedule shall be performed unless pursuant to the provisions of a Change Order or a written order issued by the City under Section 5.4.2, below.

5.3.2 From time to time the City may issue written orders to the Design-Builder for needed clarifications, modifications, or corrections. Should a difference of opinion arise as to whether the order constitutes extra Work for which additional

compensation or time is due, and the City insists on its performance, the Design-Builder shall proceed with the Work after making a written request for a Change Order, and it shall keep an accurate account of the actual Cost of the Work and schedule impact thereof as provided for in Section 5.4.3, below. The Design-Builder will thereby preserve the right to submit a claim therefore.

- 5.3.3 The value of any change in the Work which results in an addition/deletion to the GMP shall be determined in one or more of the following ways, at the option of the City:
 - A. By agreed adjustment to the GMP.
 - B. By agreed upon unit prices.
 - C. By actual Cost of the Work and Fee for such Work.
- 5.3.4 In order to arrive at the value for any change, the Design-Builder shall credit the City with its projected cost(s), for any Work which was previously included but which has been excluded by any such change.
- 5.3.5 No change in the Work shall entail additional time unless both parties determine that additional time is required and specifically so provides in the Change Order
- 5.3.6 Where extra Work is performed under this Section, the Subcontract Costs (for subcontract work not performed on the basis of a guaranteed maximum price) shall be determined by aggregating the following actual costs:
 - 5.3.6.1 The cost of all workers, such as foremen, timekeepers, mechanics, and laborers, for the time actually employed in the performance of the extra Work;
 - 5.3.6.2 All materials and supplies;
 - 5.3.6.3 Trucks and rentals on machinery and equipment for the time actually employed or used in the performance of said extra Work;
 - 5.3.6.4 Any transportation charges necessarily incurred in connection with said equipment authorized by the City for use on said Work and similar operating expenses;
 - 5.3.6.5 All incidental expenses incurred as a direct result of such extra Work, including payroll taxes and a ratable proportion of premiums on construction bonds and, where the premiums therefore are based on payroll costs, public liability and property damage, worker's compensation, and other insurance required by the Contract Documents; provided, however, the subcontractor must enumerate and justify any such claimed incidental expenses; and provided, further, that without in any way limiting the right to challenge any individual costs claimed by the subcontractor, incidental costs shall **not** include:
 - 5.3.6.5.1 Payroll costs and other compensation of the subcontractor's officers, executives, principals (of

partnership and sole proprietorships), general managers, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by the subcontractor whether at the site or in the subcontractor's principal or a branch office for general administration of the Work unless specifically agreed to by the City - all of which are to be considered administrative costs covered by the subcontractor's overhead and profit unless the Contract Time is extended, and there is evidence that additional work was performed, not as a result of the subcontractor's failure to perform the Work in a timely manner.

5.3.6.5.2 Expenses of the subcontractor's principal and branch offices other than the subcontractor's office at the site.

5.3.6.5.3 Any part of the subcontractor's capital expenses, including interest on the subcontractor's capital employed for the Work and charges against the subcontractor for delinquent payments.

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

5.3.6.5.5 Other overhead of general expense costs of any kind and the costs of any item not specifically and expressly agreed to by the City.

5.3.7 Not used.

5.3.8 No claim for extra Work of any kind will be allowed except as provided herein. If extra Work orders are given in accordance with the provisions of this Agreement, such Work shall be considered a part hereof and subject to each and all of the terms and requirements of this Agreement.

5.3.9 The Design-Builder shall be responsible for notifying its surety(ies) of any modifications to the GMP or schedule, and said surety(ies) shall not seek discharge as a result of any failure on the Design-Builder's part to notify surety(ies).

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

6.1 Costs To Be Reimbursed

Cost of the Work items shall be at rates set forth in this Article 6 and if not set forth in Article 6 then not higher than those customarily paid at the place of the Project except with prior consent of the City. With respect to rates stated in this Agreement, "Costs" shall be defined as Design-Builder's rates as stated in this Article 6 and Exhibit C. Where no rate is stated, "costs" shall be the actual price paid by the Design-Builder. The Cost of

the Work shall include only the items set forth in this Article. General Conditions Costs as defined in Exhibit L (referred to as "Included in DBs GC Services" in Exhibit L) shall be paid on a prorated monthly lump sum basis ("General Conditions Lump Sum"). To the extent any of the costs listed under Section 6.1 and its subsections are included as General Conditions Costs, such costs shall not be separately reimbursed as a Cost of the Work under Article 6. To the extent of a conflict between the terms of Article 6 and Exhibit L, Article 6 shall control, except Exhibit L shall control with respect to the definition of General Conditions Costs.

6.1.1 Labor Costs

- 6.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the City's agreement, at off-site workshops.
- 6.1.1.2 Rates for Design-Builder's supervisory and administrative personnel for that portion of their time attributable to the Project at the rates stated in Exhibit C.
- 6.1.1.3 Not used.
- 6.1.1.4 Costs paid or incurred by the Design-Builder for payroll taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations, and pensions, provided that such costs are based on wages and salaries included in the Cost of Work under Sections 6.1.1.1. Such costs are included in the rates referenced in Section 6.1.1.2.

6.1.2 Subcontract Costs

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

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

- 6.1.3.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.
- 6.1.3.2 Cost of the materials described in Section 6.1.3.1 in excess of those actually installed but required to provide reasonable allowance for waste and spoilage. Unused excess materials, if any, shall be handed over to the City at the completion of the Work or, at the City's option, shall be sold by the Design-Builder; amounts realized, if any, from such sales shall be credited to the City as a deduction from the Cost of Work.

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

- 6.1.4.1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery,

equipment, and hand tools not customarily owned by the construction workers, which are provided by the Design-Builder at the site and fully consumed in the performance of the Work, whether sold to others or retained by the Design-Builder. Cost for items previously used by the Design-Builder shall mean fair market value.

- 6.1.4.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Design-Builder at the site, whether rented from the Design-Builder or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the City's prior approval. Rates and quantities of equipment furnished by Design-Builder or any subcontractor shall be limited to no more than the prevailing local rental rate.
- 6.1.4.3 Cost of removal of debris from site.
- 6.1.4.4 Reproduction costs, costs of telegrams, facsimile transmissions and long distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office.
- 6.1.4.5 That portion of the reasonable travel and subsistence expense of the Design-Builder's personnel incurred while traveling in discharge of duties connected with the Work shall be subject to the City's prior approval.
- 6.1.4.6 Costs related to on-site utilities, not otherwise addressed by the Contract Documents, needed to complete the Project. Upon Final Completion such utility accounts will be transferred to the City.
- 6.1.4.7 With prior approval from City, costs, including transportation, inspection, testing, storage and handling, of material, equipment and supplies incorporated or reasonably used in completing the Work.

6.1.5 Miscellaneous Costs

- 6.1.5.1 Premiums for bonds required by this Agreement or the performance of the Work at the rate of sixty two hundredths of one percent (0.62%) of the estimated Contract Sum; general liability and other liability insurance related to this Agreement, including on-site general liability insurance for enrolled subcontractors, at the rate of 1% of the estimated Contract Sum, subject to annual escalation as agreed to by the Parties; and premiums and any applicable deductibles for builders' risk insurance.
- 6.1.5.2 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work.
- 6.1.5.3 Data processing costs related to the Work.

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

6.1.6 Other Costs

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

6.1.7 Emergencies and Repairs to Damaged or Nonconforming Work

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

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

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

6.1.8 General Conditions Costs Lump Sum as defined in Exhibit L in the amount stated in the Design-Build Amendment.

6.1.9 The costs described in this Section 6.1 shall be included in the Cost of the Work, notwithstanding any provision of the General Conditions or other Contract Documents which may require the Design-Builder to pay such costs, unless such costs are excluded by the provisions of Section 6.2.

6.2 Costs Not To Be Reimbursed

6.2.1 The Cost of Work shall not include:

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

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

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

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

- 6.2.1.5 Rental costs of machinery and equipment, except as specifically provided in Section 6.1.4.2.
- 6.2.1.6 Costs due to negligence of the Design-Builder or to the failure of the Design-Builder to fulfill a specific responsibility to the City set forth in this Agreement.
- 6.2.1.7 Not used.
- 6.2.1.8 Any costs not specifically and expressly described in Section 6.1.
- 6.2.1.9 Costs which would cause the GMP to be exceeded.

6.3 Discounts, Rebates, and Refunds

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

6.4 Accounting Records

The Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the City. The City and the City's accountants shall be afforded access to the Design-Builder's records, books, correspondence, instructions, Drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to this Project, and the Design-Builder shall preserve these for a period of five (5) years after final payment, or for such longer period as may be required by Applicable Law and are subject to audit by the Kansas Department of Revenue. In the event of an audit, the actual costs, including but not limited to salary and benefits of any employee of Design-Builder, shall not be taken into consideration where rates for such equipment, or employee, has been provided for specifically in this Contract. In such an event the rates stated herein shall govern.

ARTICLE 7 PAYMENT APPLICATIONS FOR CONSTRUCTION PHASE SERVICES

7.1 Payments

- 7.1.1 Based upon Applications for Payment submitted to the City by the Design-Builder, the City shall make payments on account of the contract sum to the Design-Builder as provided below and elsewhere in the Contract Documents. With each Application for Payment, Design-Builder shall submit Affidavits of Partial Payment and Release of Claims for itself and its Designer and Subcontractors on the forms attached hereto as **Exhibit "D"**.

- 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month or on a mutually agreed date by the City and the Design-Builder.
- 7.1.3 Concurrent with the first Design-Build Amendment, the Design-Builder shall submit to the City a Schedule of Values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the City may require. This schedule, unless objected to by the City, shall be used only as a basis for the Design-Builder's Applications for Payment and does not constitute approval by the City of the method or performance by the Design-Builder.
- 7.1.4 Payment will be made to the Design-Builder monthly from funds available on the basis of a duly certified estimate of value of all labor and materials delivered on the site and accepted by the City during the preceding month, calculated in proportion to the GMP, but to ensure the proper performance of the Agreement, five percent (5%) of the amount of each estimate will be retained until Substantial Completion and acceptance of Work covered by this Agreement.
- 7.1.5 Each payment made to the Design-Builder shall be on account of the total amount payable to the Design-Builder by or for the City, and all materials and Work covered by the partial payments made shall therefore become the sole property of the City. This provision shall not be construed as relieving the Design-Builder from the responsibility imposed by the Contract Documents for the care and protection of materials and Work upon which payments have been made, for the restoration of any damaged Work, or as a waiver of the right of the City to require the fulfillment of all the terms of the Agreement. Progress payments in respect to materials will be made only for materials delivered on the site and accepted by the City, all calculated in proportion to the GMP.
- 7.1.6 In general, no allowance will be made in estimates for materials on site, or stored at a facility approved by the City, if site is unable to take delivery, and not incorporated in the Work except in case of those items considered by the City to be major items of considerable magnitude, which will be allowed in estimates on the basis of ninety-five percent (95%) of invoices, the value calculated in proportion to the GMP. If the City should elect to pay for materials or equipment prior to their delivery to the Project site and/or incorporation into the Project, Design-Builder shall deliver to the City in exchange for payment a fully executed Bill of Sale, attesting to the City's ownership of such materials or equipment, and a Bailment Agreement, attesting to the proper storage and insurance of such materials and equipment until such time as they are delivered to the site, on the forms attached hereto as **Exhibits "E"** and **"F"** along with color photographs of the materials and equipment in question.
- 7.1.7 The retained percentages herein provided for are to be retained and held for the sole protection and benefit of the City, and no other person, firm or corporation shall have or assert any lien, claim, right or priority therein, thereon or thereto, or be entitled to receive any part thereof, except as herein expressly provided.
- 7.1.8 The City shall require, at intervals as it shall determine and at any time before final payment is made for the Work specified herein, that the Design-Builder furnish the City with written acknowledgments (to the extent of payment made) by all Subcontractors and vendors who have done Work or labor on, or who have

furnished materials for, this Project that they have been fully paid by the Design-Builder for such Work or labor done or materials furnished by them for which payment has been made to Design-Builder by the City. The Design-Builder's failure to furnish said list or to include all such Subcontractors and vendors shall not relieve The Design-Builder or its surety of any obligation assumed under this Agreement, nor shall the City's request for such list create any obligation on the City's part to verify accuracy.

7.1.9 The Design-Builder has accepted this job net of all sales and compensation taxes eligible for exemption under the City's sales/use tax exemption. No Application for Payment shall include any amount for reimbursement of such taxes paid by the Design-Builder resulting from the Design-Builder's failure to use the City's tax exemption certificate for any purchase in connection with the Work. Final payment will not be made to the Design-Builder until the City receives two Project Completion Certifications from the Design-Builder along with a Consent of Surety Company to Final Payment.

7.1.10 The Design-Builder shall be responsible for the return and/or exchange of surplus materials, and all credits for returned or exchanged materials shall be first submitted to the City for approval. Applications for Payment shall reflect any such credits, and the GMP shall be adjusted as necessary to reflect such credits. Unreturnable excess materials shall be turned over to the City, or, at its option, be removed from the Project site by Design-Builder.

7.1.11 The acceptance by the Design-Builder of final payment shall be and shall operate as a release to the City of all claims and all liability to the Design-Builder other than written claims in stated amounts as may be specifically excepted by the Design-Builder for all things done or furnished in connection with this Agreement and for every act and neglect of the City and others relating to or arising out of this Agreement. Any payment, however, final or otherwise, shall not release the Design-Builder or its sureties from any obligations under the Contract Documents, the bonds, or insurance coverages.

7.2 Payments Withheld

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

- .1 Incomplete Work or Defective Work not remedied;
- .2 A reasonable doubt that the Work can be completed for the balance of the Agreement price then unpaid;
- .3 Damage to the City not covered by insurance; or
- .4 A breach of this Agreement.

7.3 Substantial Completion

7.3.1 When the Design-Builder considers the Work, or a portion thereof which the City agrees to accept separately, is Substantially Complete, the Design-Builder shall prepare and submit to the City a comprehensive list of items to be completed or

corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Contract Documents.

- 7.3.2 Upon receipt of the Design-Builder's list, the City will make an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If the City's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Contract Documents so the City can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the City. In such case, the Design-Builder shall then submit a request for another inspection by the City to determine Substantial Completion.
- 7.3.3 When the Work, or designated portion thereof, is Substantially Complete, the Design-Builder will prepare a Certificate of Substantial Completion for signature by the City. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.
- 7.3.4 The Certificate of Substantial Completion shall be submitted to the City and the Design-Builder for their written acceptance of responsibilities assigned to them in such Certificate. As of the date of Substantial Completion, the Owner shall be responsible for security, maintenance, heat, utilities, damage to the Work and insurance. Upon such acceptance and Consent of Surety Company to Final Payment, the City shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.
- 7.3.5 Retainage will be released to Design-Builder within 30 days of Substantial Completion, less 150% of the reasonable value of any Work which is incomplete or not performed in compliance with the Contract Documents.

7.4 Final Completion and Final Payment

- 7.4.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the City will promptly make such inspection. Upon receipt of the Final Certificate of Payment, the City will process the final payment. The Design-Builder's Final Certificate of Payment will constitute a further representation that conditions listed in Section 7.4.2, below, as precedent to the Design-Builder's being entitled to final payment have been fulfilled.
- 7.4.2 Final payment shall not become due until the Design-Builder submits to the City (a) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Design-Builder has been paid have been paid or otherwise satisfied, (b) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the City, (c) a written agreement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (d)

Consent of Surety Company to Final Payment and (e) if required by the City, other data establishing payment or satisfaction of obligations, such as receipts, releases of claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as is attached to this Agreement as **Exhibit "G"**. If a Subcontractor refuses to furnish a release or waiver required by the City, the City is entitled to retain payment in equal amount from subsequent Payment Applications until such waiver is provided.

7.4.3 If, after Substantial Completion of the Work, final completion is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the City shall, upon application by the Design-Builder and without terminating the Agreement, make payment of the balance due for that portion of the Work completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written Consent of Surety Company to Final Payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the City prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims. The making of final payment shall constitute a waiver of claims by the City except those arising from:

7.4.3.1 claims, security interests or encumbrances arising out of the Agreement and unsettled;

7.4.3.2 failure of the Work to comply with the requirements of the Contract Documents; or

7.4.3.3 warranties required by the Contract Documents.

7.4.4 Acceptance of final payment by the Design-Builder, a Subcontractor, or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final acceptance for payment.

ARTICLE 8 GENERAL CONDITIONS

8.1 Extent of Contract

This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated Agreement between the City and the Design-Builder and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Design-Builder.

8.2 Assignment

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

that party shall nevertheless remain legally responsible for all obligations under the Agreement.

8.3 Appointment of Service Agent

KSA 16-113 requires that non-resident contractors appoint an agent for the service of process in Kansas. The executed appointment must then be filed with the Secretary of State, Topeka, Kansas. Any contractor domiciled outside of the State of Kansas must comply with these statutory requirements.

8.4 Non-Discrimination, Affirmative Action, and Sexual Harassment

8.4.1 The Design-Builder agrees that:

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

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

8.4.1.3 If the Design-Builder fails to comply with the manner in which the Design-Builder reports to the Commission in accordance with the provisions of KSA 44-1031 and amendments thereto, the Design-Builder shall be deemed to have breached the Agreement and it may be cancelled, terminated or suspended, in whole or in part, by the City;

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

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

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

8.4.3 The Design-Builder further agrees that it shall abide by the Kansas Age Discrimination In Employment Act (KSA 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other Applicable Laws and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

8.5 Insurance See **Exhibit "H"**

8.6 Bonds and Other Performance Security

The Design-Builder shall provide a Performance Bond, and a Statutory Bond or Labor and Material Payment Bond (forms attached hereto as **Exhibits "I", and "J"**) to be submitted with the first Design-Build Amendment, in the amount of one hundred percent (100%) of the GMP to cover the entire scope of Work including planning, Value Engineering, design, procurement, construction, and completion of the Work, and any other specific performance security that may be indicated in this Agreement. With each bond there shall be filed with the City one copy of "Power of Attorney" certified to include the date of the bonds. For each subsequent Change Order, Design-Builder shall submit a Consent of Surety evidencing agreement to the increased penal sum of the bonds on the form attached as **Exhibit "K"**.

8.7 Indemnity

8.7.1 Definitions

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

8.7.1.1 "The Design-Builder" means and includes the Design-Builder, all of its affiliates and subsidiaries.

8.7.1.2 "Loss" means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim, whether real or spurious, for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of this Agreement whether arising before or after the completion of the Work required hereunder.

8.7.2 The Indemnity

For purposes of this Agreement, and without in any way limiting indemnification obligations that may be set forth elsewhere in the Contract Documents, the Design-Builder hereby agrees to indemnify, defend and hold harmless the City from any and all Loss where Loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence of the Design-Builder, its employees, agents, subcontractors, and suppliers, but only to the extent of Design-Builder's negligence or that of its Design Consultants, Subcontractors and materialmen and their respective servants, agents and employees.

8.7.3 General Limitation

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

8.7.4 Waiver of Statutory Defenses

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

8.8 Contract Documents/Agreement for Design-Build

8.8.1 The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. The expectation of the City is that the Contract Documents shall include all construction, labor, materials, tools, equipment, and transportation necessary for the workmanlike construction of the Work.

8.8.2 If there is any conflict or discrepancy between this Agreement and any other of the Contract Documents, this Agreement shall prevail. This Agreement supersedes all previous agreements and understandings between the parties, which previous agreements and understandings are of no further force and effect.

8.8.3 This Agreement may not be amended or modified except by a written modification executed by both parties.

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

8.9 Defects in the Contract Documents

If the Design-Builder knows that any errors, omissions, discrepancies or inconsistencies (hereinafter "Defects") appear in the Contract Documents provided by the Owner, including, but not limited to, the plans, Specifications and other documents, the Design-Builder shall notify the City in writing of such material Defects, and shall not proceed with Work affected by such defective documents until all such material Defects have been satisfactorily resolved. The Contract Documents shall be appended to all agreements between the Design-Builder and any Subcontractor or any more remote tier Subcontractor, and such Subcontractors and remote tier Subcontractors shall, likewise, notify the Design-Builder in writing of any Defects therein.

8.10 Copies of the Agreement

The Design-Builder shall keep at the Project site and make available to the City, one copy of all Contract Documents for the Work, in good order and legibly marked to reflect actual construction. The Design-Builder shall also maintain at the site all approved samples and a print of all approved Shop Drawings. Such documents, samples, and Shop Drawings, shall be turned over to the City at the completion of the Work if requested by the City and shall be the property of the City.

8.11 Shop Drawings

The Design-Builder shall review for compliance with the Contract Documents and approve and copy to the City only those Shop Drawings, product data, samples and similar submittals required by the Contract Documents and for which review by the City

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

8.12 Concealed Conditions

The Design-Builder understands there may be some variances from information provided by the City, including, for example, soil tests, bore reports, utility locations and other such data and as-built drawings, in the case of renovation of or addition to existing facilities, reflect actual conditions. Should concealed conditions encountered in the performance of the Work below the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated in information provided by the City, or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Agreement, be encountered, Design-Builder shall be entitled to an equitable adjustment in the GMP or time, or both, for any extra Work necessitated thereby as reasonably determined by the City, where such adjustment does not arise due to the fault of Design-Builder. If the City and the Design-Builder cannot agree on an adjustment in the GMP or contract time, the Parties will follow the process outlined in Section 8.34 for Dispute Resolution.

8.13 Permits, Fees, and Notices

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

8.13.2 If the Design-Builder performs Work contrary to Applicable Laws, the Design-Builder shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

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

8.13.4 The Design-Builder shall notify all affected utilities of the Work and coordinate with the utilities to avoid interruption of utility service and damage to utility lines and property. This notice requirement shall also apply as to the owner/operator of any affected underground facility.

8.14 General Administration of the Contract

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

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

8.14.2 The Design-Builder shall be solely responsible for and have complete control and charge of construction means, methods, techniques, sequences, and procedures, and for safety precautions and programs in connection with the Work. The City shall not be responsible for nor have control or charge over the acts or omissions of the Design-Builder, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

8.14.3 If at any time beginning or during the progress of the Work, any part of the Design-Builder's plant or equipment or any of its methods of executing the Work are not in accordance with laws, rules, and regulations governing the safe performance of the Work, the City may order the Design-Builder to increase or improve its facilities or methods, and the Design-Builder shall promptly comply with such orders; but neither compliance with such orders nor failure of the City to issue such orders shall relieve the Design-Builder from its obligations to comply with such laws, rules, and regulations pertaining to jobsite safety.

8.14.4 Any plan or method of Work suggested by the City, to the Design-Builder, but not specified or required, if adopted or followed by the Design-Builder in whole or in part, shall be used at the risk and responsibility of the Design-Builder, and the City will assume no responsibility therefore.

8.14.5 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

8.15 Design-Builder's Employees

8.15.1 The Design-Builder shall at all times enforce strict discipline and good order among its employees and shall not employ on the Work any unfit person or anyone not skilled in the Work assigned to them.

8.15.2 The Design-Builder shall be responsible for compliance with all Applicable Laws including those pertaining to wages, hours and benefits for workers employed to carry out the Work.

8.16 Samples

The Design-Builder shall furnish, for approval, samples if directed by the City or the Contract Documents. The Work shall be in accordance with approved samples.

8.17 Protection of Work and City Property

The Design-Builder shall maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of life, the Work, supplies, materials, and equipment on the Project site not yet incorporated in the Work, the City's property. The Design-Builder shall assume full responsibility for the Work and shall bear any loss and repair any damage at its own cost occasioned by neglect of Design-Builder, accident caused by Design-Builder, vandalism, or natural cause, whether foreseen or unforeseen, during the progress of the Work and until Substantial Completion of the Work is achieved. The Design-Builder shall establish, maintain and enforce all the safety requirements of this Agreement and local law.

8.18 Protection of Property of Others

The Design-Builder shall be solely liable for all damages to the City or the property of the City, to other contractors or other employees of the City, to neighboring premises, or to any private or personal property, due to improper, illegal or negligent conduct of the Design-Builder, its Subcontractors, employees or agents in and about said Work, or in the execution of the Work. The Design-Builder shall be liable to the City for any damages, whether property damage or personal injury, occasioned by the Design-Builder's use of any scaffolding, shoring, apparatus, ways, works, machinery, plant or any other process or thing that is required for the Work.

8.19 Tests and Inspections

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

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

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

8.19.4 If any labor, supplies, materials or equipment are found not to be in accordance with the Contract Documents, the Design-Builder shall at its own expense bear the cost of uncovering such labor, supplies, materials or equipment, the cost of

removing same, as well as the cost of undoing and redoing the work and other work damaged by such nonconforming labor, supplies, materials or equipment.

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

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

8.20 Superintendence and Supervision

8.20.1 The Design-Builder shall provide all necessary supervision to the Work using its best skill, care, judgment, and attention and shall keep on the Work, during its progress, a competent superintendent and any necessary assistants, all satisfactory to the City. The superintendent shall not be changed except with the consent of the City unless the superintendent proves to be unsatisfactory to the Design-Builder and/or ceases to be in its employ; provided however, that the City retains the right to require that the Design-Builder replace the superintendent at any time, such right not to be arbitrarily exercised.

8.20.2 The superintendent shall be fully authorized to act for the Design-Builder and receive whatever orders as may be given for the proper prosecution of the Work or notices in connection therewith. The superintendent shall be available to communicate with the City at all reasonable times, and Design-Builder shall give the City the phone number and email address. The superintendent shall speak such languages as are necessary to be able to effectively communicate with all of Design-Builder's employees and subcontractors.

8.20.3 Use of Subcontractors on portions of the Work shall not relieve the Design-Builder of its obligation to have a competent superintendent directly employed by the Design-Builder on the Work at all times.

8.21 Design-Builder's Office at Site of Work

During the performance of this Agreement, the Design-Builder shall maintain a suitable office at or near the site of the Work which shall be the headquarters of the superintendent authorized to receive Drawings, instruction, or other communications or articles from the City, and any such communication given to said superintendent or delivered at the Design-Builder's office at the site of Work in his/her absence shall be deemed to have been given to the Design-Builder.

8.22 Not used.

8.23 Patent Liability Clause

8.23.1 The Design-Builder agrees to defend any claim, action or suit that may be brought against the City, its Governing Body, officers, agents or employees for infringement of any Letters Patent of the United States arising out of the performance of this Agreement or out of the use or disposal by or for the account of the City of supplies furnished or construction Work performed hereunder, and also to indemnify and hold harmless the City, its Governing Body, officers, agents, and employees against all judgments, decrees, damages, costs and expenses recovered against it or them or sustained by it or them on account of any such actual or alleged infringement. Notwithstanding the foregoing, Design-Builder shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the City.

8.23.2 It is understood that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatuses, devices or equipment used in or furnished for the Work shall be included in the GMP price. Final payment to the Design-Builder by the City shall not be made while any suit or claim involving infringement or alleged infringement of any patent remains unsettled.

8.24 Independent Contractor

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

8.25 Separate Contracts

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

8.25.2 City is responsible for all work performed on the Project or at the Site by separate contractors under the City's control and will award separate contracts in connection with other portions of the Project or other construction or operations on the site under the Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. Owner shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

8.25.3 If any part of the Design-Builder's Work depends upon the Work of the City or others, the Design-Builder shall inspect and promptly report to the City any apparent defects in any such work that render it unsuitable for proper execution

or results. Its failure to so inspect and report shall constitute an acceptance by it of such other work as fit and proper for the reception of its Work.

8.26 Relations with other Contractors

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

8.26.2 Not used.

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

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

8.27 Provision for Emergencies

Whenever, in the opinion of the City, the Design-Builder has not taken sufficient precaution for the safety of the public or the protection of the Work to be constructed under this Contract, or of adjacent structures or property which may be injured by process of construction, and whenever, in the opinion of the City, an emergency shall arise and immediate action shall be considered necessary in order to protect property interests and to avoid personal injury and/or death, then the City, with or without notice to the Design-Builder, shall provide suitable protection to the said interests by causing such work to be done and materials to be furnished at places as the City may consider

necessary and adequate. The cost and expense of such work and material so furnished shall be borne by the Design-Builder and, if the same shall not be paid on presentation of the bills therefore, such costs shall be deducted from any amounts due or to become due the Design-Builder. The performance of such emergency work shall in no way relieve the Design-Builder of responsibility for damages which may occur during or after such precaution has been duly taken.

8.28 Assignment and Subletting of Contract

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

8.28.2 Approval by the City of any Subcontractor shall not constitute a waiver of any right of the City to reject Defective Work, material or equipment not in compliance with the requirements of the Contract Documents. The Design-Builder shall not make any substitution for any Subcontractor accepted by the City unless the City so agrees in writing.

8.28.3 The Design-Builder shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Design-Builder by the terms of the Contract Documents insofar as applicable to the Work of the Subcontractor and to give the Design-Builder the same power to terminate any subcontract as the City has to terminate the Design-Builder under any provisions of the Contract Documents.

8.28.4 Prior to the City's approval of a GMP, the Design-Builder shall submit to the City a list of the names of all Subcontractors proposed for that portion of the Work and shall designate which work each is to perform. The failure of the City to make objection to a Subcontractor shall not constitute a waiver of any right of the City to reject Defective Work, material or equipment not in conformance with the requirements of the Contract Documents.

8.28.5 The Design-Builder shall not make any substitution for any Subcontractor who has been accepted by the City unless the City determines that there is a good cause for doing so.

8.29 Liquidated Damages

8.29.1 It is mutually understood and agreed by and between the parties to this Agreement that time is of the essence of this Agreement, and that in the event that the Design-Builder shall fail in the performance of the Work specified and required to be performed within the period of time stipulated therefore in the Agreement, after due allowance for any extension or extensions of time which may be granted under the Agreement, the Design-Builder shall pay to the City,

as stipulated liquidated damages and not as a penalty, the sum stipulated herein for each and every day that the Design-Builder shall be in default as provided in Section 3.0 of the Agreement.

8.29.2 Not used.

8.29.3 Design-Builder acknowledges that its failure to achieve Substantial Completion of the Work by the date stipulated in the Agreement or Design-Build Amendment may require the City to incur costs and damages which are difficult to calculate with specificity. Accordingly, the parties agree that they hereby agree to liquidate the City's damage for late completion to the amount stated in Section 3.0 of the Agreement, for each 24-hour calendar day, including weekends and holidays, the Work remains incomplete over the specified Contract Time, or such lesser amount as the City may agree to in the event that the City accepts partial occupancy of the Work.

8.30 Partial Occupancy or Use

8.30.1 The City may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the City and the Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, security, maintenance, heat utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of Warranties required by the Contract Documents. When the Design-Builder considers a portion Substantially Complete, and the City desires to accept the use of that portion of the Work, the Design-Builder shall prepare and submit a list to the City, per Section 7.3. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld, and the rate of liquidated damages for remaining Work shall be set. The stage of the progress of the Work shall be determined by written agreement between the City and the Design-Builder or, if no such agreement is reached, through the disputes procedures of this Agreement.

8.30.2 Immediately prior to such partial occupancy or use, the City and the Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

8.30.3 Unless otherwise agreed upon, partial occupancy or use of a portion of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

8.31 Correction of Labor, etc. – Before Substantial Completion

At the City's request, the Design-Builder shall, at the Design-Builder's expense, promptly remove from the job site all labor, supplies, materials, equipment and/or other facilities condemned by the City as not in accordance with the Contract Documents, whether incorporated or not; and the Design-Builder shall, at the Design-Builder's expense, promptly replace and re-execute all labor, supplies, materials, equipment and/or other facilities in accordance therewith and, at the Design-Builder's expense, restore all work

of other contractors and Subcontractors destroyed or damaged as a result of such removal, replacement and re-execution.

8.32 Correction of Labor, etc. – After Substantial Completion

In addition to Design-Builder's obligations under Section 8.69 below, if, within one year after the date of Substantial Completion or other date established for commencement of warranties, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Design-Builder shall correct it promptly after receipt of written notice from the City to do so unless the City has previously given the Design-Builder a written acceptance of such condition. The City shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the City fails to notify the Design-Builder and give the Design-Builder a reasonable opportunity to make the correction(s), the City waives the right to require correction by the Design-Builder and to make a claim against Design-Builder for breach of warranty. If Design-Builder fails to correct non-conforming Work within a reasonable time after receipt of notice, the City may correct it and Design-Builder shall be responsible for payment of the City's expenses.

8.33 Acceptance of Nonconforming Work

If the City prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the City may do so instead of requiring its removal and correction, in which case the GMP will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

8.34 Dispute Resolution

The City and the Design-Builder agree that disputes relative to the Work shall first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute the Design-Builder shall proceed with the Work as per the Contract Documents as if no dispute existed, provided City continues to pay Design-Builder all undisputed sums in accordance with the Contract Documents; and provided further that no dispute will be submitted to arbitration without the City's and Design-Builder's mutual express written consent.

8.35 Delays and Extensions of Time

8.35.1 If the Design-Builder shall be delayed at any time in the progress of the Work by events over which the Design-Builder has no control, including the weather conditions described in in Section 8.35.3, below, and which is not a result of the Design-Builder's acts or the acts of any of its employees, Subcontractor or suppliers, or anyone else for whom Design-Builder is responsible, negligent or otherwise; or if Work on the Critical Path is delayed due to acts or omissions of the City or any separate contractor employed by the City, an equitable adjustment in time for completion and compensation shall be made to the Agreement as the City may reasonably decide, subject to Section 8.34 above. No charge shall be made by the Design-Builder for hindrances or delays from any cause during the progress of the Work, or any portion thereof, included in this Agreement, except as provided in this Section.

8.35.2 No such extension shall be made for delay unless the Design-Builder provides written notice to the City of such delay, the reasons therefore and the expected length of delay within twenty-one working days of the event giving rise to such delay or twenty-one days after the Design-Builder should reasonably have been aware of such through the exercise of all reasonable diligence, whichever comes later, to enable the City to take immediate action with respect to the cause of delay, if the City should decide to do so. In the case of a continuing cause of delay, only one claim is necessary. Failure to provide notice within the fourteen day period provided above shall waive any claim by Design-Builder related to that claim.

8.35.3 In executing the Agreement, the Design-Builder expressly covenants and agrees that, in undertaking to complete the Work within the time agreed in a Design-Build Amendment, it has taken into consideration and made allowances for all hindrances and delays incident to such Work, whether growing out of delays in securing materials, workers, and Normal Weather Conditions or otherwise. "Normal Weather Conditions" shall mean the average of weather conditions for the month for which delay is claimed over the past five years, based on data from the closest NOAA weather recording facility. Additional time shall not be permitted for weather conditions that do not impact the Critical Path of the Work.

8.35.4 The Design-Builder shall delay or suspend the progress of the Work or any part thereof, whenever it shall be so required by written order of the City, and for such periods of time as the City shall require; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the Work, or any part thereof, the time for completion of Work so suspended or of Work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City shall not otherwise modify or invalidate in any way, any of the provisions of this Agreement. In the event that the Work shall be stopped by order of the City, through no fault of the Design-Builder, its employees, Subcontractors or suppliers, any expenses which are caused thereby shall be paid by the City to the Design-Builder.

8.36 Remedies for Default by Design-Builder

8.36.1 If Design-Builder fails or refuses to comply with any material term of this Agreement, then the City may, upon ten days' written notice to Design-Builder and its surety, take such action as the City deems appropriate to either correct the defective Work, terminate this Agreement, or, in the City's reasonable discretion, permit Design-Builder to demonstrate its ability to successfully complete the Work and continue performance.

8.36.2 In the event that a petition in bankruptcy is either filed by Design-Builder or by creditors of Design-Builder, Design-Builder shall immediately upon written notice from the City provide documented evidence of its ability to continue performance under the terms of this Agreement. If Design-Builder is unable or unwilling to provide such evidence, Design-Builder shall immediately petition the Bankruptcy Court for an order rejecting the Agreement as an executory contract of the Debtor, and lifting the Automatic Stay to enable the City to terminate this Agreement and proceed to complete the Work.

8.36.3 In the event that the City should elect to terminate this Agreement due to default by Design-Builder, the City may, subject to any prior rights of Design-Builder's surety:

- .1 take possession of the site and all materials on site;
- .2 accept assignment of subcontracts with Design-Builder's Consultants, Subcontractors and suppliers as provided in Article 2, above; and
- .3 finish the Work by whatever reasonable method the City may deem expedient.

In the event that this Agreement shall be terminated under the terms of this Section, the insurance, indemnification, warranty and other obligations that continue after termination shall continue to apply.

8.36.4 In the event that the City terminates this Agreement for default by Design-Builder, no further payment shall be made to Design-Builder until the Work is completed and an accounting can be made of all of the City's damages. If any funds remain due and owing to Design-Builder at that time, the City shall remit them to Design-Builder. If, however, the costs and expenses of the City exceed any remaining contract balance, Design-Builder or its surety shall pay the difference to the City within ten days of receipt of invoice.

8.37 Termination of the Agreement for the Convenience of the City

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

8.37.2 If the City shall terminate for its convenience as herein provided, the City shall: (a) compensate the Design-Builder for all design fees, purchased materials, actual Cost of Work satisfactorily completed through the date of termination, unavoidable expenses of termination such as re-stocking charges and the percentage of the Design-Builder's fee that represents the percentage of the Cost of Work completed to date of termination; and (b) release and indemnify the Design-Builder against any liability the Design-Builder may have to any third parties as the result of any contracts, commitments, purchase orders or any other such liabilities the Design-Builder may have incurred as a result of its obligations under the provisions of this Agreement which occur after the date of termination. The Design-Builder agrees that it shall minimize such potential liabilities by, where practical, informing third parties of the City's right to terminate and attempting to obtain from such third parties a waiver of any liability in the event of such termination.

8.37.3 In the event that this Agreement shall be terminated under the terms of this Section 8.37, the insurance, indemnification, warranty and other obligations that continue after termination shall continue to apply.

8.37.4 Any termination of the Agreement for alleged default by the Design-Builder that is ultimately determined to be unjustified shall automatically be deemed a termination for convenience of the City.

8.38 Waiver of Consequential Damages and Anticipatory Profit

To the maximum extent permitted by law, Design-Builder and City hereby waive any claim against each other for consequential damages arising out of or relating to this Agreement or the Work, or profit on Work not performed for any reason. This waiver includes damages incurred for principal office expenses including compensation of personnel stationed there, loss of financing, business and reputation, and loss of revenue or profit. To the extent, if any, such damages were included in the calculation of the agreed upon Liquidated Damages provided for in Section 3.0 of the Agreement, this Section 8.38 shall not be construed so as to invalidate, waive, or otherwise alter the agreed upon rate.

8.39 Ownership and Use of Design and Design Documents

8.39.1 Contract Documents are the property of the City, and none of the Contract Documents are to be used on other work by the Design-Builder. The design that is part of this Agreement is being done as a Work for Hire, and all statutory, common law and other rights, including copyright, in the intellectual property of that design shall be the property of the City, along with the Contract Documents, plans and specifications. This shall not be construed to prohibit the use of repetitive, non-distinct elements of the design by Design-Builder or its designers on other projects. Should Design-Builder be terminated in accordance with the terms of this Agreement, the City shall be entitled to continue the Work using the Contract Documents provided (1) the City has paid Design-Builder in full for all Preconstruction Phase Services performed and (2) to the fullest extent permitted by law, including, without limitation, the Kansas Cash Basis Act, the City defends, indemnifies, and hold harmless the Design-Builder and Design-Builder's designers from and against any claim, loss, or damages arising out of the City's use of the Contract Documents prepared by Design-Builder and Design-Builder's designers. Design-Builder shall obtain a similar agreement from all its designers for the benefit of the City.

8.39.2 Should the City use the Design and/or Design Documents for any other project, including additions or modifications to the Project, without the participation of Design-Builder and/or the Designers of the Design Documents, the City shall release Design-Builder and its designers from any liability arising from that subsequent use, and, to the fullest extent permitted by law, including, without limitation, the Kansas Cash Basis Act, shall defend, indemnify, and hold harmless the Design-Builder and the Design-Builder's designers from and against claims by others, loss, or damages arising out of the City's subsequent use for projects other than the Project for which the Design Documents were intended or additions or modifications to the Project.

8.40 Use of Premises

8.40.1 The Design-Builder shall confine its operations to limits indicated by Applicable Laws of the City and shall not unreasonably encumber the premises and/or site.

8.40.2 The Design-Builder shall not load or permit any part of any structure, streets or highways to be loaded with a weight that exceeds load limits that will endanger their safety.

8.40.3 The Design-Builder shall comply with Applicable Laws, as well as any specific instructions regarding signs, advertisements, fires, and smoking from the City.

8.40.4 A laydown area or staging area will be provided at the site and shall be chosen by the Design-Builder. The Design-Builder shall furnish its own weather protection if required.

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

8.41 Allowances

The Design-Builder agrees that the GMP for each Sub-Phase of Work includes all allowances required by the Contract Documents. The Design-Builder agrees that such GMP includes all other sums for expenses and overhead and fee on account of allowances as it deems proper. No demand for expenses or overhead and fee other than those included in a GMP shall be allowed.

8.42 Cutting, Patching, and Digging

The Design-Builder shall do all cutting, fitting, or patching of its Work that may be required to make its several parts come together properly and fit it to receive or be received by Work of others shown upon or reasonably implied by the Contract Documents. The Design-Builder shall not endanger any property of the City or any other individual or entity, or the Work by cutting, digging, or otherwise and shall not cut or alter the Work of others except with the written consent of the City. The Design-Builder shall assume responsibility for the patching or repairs, by the proper trade, of damages caused by the Work under this Agreement. The Design-Builder shall comply with all Applicable Laws dealing with cutting, patching, and digging and shall obtain all necessary permits.

8.43 Cleaning Up

The Design-Builder shall at all times keep the premises/site free from accumulations of waste material or rubbish caused by its employees or Work; and at the completion of the daily Work it shall remove all its rubbish from and about the premises/site and shall leave its Work "broom clean" or its equivalent unless more exactly specified. In case of dispute and after written notice to Design-Builder, the City may remove the rubbish and charge the cost to the Design-Builder.

8.44 Temporary Facilities

8.44.1 Except where special permission has been granted by the City to use existing toilet facilities belonging to the City, the Design-Builder shall provide and maintain sanitary temporary toilet facilities located where directed by the City for accommodation of all persons engaged on the Work. Temporary toilets shall be enclosed and weatherproof and kept in sanitary and approved condition at all times. After use for same has ceased, the Design-Builder shall remove the

temporary toilet facilities from the City's premises and disinfect and fill any vaults. All temporary toilet facilities shall comply with this Section.

8.44.2 The Design-Builder shall provide and maintain any necessary temporary offices, storerooms, roadways, etc., as may be required for the Work. Same shall be located and constructed in an approved manner acceptable to the City. Upon completion of Work or when requested by the City, the Design-Builder shall remove same from the City's premises and leave the area in a clean and orderly condition.

8.44.3 The Design-Builder shall provide and maintain temporary heat as required to protect all Work and material against injury from dampness and/or cold to the satisfaction of the City.

8.44.4 Unless otherwise specified in the Contract Documents, the Design-Builder shall provide, at its cost and expense, temporary power, wiring and lights from the City's provided source as may be required for its operations. Notwithstanding the foregoing, City shall pay consumption costs for electrical power.

8.45 Sanitary Regulations and Water

The operations of the Design-Builder shall be in full conformity with all of the rules and regulations of boards and bodies having jurisdiction with respect to sanitation. The Design-Builder shall supply safe and sufficient drinking water to all of its employees. The Design-Builder shall obey and enforce all sanitary regulations and orders, and shall take precautions against infectious diseases and the spread of same. All water used in the course of the Work shall be hauled in or purchased from the local water company's distribution system at the Design-Builder's own cost and expense. Notwithstanding the foregoing, City shall pay consumption costs for sanitary and water.

8.46 Unfavorable Construction Conditions

During unfavorable weather, or other unfavorable conditions for construction operations, the Design-Builder shall pursue only such portions of the Work as will not be damaged thereby. No portions of the Work, the satisfactory quality or efficiency of which will be affected by any unfavorable conditions, shall be constructed while these conditions exist, unless, by special means or precautions approved by the City, the Design-Builder shall be able to perform the Work in a proper and satisfactory manner. Design-Builder shall notify the City immediately in such events, to give the City the maximum opportunity to authorize extra expenditures for temporary heat or other steps that might avoid delay, but the City shall have absolutely no obligation to incur such obligations.

8.47 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of this Agreement. This shall include full responsibility for the protection of all public and private property, structures, sewers, and utilities, for both above ground and underground facilities, along, beneath, above, across or near the site or sites of the Work being performed under this Agreement, or which are in any manner affected by the prosecution of the Work or the transportation of men/women or materials in connection therewith.

8.47.1 Safety of Persons and Property

- 8.47.1.1 The Design-Builder shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:
1. employees on the Work and other persons who may be affected thereby;
 2. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Design-Builder's Subcontractors or sub-subcontractors; and
 3. other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of construction.
- 8.47.1.2 The Design-Builder shall comply with any and all instructions from the City regarding prevention of accidents, fires, or for the elimination of any unsafe practice and shall observe all the applicable recommendations of the National Fire Protection Association Standard No. 241 (or other later revisions) "Standard For Safeguarding Building Construction and Demolition Operations".
- 8.47.1.3 The Design-Builder shall give notices and comply with Applicable Laws and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
- 8.47.1.4 The Design-Builder shall give reasonable notice to the affected owner or owners when any such property is liable to injury or damage through the performance of the Work and shall make all necessary arrangements with such owner or owners relative to the removal and replacement or protection of such property and/or utilities.
- 8.47.1.5 The Design-Builder shall erect and maintain, as required by existing conditions and performance of the Agreement, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards created by such features of construction as protruding nails, hod hoists, well holes, elevator hatchways, scaffolding, window openings, stairways, falling materials, open trenches, other excavations, obstructions and similar conditions, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. Barriers shall be kept placed at all times to protect persons other than those engaged on or about the Work from accident, and the Design-Builder will be held responsible for all accidents to persons or property resulting from the acts of the Design-Builder or its employees
- 8.47.1.6 The Design-Builder shall satisfactorily shore, support, and protect any and all structures and all pipes, sewers, drains, conduits, and other facilities and shall be responsible for any damages resulting thereto.

The Design-Builder shall not be entitled to any additional time on account of any postponement, interference, or delay caused by any such structures and facilities being on the line of the Work.

- 8.47.1.7 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Design-Builder shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.
- 8.47.1.8 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Section 8.47.1.1.2 and .3 to the extent caused in whole or part by the Design-Builder, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable for and for which the Design-Builder is responsible under Section 8.47.1.1.2 and .3, except damage or Loss attributable to acts or omissions of the City or anyone directly or indirectly employed by the City, or by anyone for whose acts the City may be liable for, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations of indemnification.
- 8.47.1.9 The Design-Builder shall designate a responsible member of the Design-Builder's organization at the site whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the City.
- 8.47.1.10 The Design-Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

8.47.2 Safety Program

- 8.47.2.1 The Design-Builder is expected to establish and enforce a comprehensive safety program on this Project for the protection of its personnel, its Subcontractors' personnel, the City's employees and all other persons exposed to hazards resulting from the Design-Builder's operations. As a minimum requirement, the Design-Builder shall review and discuss the details of its program with the City at the first project meeting. The items to be covered shall include, but not necessarily be limited to,
 - A. Personal protective equipment;
 - B. First aid - personnel and facilities;
 - C. Arrangements for medical attention;
 - D. Sanitary facilities;
 - E. Fire protection;

- F. Signs, signals and barricades;
- G. Security regulations;
- H. Safety inspections;
- I. Designation of persons responsible for the program;
- J. Reporting forms and procedures;
- K. Material handling and storage;
- L. Lines of communication;
- M. Determination of potential hazards;
- N. Personnel safety meetings and education;
- O. Access to work areas;
- P. Subcontractors involvement in the program;
- Q. Inspections and corrective action.

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

8.47.3 Handling of Emergencies, Emergency Plan

8.47.3.1 In an emergency affecting the safety of life, the Work, the City's property or of adjoining property, the Design-Builder, without special instruction or authorization from the City, is hereby permitted to act, at its discretion, to prevent such threatened injury or loss. Any compensation claimed by the Design-Builder on account of emergency Work shall be determined by mutual agreement of the City and the Design-Builder, subject to Section 6.1.7.1.

8.47.3.2 The Design-Builder shall develop and maintain an up-to-date emergency action plan, taking into account fires, hazardous materials, explosions, adverse weather, floods, etc., which shall be in compliance with all Applicable Laws. The procedures should outline specific action to be taken to protect life and to secure and protect the building materials, constructed Work, buildings, equipment, and the position of cranes. The Design-Builder shall be fully responsible for the contents of and procedures outlined in said plan, including deficiencies therein, whether or not the City shall have reviewed said plan.

8.48 Weekends, Holiday, and Night Work

8.48.1 No Work shall be done between the hours of 10:00 p.m. and 7:00 a.m., or on weekends or City-designated holidays, without the written approval or permission

of the City, 48 hours in advance in each case, except such Work as may be necessary for the proper care, maintenance and protection of Work already done or of equipment, or in the case of an emergency.

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

8.49 Approval of Equals Affecting City's Program

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

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

8.50 Test of Materials Offered by the Design-Builder

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

8.51 Testing of Completed Work

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

8.52 Borrow and Waste Areas

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

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

8.53 Street Signs and Traffic Aids

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

8.54 Titles, Subheads, and Capitalization

Titles and subheadings as used herein and in other Contract Documents prepared by the City are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provisions of the Contract Documents.

8.55 Severability

If any provision or any part of a provision of this Agreement shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to Applicable Laws by any authority having jurisdiction, except a provision going to the basic consideration to the City for entering the Agreement, such determination shall not impair or otherwise affect the legality, or enforceability of the remaining provisions or parts of the provision of this Agreement, which shall remain in full force and effect as if the unenforceable provision or part was deleted.

8.56 Taxes

It is the intent of the City to supply the Design-Builder with a Project Exemption Certificate for use in purchasing materials and supplies used on the Project. The Design-Builder shall, in preparing its GMP Proposal, omit from its computed costs all sales and compensation taxes eligible for exemption. Upon issuance of a Kansas tax exemption number, two (2) copies of the Project Exemption Certificate (Form PR-74a) will be forwarded to the Design-Builder. Upon completion of the Project, the City will provide the State of Kansas with the Project completion date and the State will issue a Project Completion Certification. This will be forwarded to the Design-Builder who must sign and return it to the City. All invoices must be retained by the Design-Builder for a period of five (5) years and are subject to audit by the Kansas Department of Revenue. Final payment will not be made to the Design-Builder until the City has received the Project Completion Certification from the Contractor along with a Consent of Surety Company to Final Payment.

8.57 Governing Law

It is the intent of the parties that this Agreement and the performance hereunder, and all suits and special proceedings under this Agreement, be constructed in accordance with and under and pursuant to the laws of the State of Kansas and that, in any action, special proceeding or other proceeding that may be brought arising out of, in connection with, or by reason of this Agreement, the laws of the State of Kansas shall be applicable and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which any action or special proceeding may be instituted. The Design-Builder agrees to abide by all Applicable Laws and to furnish any certification required by any federal, state, or local government agency in connection with same.

8.58 Venue

Venue of any litigation arising in connection with this Agreement shall be the State and federal courts with jurisdiction over Leavenworth County, Kansas.

8.59 Warranty

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

8.59.2 Design-Builder shall assign to the City all manufacturers' and vendors' and subcontractors' warranties that may be called for by the Contract Documents to the extent assignable.

8.60 Access to Work

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

8.61 Hazardous Materials

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

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

in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Section 5.4, herein.

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

8.62 Order of Precedence

If any conflict exists between the provisions of these General Conditions and any other provision of the Contract Documents, the documents shall govern in the following order: Design-Build Amendments; Agreement; General Conditions, Specifications; and Drawings.

8.63 Removal of Employees

8.63.1 Reassignment of Primary Team Members

Design-Builder shall not reassign, or allow its subcontractors, consultants, or any other parties with whom it is in contract to reassign, any of Primary Team Members without the express written approval of City. Primary Team Members include:

Emily Held, Project Manager (J.E. Dunn)
Brad McKenzie, Project Architect (SAPP)

8.63.2 Removal of Unruly Employees

City shall have the right to terminate and remove from Site any individual performing Work on, or delivering materials for, the Project, if in its reasonable and sole discretion such employee is behaving in an inappropriate or dangerous manner.

ARTICLE 9 ELECTRONIC DATA

9.1 Electronic Data

9.1.1 The parties recognize that the Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

9.2 Transmission of Electronic Data

9.2.1 Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining

appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

9.2.2 Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

9.2.3 By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth elsewhere in the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

9.3 Electronic Data Protocol

9.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic data for the communication of design and construction information, and in consideration of this, agree, and shall require their independent contractors, Subcontractors, and Design Consultants to agree to the following protocols, terms and conditions set forth in this Section 9.3

9.3.2 Electronic Data will be transmitted in the format agreed upon in Section 9.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

9.3.3 The Electronic Data represents the information at a particular point in time and is subject to change. Therefore the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to final completion of the Project.

9.3.4 The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

ARTICLE 10 EXECUTION OF THE AGREEMENT

The City has caused this Agreement to be executed on its behalf, thereunto duly authorized, and the Design-Builder has executed this Agreement in the prescribed form and manner, the day and year first above written.

Exhibit B

City's Program

Exhibit C

Design-Builder's Hourly Rates

Exhibit D

Affidavit of Partial Payment and Conditional Release and Waiver of Claims

To: _____, the Owner of the real estate (the "Property") identified below, the Applicant's Contractor (if not the General Contractor) and other parties, if any, having any interest in (hereinafter collectively the "Beneficiaries").

The "Property": _____

Description of the "Project": _____

The undersigned hereby applies for payment, certifies and waives lien rights, bond rights and all other claims.

Payment Request Amount: \$_____

Date of last work covered by payment request:_____

Partial Waiver and Release of Claims

NOW, THEREFORE, contingent upon the issuance, final clearance and payment of \$_____, the undersigned irrevocably and unconditionally releases and waives any and all claims of any kind for payment for labor, materials, and equipment against the Owner or in connection with the Contract and with the Property to the extent of the payment made by Owner. The undersigned shall indemnify and hold the Beneficiaries and their respective successors and assigns harmless against any lien, bond, claims or suits in connection with demands for payment for the materials, labor, and equipment furnished in connection with the Contract for which payment has been made.

Dated _____, 20__.

CONTRACTOR:_____

By:_____

Name: _____

Title: _____

State of _____)

County of _____)

On this _____ day of _____, 20____, before me, the undersigned, personally appeared _____, _____ of _____, known to me to be the person who executed this document and acknowledged to me that he/she executed the same for the purposes therein stated.

Notary Public in and for said County and State

Commission Expires

Exhibit E

Bill of Sale

SELLER: _____

In consideration of payments made by _____ (“Buyer”) referenced in the agreement dated _____, 20____, receipt of which is hereby acknowledged, Seller declares and certifies that it now possesses, and does hereby grant, sell, transfer and deliver to Buyer all right, title and interest in the following goods:

Buyer to have all right and title to the goods in himself and his executors, administrators and assigns forever and Seller, on behalf of itself, its successors and assigns, will warrant and defend the title to said goods and chattels hereby sold unto Buyer, its successors and assigns, forever, against the lawful claims and demands of all persons. It is expressly understood and agreed that the acceptance of the goods described herein is not a waiver of any right of action that the Buyer may have for breach of warranty or any other cause under the agreement referenced above or at law.

IN WITNESS WHEREOF, Seller has executed this Agreement the ____ day of _____, 20____.

Seller: _____

By: _____

Title: _____

Subscribed and sworn to before me this ____ day of _____, 20____.

Notary Public in and for said County and State

My commission expires:

Exhibit G

Affidavit of Final Payment and Conditional Release and Waiver of Claims

To: _____, the Owner of the real estate (the "Property") identified below, the Applicant's Contractor (if not the General Contractor) and other parties, if any, having any interest in (hereinafter collectively the "Beneficiaries").

The "Property": _____

Description of the "Project": _____

The undersigned hereby applies for payment, certifies and waives lien rights, bond rights and all other claims.

Payment Request Amount: \$ _____

Certificate

The undersigned, contingent upon the issuance, final clearance and payment of a valuable consideration of the amount stated above, and being familiar with the penalties for false certification, does hereby certify to the Beneficiaries that:

1. The amount requested for labor performed and equipment and material supplied on this Project or in connection with the Property reference above, represent the actual value of work accomplished under the terms of the undersigned's agreement and all authorized changes thereto concerning work to be performed on the Property (hereinafter the "Contract").

2. No labor, equipment or materials have been supplied by the undersigned to the Project which have not been included in the applications for payment submitted to date, under any agreement, verbal or written, or any arrangements of any type whatsoever, except as specifically noted here:

3. Payment in full has been made, or with the funds requested hereby will be made, by the undersigned (a) to all of the undersigned's subcontractors, equipment providers, materialmen and laborers, and (b) for all materials and labor used or furnished by the undersigned in connection with the performance of the Contract. The undersigned represents and warrants that it owes no monies or other things of value to any subcontractor, materialman, person or entity for work performed or material supplied through the date of the most recent payment by Owner, and that the payments that have been or will be made out of this final payment to such persons or firms will fully and completely compensate them for all work in connection with the Project.

4. The undersigned has complied with Federal, State and Local tax laws, including, without limitation, Income Tax Withholding, Sales Tax, Fringe Benefits

owed pursuant to collective bargaining agreements, Social Security, Unemployment Compensation and Worker's Compensation laws, insofar as applicable to the performance of the contract.

Final Waiver and Release of Claims

NOW, THEREFORE, the undersigned, contingent upon the issuance, final clearance and payment of \$_____, which the undersigned irrevocably and unconditionally releases and waives any and all claims of any kind for payment for labor, materials, and equipment against the Owner or in connection with the Contract and with the Property. The undersigned shall indemnify and hold the Beneficiaries and their respective successors and assigns harmless against any lien, bond, claims or suits in connection with the materials, labor, and equipment furnished in connection with the Contract.

Dated _____, 20__.

CONTRACTOR: _____

By: _____

Name: _____

Title: _____

State of _____)

County of _____)

On this _____ day of _____, 20____, before me, the undersigned, personally appeared _____, _____ of _____, known to me to be the person who executed this document and acknowledged to me that he/she executed the same for the purposes therein stated.

Notary Public in and for said County and State

Commission Expires

Exhibit H

Insurance Requirements

1. Insurer Standards. The Design-Builder shall secure and maintain through the duration of the Contract and all applicable warranty periods (unless a longer term is specified below) insurance (on an occurrence basis unless stated below) of such types and in such amounts stated below. The Owner will only accept coverage from an insurance carrier who offers proof that it:
 - 1) Is authorized to do business in the state where the project is located;
 - 2) Carries a Best's policy holder rating of A- or better and at least a Class VII financial rating.

2. Owner Approval. The form of such insurance shall be approved by the Owner, but regardless of such approval it shall be the responsibility of the Design-Builder to maintain adequate insurance coverage at all times. Owner shall have the right to review copies of any and all insurance policies to which this Contract is applicable. Failure of the Design-Builder to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation, including but not limited to, the indemnification obligation.

3. Non-Depletion of Policy Limits. The cost of defense of claims shall not erode the limits of coverage furnished. (This does not apply to Professional Liability.)

4. Notice of Cancellation. The insurance policies shall require that Owner shall be given at least thirty (30) days written notice from the insurer(s) before cancellation (except for non-payment of premium) of such insurance and shall contain an endorsement stating the insurers agreement to provide such notice. **A copy of the Notice of Cancellation Endorsement must be furnished to the Owner prior to commencement of Work.** Cancellation, non-renewal or material modification of coverage of any such insurance shall be the basis for the Owner's exercising its right to terminate the Contract. In the event of threatened cancellation for non-payment of premiums by Design-Builder, Owner may, in its sole discretion and without impairing its rights to declare Design-Builder in breach of the Contract, pay those premiums to keep insurance in force and recover the payments against Design-Builder.

5. Proof of Insurance. Satisfactory certificates of insurance, written on a standard AIA Document G705 or ACORD form 25-S, and ACORD Form 27, as applicable, shall be filed with the Owner prior to Design-Builder's entry on to the Project site. The Certificate shall specify the date when such insurance expires. A renewal certificate shall be furnished to Owner prior to the expiration date of any coverage.

6. Severability of Interest. All insurance carried shall be endorsed to provide that, inasmuch as this policy is written to cover more than one insured, all terms, conditions, insuring agreements and endorsements, with the exception of limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

7. Additional Insured. Design-Builder shall include Owner and all parties Design-Builder is required to indemnify under the Contract (collectively "Indemnitees") as additional insureds on the Commercial General Liability Insurance and the Commercial Automobile Liability Insurance policies described in this document. Owner and Indemnitees shall be

included as additional insureds under Design-Builder's furnished insurance (except Workers' Compensation Insurance and Professional Liability Insurance), for ongoing operations. The Owner shall also be included as additional insured under the Design-Builder's furnished insurance (except Workers' Compensation and Professional Liability Insurance), for completed operations. Design-Builder shall provide the additional insured status by using ISO Additional Insured Endorsement (CG 20 10) , plus CG 20 37, or other carrier form that provides upstream coverage sufficient to cover Indemnitees). Said insurance shall be written on an OCCURRENCE basis, and shall be PRIMARY and NON-CONTRIBUTING and shall not be deemed to limit Design-Builder's liability under the Contract. Such insurance shall be maintained for the periods and subject to the same requirements set forth in Section 8, below, including all subsections.

8. Types of Insurance, Limits and Duty to Maintain. Design-Builder shall procure, carry and maintain for the duration of the Contract and all applicable warranty periods (unless a longer term is specified) all insurance, with identical limits of liability and scope of coverages, as set forth below:

8.1 Commercial Automobile Liability Insurance. Design-Builder shall maintain commercial automobile insurance, including contractual liabilities insuring the Indemnities set forth in the Contract, subject to standard ISO CA0001 coverage terms and conditions, covering all owned, non-owned and hired automobiles used in connection with the services or other work hereunder and shall have minimum bodily injury and property damage limits of \$1,000,000.00 combined single limit each accident. An MCS-90 endorsement shall be procured when applicable.

8.2 Workers' Compensation and Employer's Liability Insurance. Design-Builder shall maintain Worker's Compensation Insurance to cover the statutory limits of the Workers' Compensation laws of the state in which any work is to be performed (and, when applicable, to Federal Laws) and Voluntary Compensation coverage and Employer's Liability (including occupational disease) coverage with limits not less than \$500,000.00 per occurrence. The Design-Builder shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of a worker's compensation law. This policy shall include "all states" coverage.

8.3 Commercial General Liability Insurance. Design-Builder shall obtain and maintain Commercial General Liability Insurance, on an occurrence form for the hazards of (i) construction operation, (ii) subcontractors (iii) independent contractors, (iv) products and completed operations (with completed operations to remain in force for as long as Design-Builder or those included as Additional Insureds bear exposure under all applicable statutes of limitation following Final Completion), (v) explosion, collapse and underground, and (vi) contractual liability insuring the indemnities set forth in the Contract subject to standard ISO CG0001 coverage terms and conditions. Each Project shall have minimum limits of \$2,000,000.00 per occurrence, \$5,000,000 general aggregate, and \$5,000,000.00 products/completed operations aggregate coverage. Commercial General Liability under this subsection shall **not** include the following endorsements/exclusions or equivalent:

1. CG 2294 or CG 2295 (Damage to Work Performed by Contractors Exclusion)
2. CG 2139 (Contractual Limitation Endorsement)
3. CG 2196 (Silica or Silica Dust Exclusion)

4. CG 2142 (Explosion, Collapse or Underground Exclusion)

8.4 Excess Liability. Design-Builder shall maintain Excess/Umbrella Liability coverage of \$10,000,000 on a follow form basis in excess of Employers Liability Insurance, Commercial Automobile Liability Insurance and Commercial General Liability Insurance.

9. Waiver of Subrogation. All insurance policies supplied shall include a waiver of any right of subrogation of the insurers thereunder against Owner and all its assigns, affiliates, employees, and insurers.

10. No Limitation of Liability. The required coverages referred to and set forth herein shall in no way affect, nor are they intended as a limitation on, Design-Builder's liability with respect to its performance of the Contract.

11. Subcontractors' Insurance. Design-Builder shall require all those subcontractors providing equipment, materials or services in connection with this Contract to obtain, maintain and keep in force coverages in accordance with the insurance requirements set forth herein during the time they are involved in performance of services or other work hereunder, as well as completed operations coverage for the combined period of any applicable statute of repose and limitation, with insurance limits as deemed reasonably acceptable by Design-Builder in accordance with each Subcontractor's operations, but under no circumstance may the policy limits be less than \$1,000,000 per occurrence for the auto and general liability coverages. Design-Builder shall obtain certificates of insurance and additional insured endorsements evidencing such coverage and provide Owner with such certificates and endorsements.

12. Not used.

13. Builder's Risk Property Insurance.

13.1 Design-Builder shall purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy form, including coverage for Collapse, Theft, Vandalism, Flood and Earthquake in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications, comprising total value for the Work at the site and in transit on a replacement cost basis until Substantial Completion with a deductible to be absorbed by Owner. This insurance shall also include as additional insureds the interests of Owner and Subcontractors of any tier.

13.2 The Owner and Design-Builder waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The insurance policies shall provide for 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, 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.

13.3 Builder's risk losses shall be adjusted by the Design-Builder.

13.4 Design-Builder shall pay Subcontractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

14. Minimum Requirements. The insurance specified herein is the minimum requirement. In the event Design-Builder or any Subcontractor has or obtains insurance coverage in amounts in excess of those required herein, such additional insurance coverage shall also inure to the benefit of the Owner.

15. **Design-Builder shall not be permitted to commence any work on site until satisfactory copies of the Certificates evidencing insurance; Notice of Cancellation Endorsement; and Additional Insured Endorsement, have all been received and approved by Owner. Delay in commencement due to failure to provide such documentation shall constitute an unexcused delay.**

Exhibit I

Performance Bond

KNOW ALL MEN BY THESE PRESENTS, that _____ (herein called the "Principal"), as Principal, and _____, a _____ organized and existing under the laws of the State of _____ (hereinafter called the "Surety"), as Surety, are held and firmly bound unto _____ (hereinafter called "Obligee"), as Obligee, in the sum of _____ Dollars (\$_____) for the payment of which sum well and truly to be made, the said Principal and Surety bind themselves, and their respective heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a written Contract with the Obligee, dated _____ to perform the work described in said Contract, which Contract is hereby referred to and made a part hereof.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH that if the said Principal shall well and truly perform and keep all the undertakings, covenants, terms, conditions and agreements of said Contract within the time period provided therein and any extensions thereof that may be granted by the Obligee and during the life of any guaranty required under said Contract, and shall also well and truly perform the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said Contract that may hereafter be made, and shall defend, indemnify and save harmless Obligee of and from any and all claims, losses, damages, penalties, and expenses, including interest, costs and attorney's fees, which Obligee may sustain by reason of said Principal's failure so to do, then this obligation shall be null and void; otherwise it shall remain in full force and effect. Surety shall assume and commence performance of its obligations within 30 days' written notice of Contractor's default.

Surety agrees that no change, extension of time, alteration, addition, omission, or other modification of the terms of said Contract, or in the scope of the work to be performed or in the method of performance, or in the manner, time or amount of payments as provided therein, assented to by Obligee, whether made under expressed agreement or not, shall in anywise affect the said Surety's obligation on this Bond, and it does hereby waive notice and consents to any such change, alteration, modification or amendment.

IN WITNESS WHEREOF, the said Principal and Surety have hereunder set their hands and seals, this _____ day of _____, _____.

(Principal)

(Surety)

(Business Address)

(Business Address)

By: _____
(Signature and Title)

By: _____
(Signature and Title)

Witness: _____

Witness: _____

Exhibit J

Labor and Material Payment Bond

KNOW ALL MEN BY THESE PRESENTS, that _____ (hereinafter called the _____ "Principal"), as Principal, and _____, a corporation organized and existing under the laws of the State of _____ (hereinafter called the "Surety"), as Surety, are held and firmly bound unto _____ (hereinafter called the "Obligee"), as Obligee, in the sum of _____ Dollars (\$ _____) for the payment of which sum well and truly to be made, the said Principal and Surety bind themselves, and their respective heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a written Contract with the Obligee, dated _____ to perform the work described in said Contract, dated _____, which Contract is hereby referred to and made a part hereof.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH that if the said Principal shall pay promptly and in full the claims of all persons performing labor or furnishing materials, supplies and equipment in the prosecution of the work provided for in said Contract and any and all modifications of said Contract that may hereafter be made, and shall defend, indemnify and save harmless the Obligee from any and all claims, costs, damages, penalties, including attorney's fees and expenses, for all taxes, insurance premiums, any and all contributions, allowances, deductions or other payments, however termed, required by statute or union labor agreements, including voluntary payments made thereof by the Obligee to insure the orderly prosecution of work, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The said Surety agrees that no change, extension of time, alteration, addition, omission, or other modification of the terms of said Contract, or in the scope of the work to be performed or in the method of performance, or in the manner, time or amount of payments as provided therein, assented to by Obligee, whether made under expressed agreement or not, shall in anywise affect the said Surety's obligation on this Bond, and it does hereby waive notice and consents to any such change, alteration, modification or amendment.

Subject to the benefit of the Obligee, the Principal and Surety agree that this Bond shall insure to the benefit of all persons performing labor or furnishing materials, supplies and equipment in the prosecution of the work provided for in said Contract, as well as to the Obligee, and that such persons may maintain independent actions upon this Bond in their own names.

IN WITNESS WHEREOF, the said Principal and Surety have hereunder set their hands and seals, this _____ day of _____, _____.

(Principal)

(Surety)

(Business Address)

(Business Address)

By: _____
(Signature and Title)

By: _____
(Signature and Title)

Witness: _____

Witness: _____

Exhibit K

Consent of Surety to Increase in Bond Penal Sum

Project:
Contract #:
Owner:
Principal:
Obligee:

The Performance Bond/Labor and Material Payment Bond, numbered _____,
dated _____, executed by _____ as Principal, and
_____ as Surety, in connection with the Contract numbered
_____, for the Project known as _____, is hereby
amended to as to increase the Penal Sum from _____ Dollars
(\$_____) to _____ Dollars (\$_____) to insure it is of
sufficient amount to cover Change Order(s) No. _____ to the Contract.

For this form to take effect, Surety must attach a Power of Attorney form attesting to the
authority of the individual signing below.

In WITNESS WHEREOF, the Surety has hereunto set its hand on this date: _____

(Surety)

(Signature of authorized representative)

(Printed Name and Title)

Exhibit L

GENERAL CONDITIONS DISTRIBUTION MATRIX



Office of the City Manager
AGENDA STATEMENT

DATE: October 1, 2018
To: Honorable Mayor Jason K. Ward and Members of the City Council
FROM: George Brajkovic, City Manager
SUBJECT: Resolution 10-18-02, First Amendment to the MOU with the Tonganoxie Public Library for the FF&E share of the new Public Library

DISCUSSION:

On August 6, 2018, the City Council adopted Resolution 08-18-02, which authorized the execution of a Memorandum of Understanding with the Tonganoxie Public Library, which defined the roles of each entity in the design and construction of a new Public Library. As staff advances the Design Build Agreement with JE Dunn, it is necessary to account for FF&E costs via an amendment to the MOU.

Library staff has submitted the following in estimated FF&E costs associated with the new Library:

Furniture/Fixtures

Shelving/Furniture	\$145,000
Computer/Software/Laptops/e-readers	\$50,000
<u>Signage/Branding</u>	<u>\$15,000</u>
Total:	\$210,000

To account for these costs, the Library has offered that they have three Certificates of Deposit (CDs), which have an aggregate value of \$300,298. They also anticipate a significant fund-raising campaign to assist with costs, but the value of the CDs is being used to shore up this portion of the project.

Other costs of the project are being addressed in the Design Build Agreement with JE Dunn.

BUDGET IMPACT:

Bonds have been issued for this project, with an authorized total cost of \$3,750,000.

ACTION NEEDED:

Make a motion to Adopt Resolution 10-18-02, authorizing the First Amendment to the MOU with the Tonganoxie Public Library.

ATTACHMENTS:

Resolution 10-18-02
First Amendment to the MOU

cc: Dan Porter, Assistant City Manager

RESOLUTION NO. 10-18-02

A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF THAT CERTAIN FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF TONGANOXIE, KANSAS AND THE TONGANOXIE PUBLIC LIBRARY

WHEREAS, the City of Tonganoxie, Kansas, and the Tonganoxie Public Library wish to enter into that certain First Amendment to Memorandum of Understanding between the City of Tonganoxie and the Tonganoxie Public Library in order to clarify their respective obligations, authorities and responsibilities in connection with the Library Project, attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF TONGANOXIE, KANSAS:

Section 1. That the Governing Body approves and hereby authorizes the Mayor to execute that certain First Amendment to Memorandum of Understanding between the City of Tonganoxie, Kansas and the Tonganoxie Public Library, attached hereto as Exhibit A.

Section 2. That this resolution shall become effective upon passage.

ADOPTED by the Governing Body this 1st day of October, 2018.

SIGNED by the Mayor this 1st day of October, 2018.

SEAL

Jason K. Ward, Mayor

ATTEST:

Patricia C. Hagg, City Clerk

APPROVED AS TO FORM:

Shannon M. Marcano, City Attorney

EXHIBIT A
**First Amendment to Memorandum of Understanding between the City of
Tonganoxie and the Tonganoxie Public Library**

FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING

BETWEEN

CITY OF TONGANOXIE, KANSAS AND THE TONGANOXIE PUBLIC LIBRARY

WHEREAS, this First Amendment to Memorandum of Understanding (the “First Amendment”) between City of Tonganoxie, Kansas and the Tonganoxie Public Library is made and entered into this _____ day of _____, 2018, by and between the City of Tonganoxie, Kansas and the Tonganoxie Public Library.

BACKGROUND

The parties entered into a Memorandum of Understanding with an effective date of _____, 2018, concerning rights and responsibilities related to the conception and construction of a new Library Facility.

The City of Tonganoxie, Kansas and the Tonganoxie Public Library now wish to amend the Memorandum of Understanding as hereinafter provided.

WITNESSETH

NOW, THEREFORE, based on the promises and mutual covenants contained herein, the parties agree as follows:

1. That Section 3, entitled Library Responsibilities, be amended with the addition of new subsection e as follows:
 - e. The Library will fund FF&E in an amount of \$300,298.00, currently available in Certificates of Deposit owned by the Library. The Library shall not be required to spend all \$300,298.00 available if the Library Facility shall be fully equipped and turnkey for an amount less. To the extent the Library Facility shall not be fully equipped and turnkey for the full amount of \$300,298, the Library shall be solely responsible for funding the remaining FF&E necessary to fully equip the Library Facility.
2. Ratification. Except as herein amended, the Memorandum of Understanding is hereby ratified and confirmed in all other respects. All references in the Memorandum of Understanding to the “Memorandum”, or “MOU” shall mean the Memorandum of Understanding as amended by this First Amendment.
3. Signatures. This First Amendment may be executed in multiple counterparts, each of which shall be deemed an original and together constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have caused this First Amendment to be executed on the dates set forth below.

CITY OF TONGANOXIE, KANSAS

_____, 2018

By: _____

Jason K. Ward, Mayor

ATTEST:

City Clerk

TONGANOXIE PUBLIC LIBRARY

_____, 2018

By: _____

President of the Board of Directors



Office of the City Manager
AGENDA STATEMENT

DATE: October 1, 2018
To: Honorable Mayor Jason K. Ward and Members of the City Council
FROM: Dan Porter, Assistant City Manager
SUBJECT: Ordinance 1448 and 1449: Accepting the Dedication of Easements

DISCUSSION:

The City Council recently approved a final plat related to the development of a Casey's General Store within the City limits. According to the sanitary sewer utility plans associated with the development, there are two utility additional easements required for property located outside of but in near proximity to the specific project property. Ordinance 1448 and Ordinance 1449 formalize the approval and acceptance of these permanent utility easements from the current property owners. In addition, the developer is obtaining a temporary construction easement for installation of necessary infrastructure on these two properties.

BUDGET IMPACT:

None.

ACTION NEEDED:

Make a motion to adopt Ordinance 1448, Approving and Accepting a Permanent Utility Easement from Evans Family Trust.

Make a motion to adopt Ordinance 1449, Approving and Accepting a Permanent Utility Easement from Ryan Hutton.

ATTACHMENTS:

Ordinance 1448
Ordinance 1449

cc: George Brajkovic, City Manager

ORDINANCE NO. 1448

AN ORDINANCE APPROVING AND ACCEPTING A PERMANENT UTILITY EASEMENT FROM EVANS FAMILY TRUST

WHEREAS, the City of Tonganoxie, Kansas is a city of the second class and political subdivision duly organized and validly existing under the laws of the state of Kansas; and

WHEREAS, Evans Family Trust owns property in the City of Tonganoxie; and

WHEREAS, it is necessary that a certain permanent utility easement be dedicated to the City of Tonganoxie for the purpose of operating, maintaining, repairing and replacing a sanitary sewer line (hereinafter referred to as "Utility Line") and all facilities incident thereto; and

WHEREAS, Evans Family Trust wishes to dedicate such permanent utility easement, and the City of Tonganoxie wishes to accept the dedication of such permanent utility easement, legally described as follows:

A tract of land in the Southeast Quarter of Section 8, Township 11 South, Range 21 East of the Sixth Principal Meridian, in Leavenworth County, Kansas, described as follows: Commence at the Northeast corner of said Southeast Quarter; thence on an assumed bearing of South 00 degrees 02 minutes 05 seconds West, 687.35 feet along the East line of said Southeast Quarter; thence North 89 degrees 57 minutes 55 seconds West, 49.83 feet to the West right of way line of U.S. Highway No. 24 as described in Condemnation Case No. 34555, and the Point of Beginning; thence South 00 degrees 00 minutes 51 seconds West, 209.00 feet along said right of way line; thence North 89 degrees 59 minutes 09 seconds West, 22.50 feet; thence North 00 degrees 00 minutes 51 seconds East, 209.04 feet; thence South 89 degrees 53 minutes 11 seconds East, 22.50 feet to the Point of Beginning,

And as depicted in the Utility Easement Agreement attached hereto as Exhibit A

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TONGANOXIE, KANSAS:

Section 1: That the Governing Body of the City of Tonganoxie does hereby find and determine that it is in the best interest of the citizens and City of Tonganoxie, to approve, authorize, accept and receive the permanent utility easement, legally described as:

A tract of land in the Southeast Quarter of Section 8, Township 11 South, Range 21 East of the Sixth Principal Meridian, in Leavenworth County, Kansas, described as follows: Commence at the Northeast corner of said Southeast Quarter; thence on an assumed bearing of South 00 degrees 02 minutes 05 seconds West, 687.35 feet along the East line of said Southeast Quarter; thence North 89 degrees 57 minutes 55 seconds West, 49.83 feet to the West right of way line of U.S. Highway No. 24 as described in Condemnation Case No. 34555, and the Point of

Beginning; thence South 00 degrees 00 minutes 51 seconds West, 209.00 feet along said right of way line; thence North 89 degrees 59 minutes 09 seconds West, 22.50 feet; thence North 00 degrees 00 minutes 51 seconds East, 209.04 feet; thence South 89 degrees 53 minutes 11 seconds East, 22.50 feet to the Point of Beginning,

And depicted in the Utility Easement Agreement attached hereto as Exhibit A, for the purpose of operating, maintaining, repairing and replacing a sanitary sewer line (hereinafter referred to as “Utility Line”) and all facilities incident thereto

Section 2: That the permanent utility easement, legally described as:

A tract of land in the Southeast Quarter of Section 8, Township 11 South, Range 21 East of the Sixth Principal Meridian, in Leavenworth County, Kansas, described as follows: Commence at the Northeast corner of said Southeast Quarter; thence on an assumed bearing of South 00 degrees 02 minutes 05 seconds West, 687.35 feet along the East line of said Southeast Quarter; thence North 89 degrees 57 minutes 55 seconds West, 49.83 feet to the West right of way line of U.S. Highway No. 24 as described in Condemnation Case No. 34555, and the Point of Beginning; thence South 00 degrees 00 minutes 51 seconds West, 209.00 feet along said right of way line; thence North 89 degrees 59 minutes 09 seconds West, 22.50 feet; thence North 00 degrees 00 minutes 51 seconds East, 209.04 feet; thence South 89 degrees 53 minutes 11 seconds East, 22.50 feet to the Point of Beginning,

And depicted in the Utility Easement Agreement attached hereto as Exhibit A, is hereby approved, received and accepted by the Governing Body of the City of Tonganoxie on behalf of the City. The City Council directs that the Utility Easement Agreement, attached hereto as Exhibit A, be duly and properly recorded in the office of the Leavenworth County Register of Deeds.

Section 3. That the Mayor, City Clerk, City Manager and other city employees be authorized and directed to take such further action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this ordinance.

Section 4: That this ordinance shall take effect and be in force from and after its publication in the official newspaper of the City of Tonganoxie, Kansas as provided by law.

PASSED by the City Council this 1st day of October, 2018.

APPROVED by the Mayor this 1st day of October, 2018.

SEAL

Jason K. Ward, Mayor

ATTEST:

Patricia C Hagg, City Clerk

APPROVED AS TO FORM:

Shannon M. Marcano, City Attorney

EXHIBIT A

Utility Easement Agreement

Prepared by and after Recording Return to:

Douglas M. Beech, Casey's General Stores, Inc., P.O. Box 3001, Ankeny, IA 50021 P: 515/965-6284

UTILITY EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT, made this _____ day of _____, 2018, by and between Evans Family Trust dated December 29, 2015 (hereinafter referred to as "Evans") and the City of Tonganoxie, a Kansas municipality of 526 E. 4th Street, Tonganoxie, Kansas (hereinafter referred to as "City"),

WITNESSETH:

WHEREAS, Evans is the owner of certain real estate ("Evans Property") located in Tonganoxie, Leavenworth County, Kansas, legally described as follows:

See Exhibit "A" attached hereto.

WHEREAS, the parties have reached an agreement wherein City shall be granted a twenty-two and one-half foot (22.50') wide permanent utility easement over and across a portion of the Evans Property for the operation, maintenance, repair and replacement of the sanitary sewer and storm water drainage lines on the Evans Property, upon the terms and conditions herein provided.

NOW THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. EASEMENT AGREEMENT. Evans hereby sells, grants and conveys unto City a permanent twenty-two and one-half foot (22.50') wide utility easement for the purpose of operating, maintaining, repairing and replacing a sanitary sewer line and a storm sewer drainage line (collectively hereinafter referred to as "Utility Lines") and all facilities incident thereto, under, within and along an area of land

defined as a portion of the Evans Property being a strip of land 22.50 feet of even width and legally described as follows:

A tract of land in the Southeast Quarter of Section 8, Township 11 South, Range 21 East of the Sixth Principal Meridian, in Leavenworth County, Kansas, described as follows: Commence at the Northeast corner of said Southeast Quarter; thence on an assumed bearing of South 00 degrees 02 minutes 05 seconds West, 687.35 feet along the East line of said Southeast Quarter; thence North 89 degrees 57 minutes 55 seconds West, 49.83 feet to the West right of way line of U.S. Highway No. 24 as described in Condemnation Case No. 34555, and the Point of Beginning; thence South 00 degrees 00 minutes 51 seconds West, 209.00 feet along said right of way line; thence North 89 degrees 59 minutes 09 seconds West, 22.50 feet; thence North 00 degrees 00 minutes 51 seconds East, 209.04 feet; thence South 89 degrees 53 minutes 11 seconds East, 22.50 feet to the Point of Beginning,

which said parcel of real estate is herein referred to as the "Easement Area." A diagram depicting the location of the Easement Area is attached hereto as Exhibit "B."

2. MAINTENANCE AND REPAIR. City will be solely responsible for the operation, maintenance, repair and replacement of said Utility Lines, and its officers, agents, employees and contractors shall have the right at any and all reasonable times, when necessary or convenient to do so, to enter upon the Easement Area and perform any and all acts necessary for the operation, maintenance, repair or replacement of the Utility Lines and any associated equipment, to properly carry into effect the purposes for which this easement is made and granted.
3. EVANS' USE. Evans shall have the undisturbed right of use of the Easement Area, as so far as such use does not interfere with the rights herein granted to City, except Evans shall not erect or replace any building or permanent structure or plant any tree on the Easement Area without the advanced consent of City, and City shall not be liable for damage occasioned by the removal of or injury to any building, improvement or trees placed without its consent when the same is affected by City in the furtherance of the purposes set forth herein.

4. BINDING EFFECT. Each of the covenants and agreements made and provided herein shall be construed as covenants and agreements imposed upon and running in perpetuity with the land. Each and every one of the benefits of this agreement shall inure to and be binding upon the respective heirs, legal representatives, executors, administrators, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year first written above.

CITY OF TONGANOXIE, KANSAS

**EVANS FAMILY TRUST DATED
DECEMBER 29, 2015**

By: _____
Jason K. Ward, Mayor

By: _____
John W. Evans, Trustee

By: _____
Patricia C. Hagg, City Clerk

By: _____
Ferry A. Evans, Trustee

ACKNOWLEDGMENTS

STATE OF KANSAS)
) SS:
COUNTY OF LEAVENWORTH)

On this ____ day of _____, 2018, before me, the undersigned, a Notary Public in and for said state, personally appeared Jason K. Ward and Patricia C. Hagg, to me personally known and who being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Tonganoxie, Kansas; that the instrument was signed on behalf of the City, by the authority of its City Council, and that Jason K. Ward and Patricia C. Hagg acknowledge the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the City, by it voluntarily executed.

Notary Public in and for said County and State

STATE OF KANSAS)
) SS:
COUNTY OF _____)

On this ____ day of _____, 2018, before me the undersigned, a Notary Public in and for the State of Kansas, personally appeared John W. Evans and Ferry A. Evans, to me personally known, and who being by me duly sworn did say that they are the Trustees of the Evans Family Trust dated December 29, 2015 executing the foregoing instrument, and that the instrument was signed on behalf of the Trust by them as Trustees, and John W. Evans and Ferry A. Evans acknowledged the instrument to be the voluntary act and deed of the Trust and of them as Trustees, and by them voluntarily executed.

Notary Public in and for the State of Kansas

EXHIBIT "A"

A tract of land in southeast ¼ of Section 8, Township 11S, Range 21E in Leavenworth County, Kansas, more fully described as follows:

Beginning at a point 906.37 feet west and 503.36 feet south of the North ½ Corner of the Southeast ¼ of said Section 8, thence (S 03° 48' 47" W) 226.73 Ft.; Thence (S 84° 28' 15" W) 147.17 Ft.; thence (N 40° 15' 56" W) 140.06 Ft.; Thence (N 55° 17' 47" E) 231.66 Ft.; Thence (N 87° 36' 34" E) 62.81 Ft to the Point of Beginning containing .90 acres more or less.

A 20 foot Driveway Easement in the southeast ¼ of Section 8, Township 11S, Range 21E, in Leavenworth County, Kansas. The center line being more fully described as follows: Beginning at a point 863.15 feet west from the North ½ corner of the southeast ¼ of said section 8; Thence (S 00° 02' 15" W) 503.94 feet; thence (S 06° 21' 43" W) 185.77 feet; thence (West) 35.18 feet to the end.

AND The North ½ of the Southeast ¼ of Section 8, Township 11 S, Range 21E AND one acre in the Southwest ¼ of the Southeast ¼, of said Section 8, bounded as follows, to wit: Beginning on the West line of said Southwest ¼ of the Southeast ¼, 16 rods South of the Northwest corner of the same; running thence North to said Northwest corner; thence East 20 rods; thence Southwesterly to the point of beginning, containing one acres, more or less; AND ALSO The North 29 acres of the East ½ of the East ½ of the Southwest ¼ of said Section 8, all in Township 11 South, Range 21, less the one acre sold to Fountain M. Smith, less the land sold for highway purposes.

Less and except:

A tract of land in the Southeast Quarter of Section 8, Township 11 South, Range 21 East of the 6th P.M., Leavenworth County, Kansas, more fully described as follows: Commencing at the Northeast corner of said Southeast Quarter; thence South 01 degrees 38' 21" East for a distance of 687.42 feet along the East line of said Southeast Quarter; thence South 88 degrees 26' 03" West for a distance of 49.83 feet to the Westerly line of U.S. Highway 24 as described in Condemnation Case No. 34555 and reflected on survey by Richard T. Schmidt dated December 8, 2017; thence continuing South 88 degrees 26' 03" West for a distance of 208.71 feet as established from survey by Richard T. Schmidt; thence North 01 degrees 39' 12" West for a distance of 270.00 feet as established from survey Richard T. Schmidt and to the apparent Southwest corner of JOHN EVANS SUBDIVISION #1 as platted; thence North 88 degrees 26' 03" East for a distance of 208.71 feet to the said Westerly right of way of U.S. Highway 24; thence South 01 degrees 39' 12" East for a distance of 270.00 feet to the point of beginning.

ORDINANCE NO. 1449

AN ORDINANCE APPROVING AND ACCEPTING A PERMANENT UTILITY EASEMENT FROM RYAN HUTTON

WHEREAS, the City of Tonganoxie, Kansas is a city of the second class and political subdivision duly organized and validly existing under the laws of the state of Kansas; and

WHEREAS, Ryan Hutton owns property in the City of Tonganoxie; and

WHEREAS, it is necessary that a certain permanent utility easement be dedicated to the City of Tonganoxie for the purpose of operating, maintaining, repairing and replacing a sanitary sewer line (hereinafter referred to as “Utility Line”) and all facilities incident thereto; and

WHEREAS, Ryan Hutton wishes to dedicate such permanent utility easement, and the City of Tonganoxie wishes to accept the dedication of such permanent utility easement, legally described as follows:

The North 10.00 feet of the South 20.00 feet of the West 42.00 feet of Lot 5, Block 35, Railroad Addition to Tonganoxie, according to the recorded plat thereof, in the City of Tonganoxie, Leavenworth County, Kansas

And as depicted in the Utility Easement Agreement attached hereto as Exhibit A

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TONGANOXIE, KANSAS:

Section 1: That the Governing Body of the City of Tonganoxie does hereby find and determine that it is in the best interest of the citizens and City of Tonganoxie, to approve, authorize, accept and receive the permanent utility easement, legally described as:

The North 10.00 feet of the South 20.00 feet of the West 42.00 feet of Lot 5, Block 35, Railroad Addition to Tonganoxie, according to the recorded plat thereof, in the City of Tonganoxie, Leavenworth County, Kansas

And depicted in the Utility Easement Agreement attached hereto as Exhibit A, for the purpose of operating, maintaining, repairing and replacing a sanitary sewer line (hereinafter referred to as “Utility Line”) and all facilities incident thereto

Section 2: That the permanent utility easement, legally described as:

The North 10.00 feet of the South 20.00 feet of the West 42.00 feet of Lot 5, Block 35, Railroad Addition to Tonganoxie, according to the recorded plat thereof, in the City of Tonganoxie, Leavenworth County, Kansas

And depicted in the Utility Easement Agreement attached hereto as Exhibit A, is hereby approved, received and accepted by the Governing Body of the City of Tonganoxie on behalf of the City. The City Council directs that the Utility Easement Agreement, attached hereto as Exhibit A, be duly and properly recorded in the office of the Leavenworth County Register of Deeds.

Section 3. That the Mayor, City Clerk, City Manager and other city employees be authorized and directed to take such further action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this ordinance.

Section 4: That this ordinance shall take effect and be in force from and after its publication in the official newspaper of the City of Tonganoxie, Kansas as provided by law.

PASSED by the City Council this 1st day of October, 2018.

APPROVED by the Mayor this 1st day of October, 2018.

SEAL

Jason K. Ward, Mayor

ATTEST:

Patricia C Hagg, City Clerk

APPROVED AS TO FORM:

Shannon M. Marcano, City Attorney

EXHIBIT A

Utility Easement Agreement

Prepared by and after Recording Return to:

Douglas M. Beech, Casey's General Stores, Inc., P.O. Box 3001, Ankeny, IA 50021 P: 515/965-6284

UTILITY EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT, made this _____ day of _____, 2018, by and between Ryan Hutton, of 104 E. 6th Street, Tonganoxie, Kansas (hereinafter referred to as "Hutton") and the City of Tonganoxie, a Kansas municipality of 526 E. 4th Street, Tonganoxie, Kansas (hereinafter referred to as "City"),

WITNESSETH:

WHEREAS, Hutton is the owner of certain real estate ("Hutton Property") located in Tonganoxie, Leavenworth County, Kansas, legally described as follows:

Lot 5, Block 35, Railroad Addition to Tonganoxie, according to the recorded plat thereof, in the City of Tonganoxie, Leavenworth County, Kansas.

WHEREAS, the parties have reached an agreement wherein City shall be granted a ten foot (10') wide permanent utility easement over and across a portion of the Hutton Property for the operation, maintenance, repair and replacement of the sanitary sewer line on the Hutton Property, upon the terms and conditions herein provided.

NOW THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. EASEMENT AGREEMENT. Hutton hereby sells, grants and conveys unto City a permanent ten foot (10') wide utility easement for the purpose of operating, maintaining, repairing and replacing a sanitary sewer line (hereinafter referred to as "Utility Line") and all facilities incident thereto, under, within and along an area of land defined as a portion of the Hutton Property being a strip of land 10 feet of even width and legally described as follows:

The North 10.00 feet of the South 20.00 feet of the West 42.00 feet of Lot 5, Block 35, Railroad Addition to Tonganoxie, according to the recorded plat thereof, in the City of Tonganoxie, Leavenworth County, Kansas,

which said parcel of real estate is herein referred to as the "Easement Area." A diagram depicting the location of the Easement Area is attached hereto as Exhibit "A."

2. MAINTENANCE AND REPAIR. City will be solely responsible for the operation, maintenance, repair and replacement of said Utility Line, and its officers, agents, employees and contractors shall have the right at any and all reasonable times, when necessary or convenient to do so, to enter upon the Easement Area and perform any and all acts necessary for the operation, maintenance, repair or replacement of the Utility Line and any associated equipment, to properly carry into effect the purposes for which this easement is made and granted.
3. HUTTON'S USE. Hutton shall have the undisturbed right of use of the Easement Area, as so far as such use does not interfere with the rights herein granted to City, except Hutton shall not erect or replace any building or permanent structure or plant any tree on the Easement Area without the advanced consent of City, and City shall not be liable for damage occasioned by the removal of or injury to any building, improvement or trees placed without its consent when the same is affected by City in the furtherance of the purposes set forth herein.
4. BINDING EFFECT. Each of the covenants and agreements made and provided herein shall be construed as covenants and agreements imposed upon and running in perpetuity with the land. Each and every one of the benefits of this agreement shall inure to and be binding upon the respective heirs, legal representatives, executors, administrators, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year first written above.

CITY OF TONGANOXIE, KANSAS

HUTTON

By: _____
Jason K. Ward, Mayor

By: _____
Ryan Hutton

By: _____
Patricia C. Hagg, City Clerk

ACKNOWLEDGMENTS

STATE OF KANSAS)
) SS:
COUNTY OF LEAVENWORTH)

On this ____ day of _____, 2018, before me, the undersigned, a Notary Public in and for said state, personally appeared Jason K. Ward and Patricia C. Hagg, to me personally known and who being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Tonganoxie, Kansas; that the instrument was signed on behalf of the City, by the authority of its City Council, and that Jason K. Ward and Patricia C. Hagg acknowledge the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the City, by it voluntarily executed.

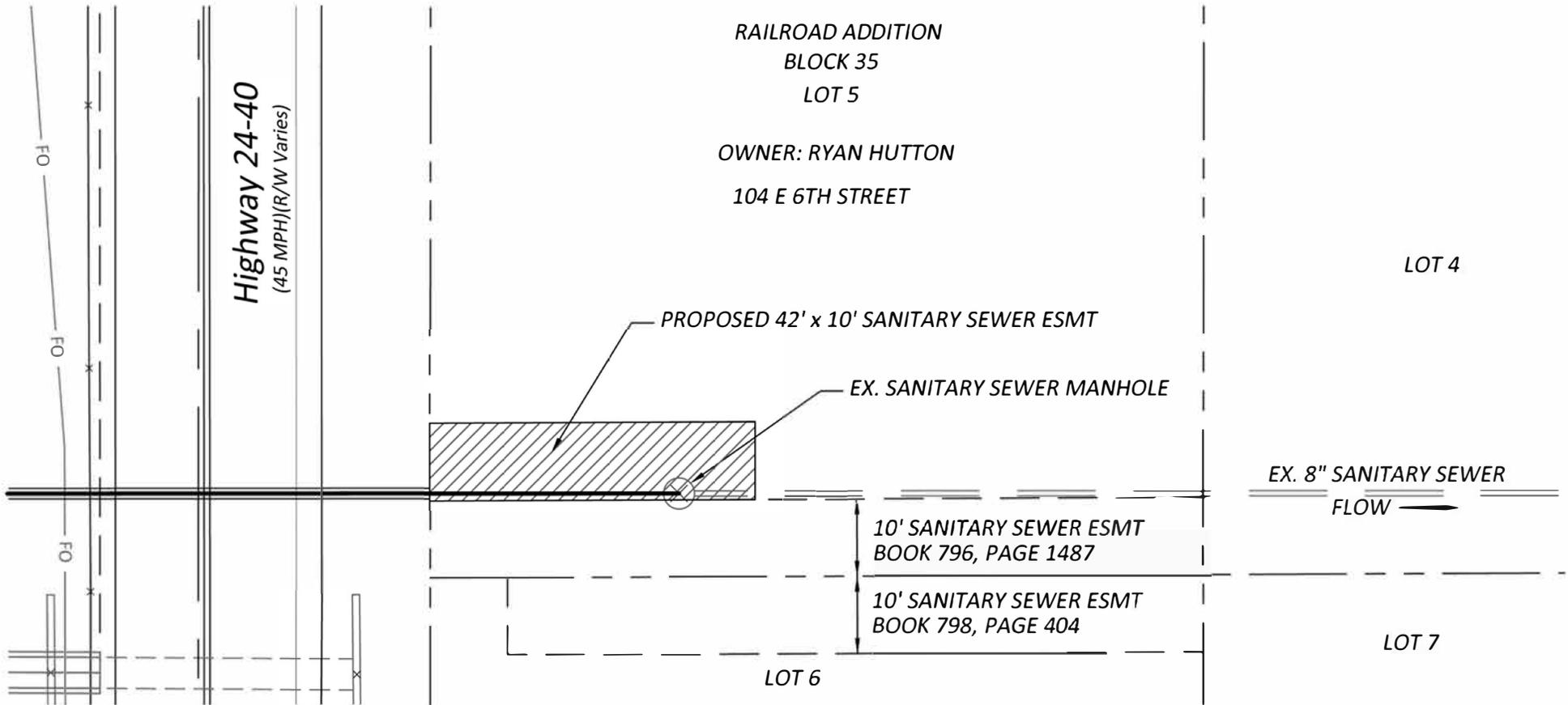
Notary Public in and for said County and State

STATE OF KANSAS)
) SS:
COUNTY OF LEAVENWORTH)

On this ____ day of _____, 2018, before me the undersigned, a Notary Public in and for said county and state, personally appeared Ryan Hutton, to me known to be the person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

Notary Public in and for the State of Kansas

EASEMENT EXHIBIT "A"



NOT TO SCALE



1415 SW Topeka Blvd.
Topeka, KS 66612
Ph: (785) 215-8630



Office of the City Manager
AGENDA STATEMENT

DATE: October 1, 2018
To: Honorable Mayor Jason K. Ward and Members of the City Council
FROM: Dan Porter, Assistant City Manager
SUBJECT: Consider Award of Bid to Proseal, Inc. for 2018 Asphalt Rejuvenation Project

DISCUSSION:

The 2018 budget adopted by the City Council included dedicated funding for street maintenance activities at a greatly enhanced level compared to prior years due to the identification of a clear need for preventative maintenance to improve the lifespan and quality of the City's transportation infrastructure and the presence of a partially dedicated funding source due to voter approval of a ¾ cent infrastructure sales tax in February 2017. The governing body provided policy direction at the Capital Maintenance & Improvement Projects workshop held in May 2018 for staff to move forward with targeted street maintenance treatments on locations identified throughout the City. The 2018 Asphalt Rejuvenation project reflects the second largest component of those efforts in 2018 and is planned for completion using outside firms. In 2018, Public Works staff have progressed in-house with related projects like curb repair and replacement and administered a contract valued at \$250,682 for mill & overlay efforts performed by an outside firm.

Advertisement was placed soliciting bids (request for proposals) for the asphalt rejuvenation project on the City's website on September 10, 2018 and in the *Tonganoxie Mirror* on September 12, 2018 listing a due date of September 26, 2018. Staff received 2 complete bids for the primary locations identified in the attached specifications.

The low bid for the primary locations was received from Proseal, Inc. for \$0.83/square yard, or \$55,270.53. City staff reviewed the bid and consider it satisfactory & complete compared to the specifications. Staff recommends award to this firm and request approval of the draft contract included as an attachment.

BUDGET IMPACT:

As of September 27, 2018, the City's Special Highway Fund still holds over \$87,000 of a total of \$357,100 provided in fiscal year 2018 annual budget authority. The proposed contract fits within these constraints and meets cash basis law requirements.

ACTION NEEDED:

Make a motion to accept the bid of Proseal, Inc. and authorize staff to execute the contract with Proseal, Inc. for an amount not to exceed \$55,270.53.

ATTACHMENTS:

Resolution 10-18-03: Draft Contract, including Project Specifications
Bids Tabulation & Summary
Other Bid Submissions

cc: George Brajkovic, City Manager
Kent Heskett, Public Works Director

RESOLUTION 10-18-03

A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF A CONSTRUCTION AND TECHNICAL SERVICES AGREEMENT WITH PROSEAL, INC.

WHEREAS, the City of Tonganoxie, Kansas (the “City”) wishes to enter into a Construction and Technical Services Agreement with Proseal, Inc, attached hereto as **Exhibit A**, for the application of asphalt rejuvenation agents to streets within the City limits.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF TONGANOXIE, KANSAS:

Section 1. That the Governing Body approves and hereby authorizes the Mayor to execute the Construction and Technical Services Agreement with Proseal, Inc., attached hereto as **Exhibit A**, for the application of asphalt rejuvenation agents to streets within the City limits.

Section 2. That this resolution shall become effective upon passage.

ADOPTED by the Governing Body this 1th day of October, 2018.

SIGNED by the Mayor this 1st day of October, 2018.

SEAL

Jason K. Ward, Mayor

ATTEST:

Patricia C. Hagg, City Clerk

APPROVED AS TO FORM:

Shannon M. Marcano, City Attorney

EXHIBIT A
Construction and Technical Services Agreement

CONSTRUCTION & TECHNICAL SERVICES AGREEMENT

THIS AGREEMENT is dated this _____ day of _____, 2018, between the City of Tonganoxie (City), a constitutionally chartered municipal corporation in the state of Kansas, and Proseal, Inc. (Contractor), whereby Contractor shall provide construction services to the City in accordance with the terms and conditions contained in this Agreement.

PART I SPECIAL TERMS AND CONDITIONS

Sec. 1 Compensation

- A. The amount the City will pay Contractor under this Agreement will not exceed \$55,270.53. Contractor will be paid by corporate check.
- B. Contractor will bill the City by itemized invoice, in a form acceptable to the City, upon completion of work as certified by the Public Works Director.
- C. It shall be a condition precedent to payment of any invoice from Contractor that Contractor is in compliance with, and not in breach or default of, all terms, covenants and conditions of the Agreement. If damages are sustained by the City as a result of breach or default by Contractor, the City may withhold payment(s) to Contractor for the purpose of set off until such time as the exact amount of damages due the City from Contractor may be determined.
- D. No request for payment will be processed unless the request is in proper form, correctly computed, completely itemized, and is approved as payable under the terms of the Agreement.
- E. The City is not liable for any obligation incurred by Agreement except as approved under the provisions of the Agreement.

Sec. 2 Responsibilities of Contractor

Contractor shall perform the following Scope of Services:

- A. Provide specialized and technical work as further described in Addendum A herein.
- B. Use reasonable construction practices of modern industry standards as to ensure reasonable quality, functionality, and durability of final product.
- C. Comply with direction and coordination of the Public Works Director.
- D. Ensure that Contractor is sufficiently certified, equipped, and staffed to fully satisfy Contractor's responsibilities under the terms of this Agreement.

Sec. 3 Notices

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

To City:

City Manager
City of Tonganoxie
P.O. Box 326
Tonganoxie, Kansas 66086
Phone: (913) 845-2620 Facsimile: (913) 845-9760

To Contractor:

Chris Greenwell
Proseal, Inc.
PO Box 741
El Dorado, KS 67042
Phone: (316)650-9805 Facsimile: _____

All notices are effective on the date mailed or deposited with courier.

Sec. 4

Merger

This Agreement consists of Part I, Special Terms and Conditions and any Attachments and any documents incorporated by reference; and Part II, Standard Terms and Conditions. This Agreement, including any Attachments and incorporated documents, constitutes the entire agreement between the City and Contractor with respect to this subject matter.

Sec. 5

Conflict between Contract Parts

In the event of any conflict or ambiguity between the Special Terms and Conditions of Part I and the Standard Terms and Conditions of Part II of this Agreement, Part I will be controlling.

Sec. 6

Term of Agreement

This Agreement shall begin on **October 1, 2018**, and shall end on **December 1, 2018**. The term of this Agreement may be extended an additional **1** months upon the prior written approval by the City.

Sec. 7

Responsibilities of City

- A. The City will provide sufficient and clear direction to Contractor for the adequate fulfillment of the scope of services under the terms of this Agreement.
- B. The City will provide prompt payment to Contractor, upon receipt of acceptable documentation and approval by the City Council, provided that Contractor has performed all work, in a timely manner, to the satisfaction of the Public Works Director.
- C. The Contractor will provide adequate notice to affected residents and businesses of any interruption to normal and reasonable automotive traffic flow.

Sec. 8

Subcontracting

Contractor must provide in writing to the City the name of any and all subcontracted companies and independent contractors that will perform work on behalf of Contractor under the terms of this Agreement.

Sec. 9

Performance Bond

If this Agreement is in the amount of \$40,000.00 or greater, Contractor shall furnish a performance bond to the City executed by a surety for the contract amount, guaranteeing Contractor's faithful performance of each and every term of this Agreement and all authorized changes. Surety must:

- A. Be qualified to issue bonds at amounts specified in the Department of the Treasury Circular 570; and
- B. Be licensed by the State of Kansas to do business in the State of Kansas; and
- C. If applicable, retain an A.M. Best rating of "B+, Class V" for Bonds in excess of \$200,000.

Sec. 10 Incorporation of Federal/State Laws and Regulation

Contractor shall administer and use the funds provided hereunder in conformance with all federal/state laws and regulations applicable to the use of those funds. The federal/state laws and regulations applicable to the use of funds provided under this Agreement are incorporated and made a part of this Agreement by reference. Contractor agrees that it is its responsibility to obtain and familiarize itself with those laws and regulations. All laws and regulations incorporated into this Agreement shall include all subsequent amendments.

Sec. 11 Attorney Services Certification

Contractor certifies that at the time of the issuance of the Agreement, either in an individual or firm capacity, Contractor does not represent any part in litigation against the City, exclusive of representation in municipal court, exclusive of those attorneys employed by a not-for-profit legal services corporation and exclusive of where the City is named as a nominal part, where the litigation has been filed with the agreement of the City and the party represented by the attorney, or where the council has otherwise waived this requirement.

PART II

STANDARD TERMS AND CONDITIONS

Sec. 1. Indemnification: Definitions

A. For purposes of this Section 1 only, the following terms shall have the meanings listed:

- i. **Claims** means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys' fees, including attorneys' fees incurred by the City in the enforcement of this indemnity obligation.
- ii. **Contractor's Agents** means Contractor's officers, employees, sub-consultants, subcontractors, successors, assigns, invitees, and other agents.
- iii. **City** means City of Tonganoxie and its agents, officials, officers and employees.

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

C. Contractor shall defend, indemnify and hold harmless the City from and against all claims arising out of or resulting from all acts or omissions in connection with this Contract caused in whole or in part by Contractor or Contractor's Agents, regardless of whether or not caused in part by any act or omission,

including negligence, of the City. Contractor is not obligated under this Section to indemnify the City for the sole negligence of the City.

D. Nothing in this section shall apply to indemnification for professional negligence which is specified in a separate provision of this Contract.

Sec. 2. Independent Contractor.

Contractor is an independent contractor and is not the City's agent. Contractor has no authority to take any action or execute any documents on behalf of the City.

Sec. 3. Insurance.

A. Contractor shall procure and maintain in effect throughout the duration of this Contract insurance coverage not less than the types and amounts specified in this section. In the event that additional insurance, not specified herein, is required during the term of this Contract, Contractor shall supply such insurance at the City's cost. Policies containing a Self-Insured Retention are unacceptable to the City.

1. Commercial General Liability Insurance: with limits of \$1,000,000 per occurrence and \$1,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:
 - a. Severability of Interests Coverage applying to Additional Insureds
 - b. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$1,000,000
 - c. No Contractual Liability Limitation Endorsement
 - d. Additional Insured Endorsement, ISO form CG20 10, or its equivalent.
2. If applicable, Workers' Compensation Insurance, as required by statute, including Employers Liability with limits of:

Workers' Compensation Statutory Employers Liability \$100,000 accident with limits of:
\$500,000 disease-policy limit
\$100,000 disease-each employee

3. Commercial Automobile Liability Insurance: with a limit of \$1,000,000 per occurrence, covering owned, hired, and non-owned automobiles. Coverage provided shall be on an "any auto" basis and written on an "occurrence" basis. This insurance will be written on a Commercial Business Auto form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Contract, by Contractor.
4. If applicable, Professional Liability Insurance with limits per claim and annual aggregate of \$1,000,000.

B. The policies listed above may not be canceled until after thirty (30) days written notice of cancellation to the City, ten (10) days in the event of nonpayment of premium. The Commercial General and Automobile Liability Insurance specified above shall provide that the City and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this Contract. Contractor shall provide to the City at execution of this Contract a certificate of insurance showing all required endorsements and additional insureds.

C. All insurance coverage must be written by companies that have an A.M. Best's rating of "B+V" or better, and are licensed or approved by the State of Kansas to do business in Kansas.

D. Regardless of any approval by the City, it is the responsibility of Contractor to maintain the required insurance coverage in force at all times; its failure to do so will not relieve it of any contractual obligation or responsibility. In the event of Contractor's failure to maintain the required insurance in effect, the City

may order Contractor to immediately stop work, and upon ten (10) days notice and an opportunity to cure, may pursue its remedies for breach of this Contract as provided for herein and by law.

Sec. 4. Governing Law.

This Contract shall be construed and governed in accordance with the law of the State of Kansas. The parties submit to the jurisdiction of the courts of the State of Kansas and waive venue.

Sec. 5. Compliance with Laws.

Contractor shall comply with all federal, state and local laws, ordinances and regulations applicable to the work and this Agreement.

Sec. 6. Default and Remedies.

If Contractor shall be in default or breach of any provision of this Contract, the City may terminate this contract, suspend the City's performance, withhold payment or invoke any other legal or equitable remedy after giving Contractor notice and opportunity to correct such default or breach.

Sec. 7. Waiver.

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

Sec. 8. Modification.

Unless stated otherwise in this Contract, no provision of this Contract may be waived, modified or amended except in writing signed by the City.

Sec. 9. Headings; Construction of Contract.

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

Sec. 10. Severability of Provisions.

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

Sec. 11. Audit.

A. The City Manager or designee shall have the right to audit this Contract and all books, documents and records relating thereto.

B. Contractor shall maintain all its books, documents and records relating to this Contract during the contract period and for three (3) years after the date of final payment.

C. The books, documents and records of Contractor in connection with this Contract shall be made available to the City Manager or designee within ten (10) days after the written request is made.

Sec. 12. Tax Compliance.

Contractor shall provide proof of compliance with the City's tax ordinances administered by the City Manager as a precondition to the City making the first payment under this contract or any contract renewal when the total contract amount exceeds \$10,000. If contractor performs work on a contract that is for a term longer than one (1) year, the contractor also shall submit to the City proof of compliance with the City's tax ordinances administered by the City Manager as a condition precedent to the City making final payment under the contract.

Sec. 13. Assignability or Subcontracting

Contractor shall not subcontract, assign or transfer any part or all of Contractor's obligations or interests without the City's prior approval. If Contractor shall subcontract, assign, or transfer any part of Contractor's interests or obligations under this Contract without the prior approval of the City, it shall constitute a material breach of this Contract.

Sec. 14. Conflicts of Interest.

Contractor certifies that no officer or employee of the City has, or will have, a direct or indirect financial or personal interest in this Contract, and that no officer or employee of the City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Contractor in this Contract.

THIS AGREEMENT CONTAINS INDEMNIFICATION PROVISIONS

IN WITNESS WHEREOF, Contractor and the City have caused this CONSTRUCTION Agreement to be duly executed as set forth below.

Contractor

I hereby certify that I have authority to execute this document on behalf of **Proseal, Inc.**

By: _____

Printed: _____

Title: _____

Approved as to form:

Shannon M. Marcano
City Attorney

City of Tonganoxie, Kansas

a constitutionally chartered municipal corporation

By: _____

Jason K. Ward

Title: Mayor

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

By: _____

George Brajkovic

Title: City Manager

Addendum A

Scope of Work

Sec. 1 Contractor will purchase all associated materials that are necessary for complete performance under the terms of this Agreement.

Sec. 2 Contractor will apply asphalt rejuvenating product to selected streets within the City limits of Tonganoxie, which locations and specifications are generally described as the following:

Primary Work

- 1) Application of Asphalt Rejuvenating product per the standard specifications that follow.

Location of work

1. Finch Dr
2. Wilshire Dr
3. Skyline Dr
4. Melrose Pl
5. Rawlings Dr
6. Willis Dr
7. Joles Dr
8. Jackson Dr
9. Grae Ct
10. South Park Dr
11. Stone Creek Ave
12. Woodfield Dr
13. Michaels Ct
14. Industrial Dr
15. High Prairie Pl
16. Hidden Valley Dr
17. Valley View Dr
18. Rock Creek Dr
19. Rock Creek Ct
20. Bradley Ct
21. Brook Ridge Ct
22. Hidden Valley Ct
23. Copper Creek Ct
24. Country View Ct
25. Willow Bend Dr

The attached map shows the streets, highlighted in red, to be treated.

Sec. 3 The City will be responsible for sweeping.

Sec. 4 The total amount of this agreement includes all labor, equipment, and materials.

Sec. 5 Contractor commits to performing work and staging equipment, materials, and personnel, under the direction of the Public Works Director, at allowable locations, allowable times, and in such a manner as not to negatively impact normal operations of City staff, automotive traffic, neighboring properties, and other field work.

Sec. 6 Contractor shall follow guidelines listed in the bid advertisement specifications hereby incorporated and made part of this Agreement.

Sec. 7 Contractor's quote is hereby incorporated by reference and made part of this Agreement.

[INSERT CITY BID SPECIFICATIONS from 2018 RFP.]

[INSERT FULL QUOTE from Proseal, Inc.]

Tonganoxie Asphalt Rejuvenating Project 2018

Primary Work

1. Application of Asphalt Rejuvenating product per the standard specifications that follow.

Sweeping will be the responsibility of the City of Tonganoxie.

Potential Contract and Terms

- 1) Contractor shall furnish a performance bond to the City executed by surety for the contract amount.
- 2) Contractor shall provide proof of commercial general liability and auto liability insurance for the amount of \$1,000,000 per occurrence.
- 3) A project tax exemption number will be provided.
- 4) Work is anticipated to begin approximately October 8th, 2018 with the work being completed before December 1st, 2018.
- 5) The City of Tonganoxie holds the right to reject all bids and negotiate with the winning bidder.

Bids shall be sealed and sent to:

City of Tonganoxie
Box 326
Tonganoxie Ks, 66086

Or hand delivered to City Hall at 526 E 4th St. By 1:00 PM Wednesday September 26th, 2018.

Bids will be opened Wednesday September 26th, at 1:00 PM in the Tonganoxie Council Chambers @ 325 S. Delaware St.

Questions can be directed to Kent Heskett, Public Works Superintendent, at 913-208-6590 or kheskett@tonganoxie.org. All questions and answers will be posted on the City website.

Location of work

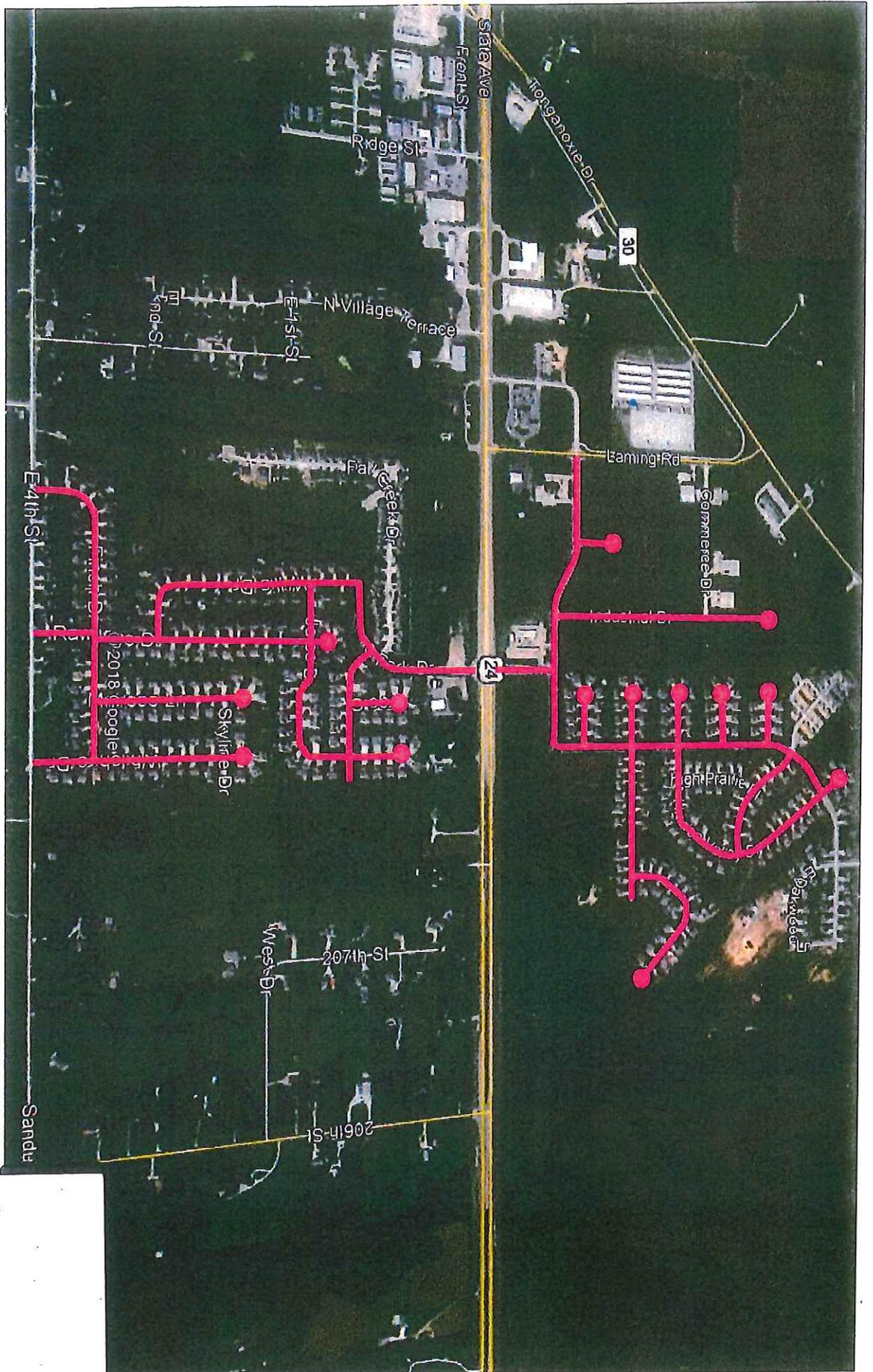
1. Finch Dr
2. Wilshire Dr
3. Skyline Dr
4. Melrose Pl

5. Rawlings Dr
6. Willis Dr
7. Joles Dr
8. Jackson Dr
9. Grae Ct
10. South Park Dr
11. Stone Creek Ave
12. Woodfield Dr
13. Michaels Ct
14. Industrial Dr
15. High Prairie Pl
16. Hidden Valley Dr
17. Valley View Dr
18. Rock Creek Dr
19. Rock Creek Ct
20. Bradley Ct
21. Brook Ridge Ct
22. Hidden Valley Ct
23. Copper Creek Ct
24. Country View Ct
25. Willow Bend Dr

The attached map shows the streets, highlighted in red, to be treated.

All measurements shall be verified by contractors and are final upon the bid deadline.

Bid amount shall be good and valid for sixty (60) days from the bid deadline.



STANDARD SPECIFICATIONS

FOR

ASPHALT SURFACE MAINTENANCE

WITH AN

ASPHALT REJUVENATING AGENT

ASPHALT REJUVENATING AGENT

I. Scope:

This work shall consist of furnishing all labor, material, and equipment necessary to perform all operations for the application of an asphalt rejuvenating agent to asphaltic concrete surface courses. The rejuvenation of surface courses shall be by spray application of a cationic rejuvenating agent composed of petroleum oils and resins emulsified with water. All work shall be in accordance with the specifications, the applicable drawings, and subject to the terms and conditions of this contract.

II. Material Specifications:

The asphalt rejuvenating agent shall be an emulsion composed of a petroleum resin oil base uniformly emulsified with water. Each bidder must submit with his bid a certified statement from the asphalt rejuvenator manufacturer showing that the asphalt rejuvenating emulsion conforms to the required physical and chemical requirements.

SPECIFICATIONS

<u>Tests</u>	<u>Test Method</u>		<u>Requirements</u>	
	<u>ASTM</u>	<u>AASHTO</u>	<u>Min.</u>	<u>Max.</u>
Tests on Emulsion:				
Viscosity @ 25° C, SFS	D-244	T-59	15	40
Residue, % W ¹		D-244(Mod.) T-59(Mod)	60	65
Miscibility Test ²	D-244(Mod.)	T-59(Mod)	No Coagulation	
Sieve Test, %W ³	D-244(Mod.)	T-59(Mod)	-	0.1
Particle Charge Test	D-244	T-59	Positive	
Percent Light Transmittance ⁴	GB	GB	-	30
Tests on Residue from Distillation:				
Flash Point, COC, ° C	D-92	T-48	196	-
Viscosity @ 60° C, cSt	D-445	-	100	200

Asphaltenes, %w	D-2006-70	-	-	1.00
Maltene Dist. Ratio	D-2006-70	-	0.3	0.6

$$\frac{PC + A_1^5}{S + A_2}$$

PC/S Ratio ⁵	D-2006-70	-	0.5	-
Saturated Hydrocarbons, S ⁵	D-2006-70	-	21	28

¹ ASTM D-244 Modified Evaporation Test for percent of residue is made by heating 50 gram sample to 149 C (300 F) until foaming ceases, then cool immediately and calculate results.

² Test procedure identical with ASTM D-244-60 except that .02 Normal Calcium Chloride solution shall be used in place of distilled water.

³ Test procedure identical with ASTM D-244 except that distilled water shall be used in place of two percent sodium oleate solution.

⁴ Test procedure is attached.

⁵ Chemical composition by ASTM Method D-2006-70:

PC = Polar Compounds, A₁ = First Acidaffins

A₂ = Second Acidaffins, S = Saturated Hydrocarbons

III. Material Performance:

The rejuvenating agent shall have a record of at least five years of satisfactory service as asphalt rejuvenating agent and in-depth sealer. Satisfactory service shall be based on the capability of the material to decrease the viscosity and increase the penetration value of the asphalt binder as follows. The viscosity shall be reduced by a minimum of 45 percent and the penetration value shall be increased by a minimum of 25 percent. Testing shall be performed on extracted asphalt cement from a pavement to a depth of three eighths inch (3/8"). In addition, the pavement shall be in-depth sealed to the intrusion of air and water.

The bidder must submit with his bid the manufacturer's certification of compliance that the material proposed for use is in compliance with the specification requirements.

RECLAMITE®, manufactured by Tricor Refining, LLC is a product of known quality and accepted performance.

IV. Applicator Experience:

The asphalt-rejuvenating agent shall be applied by an experienced applicator of such material. The bidder shall have a minimum of three years experience in applying the product proposed for use.

V. PRODUCT STANDARDS AND ALTERNATES:

The product "Reclamite"®, as manufactured by Tricor Refining, LLC for the asphalt rejuvenating agent is the standard for these specifications and the prices quoted on the Bid Sheet Base Bid shall be for this standard. Should a bidder wish to submit a bid for alternates to the Standard, said prices shall be entered on the BID SHEET as the "Alternate Bid" for each item. In the event that the bidder submits no bid for the Standard, only the "Alternate Bids" should be completed.

Bidders may offer an ALTERNATE for the Standard specified in the Specifications provided the bidder adheres to the following and submits same with his bid.

(a) List the proposed alternate on the BID SHEET form giving the product name and price.

(b) Furnish complete specifications and descriptive literature for the alternate as well as a one-gallon sample of the material proposed for use. Such descriptive and detailed information shall be complete and at least equal in detail to the city's requirements for the standard item for which the alternate is offered.

(c) Submit a current Material Safety Data Sheet for the alternate materials.

The City will give the alternate consideration. The Contractor may furnish only those alternate items included in his proposal and approved by the City prior to award of a contract.

If no ALTERNATE is indicated on the BID SHEET, the Contractor shall furnish the STANDARD (brand) specified in the attached specifications.

Should the ALTERNATE offered be found unacceptable based on the data submitted with the bid and no bid is entered on the BID SHEET for the Standard, then said bid will be considered non-responsive.

VI. APPLICATION TEMPERATURE/WEATHER LIMITATIONS:

The temperature of the asphalt rejuvenating emulsion, at the time of application shall be as recommended by the manufacturer. The asphalt-rejuvenating agent shall be applied only when the existing surface to be treated is thoroughly dry and when it is not threatening to rain. The asphalt-rejuvenating agent shall not be applied when the ambient temperature is below 40° F.

VII. HANDLING OF ASPHALT REJUVENATING AGENT:

Contents in tank cars or storage tanks shall be circulated at least forty-five minutes before withdrawing any material for application. When loading the distributor, the asphalt rejuvenating agent concentrate shall be loaded first and then the required amount of water shall be added. The water shall be added into the distributor with enough force to cause agitation and thorough mixing of the two materials. To prevent foaming, the discharge end of the water hose or pipe shall be kept below the surface of the material in the distributor that shall be used as a spreader. The distributor truck will be cleaned of all of its asphalt materials, and washed out to the extent that no discoloration of the emulsion may be perceptible. Cleanliness of the spreading equipment shall be subject to the approval and satisfaction of the Engineer.

VIII. RESIDENT NOTIFICATION:

The contractor shall distribute by hand, a typed notice to all residences and businesses on the street to be treated. The notice will be delivered no more than 24 hours prior to the treatment of the road. The notice will have a local phone number that residents may call to ask questions. The notice shall be of the door hanger type that secures to the door handle of each dwelling. Unsecured notices will not be allowed. The contractor shall also place the notice on the windshield of any parked cars on the street. Hand distribution of this notice will be considered incidental to the contract.

IX. APPLYING EQUIPMENT:

The distributor for spreading the emulsion shall be self-propelled, and shall have pneumatic tires. The distributor shall be designed and equipped to distribute the asphalt rejuvenating agent uniformly on variable widths of surface at readily determined and controlled

rates from 0.05 to 0.5 gallons per square yard of surface, and with an allowable variation from any specified rate not to exceed 5 percent of the specified rate.

Distributor equipment shall include full circulation spray bars, pump tachometer, volume measuring device and a hand hose attachment suitable for application of the emulsion manually to cover areas inaccessible to the distributor. The distributor shall be equipped to circulate and agitate the emulsion within the tank.

A check of distributor equipment as well as application rate accuracy and uniformity of distribution shall be made when directed by the Engineer.

The truck used for sanding shall be equipped with a spreader that allows the sand to be uniformly distributed onto the pavement. The spreader shall be able to apply 1/2 pound to 3 pounds of sand per square yard in a single pass. The spreader shall be adjustable so as not to broadcast sand onto driveways or treelawns.

The sand to be used shall be free flowing, without any leaves, dirt, stones, etc. Any wet sand shall be rejected from the job site.

Any equipment that is not maintained in full working order, or is proven inadequate to obtain the results prescribed, shall be repaired or replaced at the direction of the Engineer.

X. APPLICATION OF REJUVENATING AGENT:

The asphalt-rejuvenating agent shall be applied by a distributor truck at the temperature recommended by the manufacturer and at the pressure required for the proper distribution. The emulsion shall be so applied that uniform distribution is obtained at all points of the areas to be treated. Distribution shall be commenced with a running start to insure full rate of spread over the entire area to be treated. Areas inadvertently missed shall receive additional treatment as may be required by hand sprayer application.

Application of asphalt rejuvenating agent shall be on one-half width of the pavement at a time. When the second half of the surface is treated, the distributor nozzle nearest the center of the road shall overlap the previous application by at least one-half the width of the nozzle spray. In any event the centerline construction joint of the pavement shall be treated in both application passes of the distributor truck.

Before spreading, the asphalt rejuvenating agent shall be blended with water at the rate of two (1) part rejuvenating agent to one (1) part water, by volume or as specified by the manufacturer. The combined mixture of asphalt rejuvenating agent and water shall be spread at the rate of 0.05 to 0.10 gallons per square yard, or as approved by the Engineer following field testing.

Where more than one application is to be made, succeeding applications shall be made as soon as penetration of the preceding application has been completed and the Engineer grants approval for additional applications.

Grades or super elevations of surfaces that may cause excessive runoff, in the opinion of the Engineer, shall have the required amounts applied in two or more applications as directed.

After the street has been treated, the area within one foot of the curb line on both sides of the road shall receive an additional treatment of the asphalt rejuvenating emulsion. Said treatment shall be uniformly applied by a method acceptable to the Engineer.

After the rejuvenating emulsion has penetrated, a coating of dry sand shall be applied to the surface in sufficient amount to protect the traveling public as required by the Engineer.

The Contractor shall furnish a quality inspection report showing the source, manufacturer, and the date shipped, for each load of

asphalt rejuvenating agent. When directed by the Engineer, the Contractor shall take representative samples of material for testing.

XI. STREET SWEEPING:

The City of Tonganoxie shall be responsible for sweeping and cleaning of the streets prior to, and after treatment.

Prior to treatment, the street will be cleaned of all standing water, dirt, leaves, foreign materials, etc. This work shall be accomplished by hand brooming, power blowing or other approved methods. If in the opinion of the Engineer the hand cleaning is not sufficient than a self-propelled street sweeper shall be used.

All sand used during the treatment must be removed no later than 48 hours after treatment of the street. This shall be accomplished by a combination of hand and mechanical sweeping. All turnouts, cul-de-sacs, etc. must be cleaned of any material to the satisfaction of the Engineer. Street sweeping will be included in the price bid per square yard for asphalt rejuvenating agent.

If, after sand is swept and in the opinion of the Engineer a hazardous condition exists on the roadway, the contractor must apply additional sand and sweep same no later than 24 hours following reapplication. No additional compensation will be allowed for reapplication and removal of sand.

XII. TRAFFIC CONTROL:

The Contractor shall schedule his operations and carry out the work in a manner to cause the least disturbance and/or interference with the normal flow of traffic over the areas to be treated. Treated portions of the pavement surfaces shall be kept closed and free from traffic until penetration, in the opinion of the Engineer, has become complete and the area is suitable for traffic.

When, in the opinion of the Engineer, traffic must be maintained at all times on a particular street, then the Contractor shall apply asphalt rejuvenating agent to one lane at a time. Traffic shall be maintained in the untreated lane until the traffic may be switched to the completed lane.

The Contractor shall be responsible for all traffic control and signing required to permit safe travel. The contractor shall notify the police and fire departments as to the streets that are to be treated each day.

If, in the opinion of the Engineer, proper signing is not being used, the Contractor shall stop all operations until safe signing and barricading is achieved.

XIII. METHOD OF MEASUREMENT:

Asphalt rejuvenating agent will be measured by the square yard as provided for in the Contract Documents.

XIV. BASIS FOR PAYMENT:

The accepted quantities, measured as provided for above, will be paid for at the contract unit price for asphalt rejuvenating agent.

Asphalt rejuvenating agent shall be paid for PER SQUARE YARD, which shall be full compensation for furnishing all materials;

equipment, labor and incidentals to complete the work as specified and required.

BID SHEET

The undersigned proposes to furnish material, labor, etc. according to the terms and conditions of the attached (agency) Proseal Inc. Specifications at the following unit prices, to wit:

BASE BID

65,591 ~~66,591~~ SQUARE YARDS, MORE OR LESS, CONSTRUCTION SEALING WITH ASPHALT REJUVENATING AGENT FURNISHED AND APPLIED.

Reclamite \$.83 PER SQ. YD.

Product Name

CONTRACTOR CAN BEGIN WORK 1 DAYS AFTER WRITTEN NOTICE.

CONTRACTOR WILL COMPLETE WORK BY 12/1 YES OR NO

PRICE TERMS: 90 Days

ALTERNATE BID

_____ SQUARE YARDS, MORE OR LESS, CONSTRUCTION SEALING WITH ASPHALT REJUVENATING AGENT FURNISHED AND APPLIED.

_____ \$ _____ PER SQ. YD.

Product Name

CONTRACTOR CAN BEGIN WORK _____ DAYS AFTER WRITTEN NOTICE.

CONTRACTOR WILL COMPLETE WORK BY _____ YES _____ OR NO _____

PRICE TERMS: _____

Proseal Inc. Chris Greenwell

BIDDER

AUTHORIZED AGENT

P.O. Box 741

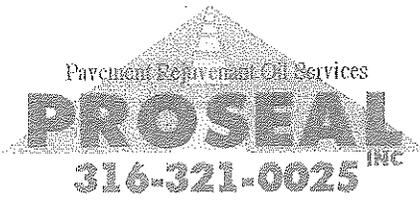
BUSINESS ADDRESS

El Dorado, KS 67042

316-650-9805

PHONE NUMBER

Estimate



PROSEAL INC.
 P.O. BOX 741
 EL DORADO, KS 67042

Date	Estimate #
2/16/2018	630

Name / Address
CITY OF TONGANOXIE 321 S. DELAWARE TONGANOXIE, KS 66086

Project

Description	Qty	Cost	Total
RECLAMITE ASPHALT REJUVENATOR APPLICATION	66,591	0.83	55,270.53
Customer will provide sweeping		Total	\$55,270.53



PROSINC-01

JERPELDING

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
09/20/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Insurance Center, Inc. (ICI) 120 W. Central Ave. El Dorado, KS 67042-2138	CONTACT NAME: PHONE (A/C, No, Ext): (316) 321-5600 FAX (A/C, No): (316) 321-5625	
	E-MAIL ADDRESS: ici@ici.insurance	
INSURED Proseal, Inc. PO Box 741 El Dorado, KS 67042	INSURER(S) AFFORDING COVERAGE NAIC #	
	INSURER A : EMC Property & Casualty Company 25186	
	INSURER B : Employers Mutual Casualty Company 21415	
	INSURER C : EMCASCO Insurance Company 21407	
	INSURER D :	
	INSURER E :	
INSURER F :		

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

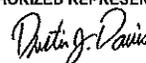
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			3X87250	04/01/2018	04/01/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			3X87250	04/01/2018	04/01/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			3X87250	04/01/2018	04/01/2019	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000
C	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) if yes, describe under DESCRIPTION OF OPERATIONS below Y / N N / A <input checked="" type="checkbox"/> N			3X87250	04/01/2018	04/01/2019	<input checked="" type="checkbox"/> PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
B	Leased/Rented EQ			3X87250	04/01/2018	04/01/2019	Per Item & Aggregate \$ 75,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

City of Tonganoxie PO Box 326 Tonganoxie, KS 66086	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
--	---

	1	2
Vendor	Proseal, Inc.	Vance Brothers, Inc.
Base Price	\$ 0.83	\$ 1.32
Sq Yards Base	66,591	66,591
Price Base	\$ 55,271	\$ 87,900
Price Total	\$ 55,271	\$ 87,900

BID SHEET

The undersigned proposes to furnish material, labor, etc. according to the terms and conditions of the attached (agency) _____ Specifications at the following unit prices, to wit:

BASE BID

65,591 SQUARE YARDS, MORE OR LESS, CONSTRUCTION SEALING WITH ASPHALT REJUVENATING AGENT FURNISHED AND APPLIED.

_____ \$ _____ PER SQ. YD.

Product Name

CONTRACTOR CAN BEGIN WORK _____ DAYS AFTER WRITTEN NOTICE.

CONTRACTOR WILL COMPLETE WORK BY YES _____ OR NO _____

PRICE TERMS: _____

ALTERNATE BID

65,591 SQUARE YARDS, MORE OR LESS, CONSTRUCTION SEALING WITH ASPHALT REJUVENATING AGENT FURNISHED AND APPLIED.

RJV-1 \$ 1.32 PER SQ. YD.

Product Name

CONTRACTOR CAN BEGIN WORK 30 DAYS AFTER WRITTEN NOTICE.

CONTRACTOR WILL COMPLETE WORK BY YES X OR NO _____

PRICE TERMS: 30 Days after Completion

BIDDER



AUTHORIZED AGENT

BUSINESS ADDRESS

Vance Brothers Inc.
5201 Brighton P.O. Box 300107
Kansas City, MO 64130-0107

816-927-4305

PHONE NUMBER

SJE Consulting

Date: August 28, 2018

E-Mail: sescobar1237@outlook.com

Telephone: 310-283-8990

Address: 9914 Rosewalk Street,
Bakersfield, CA 93311

Subject: Vance Brothers Emulsified Rejuvenating Agent RJV-1

Scope:

The purpose of this document is to prove that the Vance Brothers Emulsified Rejuvenating Agent (RJV-1) is an equivalent to the Industry standard, Reclamite®, in physical test properties and performance on the pavement. Reclamite® was developed by the Golden Bear Oil Company. The first commercial application of Reclamite® was done in Reedley, CA, in 1957. I was employed by Witco Chemical Corporation (Golden Bear Division) for over 27 years and was tasked with Reclamite® reformulations for improved performance in the field. I covered the applications of the product through a network of licensees, mainly in the United States, and military bases, primarily in foreign countries, to make formulation adjustments, if necessary, for improved performance.

Specifications:

1. Base Oil: The Vance Brothers base oil meets all the requirements of the Standard Reclamite® Specification. See test results below:

Tests	ASTM Test Method	Vance Brothers-Base Oil	Standard Specification
Viscosity@ 60°C, cSt	D2170	124	100-200
Flash Point, °F, COC	D92	418	385 min
Chemical Characteristics	D2006		
Asphaltenes, w% (A)		0.0	0.75 max
Polar Compounds, w% (PC)		15.6	--
1 st Acidaffins, w% (A ₁)		17.7	--
2 nd Acidaffins, w% (A ₂)		41.3	--
Saturated Hydrocarbons (S)		25.4	21-28
(PC)/S Ratio		0.61	0.5 min
Maltene Distribution Ratio (PC + A ₁)/(S + (A ₂))		0.50	0.3-0.6
Rolling Thin Film Oven Test Aged Residue	D2872		
Weight Change, w%	D2872	-5.12	-6.50 max
Viscosity @ 60°C, cSt	D2170	180	--
Ratio (RTFO Vis./Original Vis.)		1.45	

2. Emulsion Specifications: Vance Brothers Emulsified Rejuvenating Agent, RJV-1, meets all the requirements for the Industry Standard Reclamite® Specification. See test results below:

Tests	Test Method	Vance Brothers-Emulsion	Standard Specification
Viscosity@ 25°C, SFS	AASHTO T59	24	15-40
Sieve Test, w%	AASHTO T59	0.0	0.1 max
Particle Charge Test	AASHTO T59	Positive	Positive
Miscibility Test	AASHTO T59	No Coagulation	No Coagulation
Light Transmittance, %	Golden Bear	25	30 max
Cement Mixing Test, w%	AASHTO T59	0.0	2.0 max
Residue, w%	AASHTO T59	61.6	60-65
Test on Residue			
Flash Point, COC, °C	ASTM D92	210	196 min
Viscosity @ 60°C, cSt	ASTM D445	131	100-200
Chemical Characteristics ⁽¹⁾	D2006		
Asphaltenes, w% (A)		nil	0.75 max
Polar Compounds, w% (PC)		18.8	--
1 st Acidaffins, w% (A ₁)		16.3	--
2 nd Acidaffins, w% (A ₂)		43.1	--
Saturated Hydrocarbons (S)		21.8	21-28
(PC)/S Ratio		0.86	0.5 Min.
Maltene Distribution Ratio (PC + A ₁)/(S + (A ₂))		0.54	0.3-0.6

⁽¹⁾ Please note the chemical analysis was done on the residue of the emulsions, for your reference, since the emulsification system's residue can skew the results.

3. Evaluation of Emulsions into Asphalt Briquettes: The depth and time of Penetration were determined by the procedure as outlined in "Emulsified Petroleum Oils and Resins in Reconstituting Asphalts in Pavements" by Barney A. Vallerga, Highway Research Board 1963 was used. Vance Brothers' RJV-1 shows comparable performance to Reclamite®. See test results below:

Emulsion	Dilution Ratio with water	Penetration Briquettes	
		Time (sec.)	Depth (mm)
Vance Brothers RJV-1	2 (emulsion) : 1 (water)	159	16.8
Vance Brothers RJV-1	1 (emulsion) : 1 (water)	129	16.8
Reclamite® Standard	2 (emulsion) : 1 (water)	152	16.1
Reclamite® Standard	1 (emulsion) : 1 (water)	121	16.5

4. **Field Performance - Quality Control Procedure:** The FAA's AC 150/5370-10G, Item P-632 Bituminous Pavement Rejuvenation, Guidelines and Procedures for maintenance of Airport Pavements & ASTM D5340 is a good protocol to establish the effectiveness of an emulsified asphalt rejuvenating agent. Golden Bear Oil used this procedure on many bituminous pavements throughout the world to evaluate the effectiveness of this treatment to the maintenance division of road building agencies. By using this procedure on small test sections (normally 1 square yard areas) and applying the exact dilution rate of emulsion & water (normally 2:1 and 1:1 dilution) the test sections are visually observed to determine how quickly and how far the product penetrates the pavement's surface and the surface is visually inspected for any excess oil. The diluted emulsion can be applied to these small test sections by a standard garden sprayer. The test sections and the untreated pavement are cored and the top 3/8" layer of each core is sawed and removed. The binder is extracted and recovered to determine the effectiveness of the emulsified rejuvenating agent's ability to reduce the recovered binder's viscosity compared to the untreated binder. The percentage reduction of the viscosity is compared to the minimum chart to determine if the reduction has met the requirement listed in this procedure.

This testing can be done prior to the project's application to provide a guideline on how the product will perform. Verification can be determined after the product has been applied by testing the top 3/8" layer of selected areas of the treated pavement.

A copy of Item P-632 Bituminous Pavement Rejuvenation is attached. The table below shows typical results for RJV-1.

Item P-632 Table 2. Pavement More Than Three (3) Years in Age

Item	Property of Recovered Binder	Requirement	Control Untreated	VB RJV-1	% Decrease	Test Method
1	Absolute Viscosity _{60°C} , Poise	≥ 40% Decrease	NA	NA	NA	ASTM D2171
2a	Complex Modulus _{60°C} , G*, kPa		49.3 kPa	27.1 kPa	45.00%	AASHTO T315
2b	Viscosity _{60°C} η* = G*/ ω Pa·s		4,930 Pa·s	2,710 Pa·s	45.00%	
2c	Phase Angle _{60°C} δ, °	Report	72.8°	75.4°		

In addition to assisting Vance Brothers with the development of RJV-1, I have previously assisted other companies in developing products that meet Reclamite specifications. They have all been used successfully as rejuvenating agents across the country for more than 9 years with the evaluation shown above.

Regards!



Steven Escobar

SJE Consulting



Office of the City Manager
AGENDA STATEMENT

DATE: October 1, 2018
To: Honorable Mayor Jason K. Ward and Members of the City Council
FROM: Greg Lawson, Police Chief
SUBJECT: Authorization to Purchase Replacement Police Unit

DISCUSSION:

The Tonganoxie Police Department recently sustained the operational loss of a 2015 Ford Explorer police vehicle (following a vehicular accident). The vehicle displayed approximately 45,000 miles on the odometer, and was in fair condition prior to the crash. The City's insurance appraiser subsequently inspected the vehicle, and deemed it to be a complete loss. After meeting the City's \$1,000 deductible, the insurance company reimbursed the City for the remaining value of \$15,056.42. The reimbursement amount is significantly less than the price of a new police unit, which costs approximately \$31,000 after being equipped with necessary accessories.

This loss of the vehicle has had an adverse effect to police operations, even though the City of Tonganoxie purchased a new Police vehicle in early 2018. The City did not allocate funds for a new vehicle in the 2019 budget; however, the insurance proceeds from the insurance claim could pay for the majority of a used replacement vehicle.

In light of the amount of discrepancy between insurance reimbursement proceeds and replacement costs for a new vehicle, staff are proposing the following solution. The attached quote references the cost of a used Kansas Highway Patrol (KHP) vehicle. This vehicle is a 2017 Dodge Charger with approximately 49,000 miles (similar mileage and condition to the totaled vehicle). The low mileage is beneficial in part, because of the remaining 50,000 mile powertrain factory warranty. The KHP vehicle is available for \$20,000, which includes the lights, siren, and radio console. Staff are requesting approval to purchase the KHP vehicle.

It should be noted that the KHP police unit will replace the aforementioned crashed vehicle that was in the same general condition. However, this remedy is not anticipated to replace the need for another new vehicle in the 2020 budget.

BUDGET IMPACT:

The majority of the replacement cost is met through insurance proceeds reimbursements. The remaining cost is projected to be available through existing budget authority in the City's General Fund.

ACTION NEEDED:

Make a motion to authorize staff to purchase a 2017 Dodge Charger in an amount not to exceed \$20,000.

ATTACHMENTS:

2018 Tonganoxie Police Fleet Inventory

cc: George Brajkovic, City Manager

POLICE PATROL VEHICLE INVENTORY

Department	Year Make/Model	Cost New	Class	Vehicle Number	Inactive Date
Police	2014 Ford Explorer AWD, 4 door	\$ 33,000	Heavy	60	
Police	2013 Dodge Charger	\$ 31,605	Heavy	62	
Police	2015 Ford Explorer AWD, 4 door	\$ 37,500	Heavy	63	24-Aug
Police	2014 Dodge Charger	\$ 35,000	Heavy	64	
Police	2017 Dodge Charger	\$ 35,000	Heavy	66	
Police	2017 Dodge Charger	\$ 35,000	Heavy	67	
Police	2018 Dodge Charger	\$ 35,000	Heavy	68	
Police	2011 Crown Vic	\$ 31,560	Heavy	6110	

Department	Year Make/Model	Cost New	Class	Vehicle Number	Inactive Date
Police	1984 Chevy WORK TRUCK 4x4	\$ 1,000	Medium	NO VEHICLE #	