

**DESIGN-BUILD CONTRACT
TRUMAN AND HARRIS EMERGENCY REPAIRS PROJECT
PROJECT NUMBER: 70571703**

THIS DESIGN-BUILD CONTRACT "Contract", made and entered into this ____ day of _____, 2020, by and between the CITY OF INDEPENDENCE, MISSOURI, acting through the City Manager, thereunto duly authorized to do so, Party of the First Part and hereinafter called the Owner; and

Radmacher Brothers Excavating, 2201 North 7 Highway Suite B, Pleasant Hill, MO 64080,
a corporation of the State of Missouri, Party of the Second Part hereinafter called the Design-Builder,
WITNESSETH:

WHEREAS the Owner requires design, engineering, construction and construction management services in connection with the Truman and Harris Emergency Repairs Project in the City of Independence, Missouri (hereinafter referred to as "Project"), and

WHEREAS the Owner selected the Design-Builder through a qualifications-based selection process for a design-build project; and,

WHEREAS the said Design-Builder, in response to such advertisement, has already completed a preliminary project design, including a Guaranteed Maximum Price proposal, a copy therefore being attached to and made part of this contract.

NOW, THEREFORE, in consideration of the compensation to be paid to the Design-Builder and of the mutual agreements herein contained, the Parties to these presents have agreed and hereby agree, the Owner for itself and its successors, and the Design-Builder for itself or themselves, or it's, or their successors and assigns, or it's or their executors and administrators, as follows:

ARTICLE 1. General Provisions

1. **Definitions.** All terms and phrases defined in this Contract shall have the meanings and definitions set forth herein. All words that have well known technical or construction industry meanings are used in this Contract in accordance with such recognized meanings, unless defined differently herein or the context clearly indicates otherwise. All references to "days" herein shall mean calendar days, unless otherwise specified.
2. **Scope of Work.** Design-Builder agrees, pursuant to the terms and conditions of this Contract, to provide and/or arrange for the provision of all design, engineering and construction work for the Project required by the terms and conditions hereof, (including, but not limited to civil, geotechnical and structural design engineering services necessary to construct the Project consistent with the Project Concept), all labor, materials, equipment and construction work necessary to produce the completed construction of the Project as established by the Project Concept and the final construction documents, and

construction administration and construction management services necessary to administer such design, engineering and construction.

3. **Responsibility**. Design-Builder shall be responsible for all work or services required by the terms and conditions of this Contract, whether or not such work or services are performed directly by Design-Builder or by Subcontractors employed or retained by Design-Builder. In addition, Design-Builder shall be responsible for all construction administration and construction management services necessary to coordinate the work of Design-Builder and any Subcontractors employed or retained by Design-Builder to furnish work, labor, services, material or equipment with respect to the Project.
4. **Communication and Coordination**. Design-Builder shall retain all Subcontractors necessary to perform the work required by this Contract. In this regard, Design-Builder shall be responsible for directing, supervising, assigning and dividing the work among such Subcontractors as necessary for the full and timely completion of the engineering and construction work required for the Project. In connection with all work performed by or under the supervision of Design-Builder pursuant to this Contract, Design-Builder shall, consistent with sound design and construction practice and applicable standards of professional care and diligence, maintain communication and shall coordinate its activities with Owner, any consultants or contractors employed by Owner and any other parties involved with the Project, as necessary to facilitate the timely and proper performance of Design-Builder's services hereunder. In addition, in connection with the performance of Design-Builder's services pursuant to this Contract, Design-Builder shall meet with and report to Owner, at such times as are required by this Contract or hereafter agreed to by Owner and Design-Builder, regarding the progress, scheduling and content of Design-Builder's services on the Project and to discuss and address any problems in connection with the work on the Project.
5. **Design-Builder Project Representative**. Design-Builder and Owner shall agree (prior to the commencement of the Preliminary Design Services set forth in Article 2 below) on the designation of Design-Builder's Project Representative, who shall be a knowledgeable member of Design-Builder's Project team, shall be responsible for coordinating, scheduling and supervising the services and activities required by this Contract, shall be the person who attends any meetings and conferences with Owner required by this Contract, and shall be the person responsible for communicating, on behalf of Design-Builder, with Owner, all Subcontractors and such other persons or entities involved with the Project as may be necessary for the timely and proper performance of Design-Builder's work and services hereunder. Design-Builder's Project Representative shall not be discontinued by Design-Builder (except upon Final Completion of this Project or in the event of resignation or disability or if Owner requests a replacement to resolve incompatible working relationships) and no new individual shall be designated as Design-Builder's Project Representative without the prior approval of Owner, which approval shall not be unreasonably withheld.
6. **Extent of Agreement**. This Contract is an agreement only between Owner and Design-Builder (who shall be singularly responsible to Owner for the performance of this Contract) and does not constitute any obligation or agreement between Owner and any Subcontractor retained by Design-Builder to provide work or services in connection with the Project. No such Subcontractor shall have the benefit of any rights, remedies or

redress against Owner provided to Design-Builder by this Contract, and Owner shall have no obligation to make or see to the payment of any such Subcontractor.

7. **Standard of Care.** Design-Builder acknowledges that it has described and represented itself to Owner as possessing expertise, experience and knowledge in projects of the same type and nature as this Project. Design-Builder agrees that the work and services provided by Design-Builder and its Subcontractors shall be performed in a manner consistent with those standards of professional skill, care and diligence applicable to design/build providers of comparable experience and knowledge in similar circumstances.
8. **Effective Date.** Design-Builder and Owner agree that this Contract is intended to and shall govern all work and services provided by Design-Builder for the Project, whether initiated or performed prior or subsequent to the execution of this Contract.

ARTICLE 2. Development of Program; Preliminary Design Services; Establishment of GMP

1. **Development of Program.** Prior to the commencement of the preliminary design services set forth in this Article, Design-Builder shall meet with Owner, at such times and places as agreed to by Owner and Design-Builder, to discuss Owner's goals and desires for the design and construction of the Project (hereinafter referred to as the "Program"), and to assist Owner in the development and delineation of the scope and nature of the work on the Project, to fix and describe the basic size and character of the Project and to identify generally the design and construction requirements of the Project with respect to structural, geotechnical, and other appropriate elements.
2. **Project Concept and Project Budget.** As used herein, the "Project Concept" shall mean the final program for the design and construction of the Project as agreed to by Design-Builder and Owner pursuant to the meetings required by Article 2, paragraph 1 above. Once established, the Project shall be designed and constructed in accordance with the Project Concept, except as it may be modified by Owner. The Design-Builder acknowledges that the Project Concept is intended to set forth desired aesthetic features, physical arrangements, and performance characteristics in a general fashion only and is not an exhaustive list of all design features or requirements for the Project. Unless otherwise agreed to by the Owner and Design-Builder in writing (or in the Project Concept itself), the inclusion of or failure to include any particular item in the Project Concept shall not relieve the designers and engineers retained by Design-Builder to provide the design services for the Project of the obligation to design a sound, operable, functional and complete Project, consistent with applicable standards of professional skill, care and diligence. Based on the Project Concept, the parties shall also agree upon a "Project Budget" for the total construction cost of the Project if it is built in conformance with the Project Concept.
3. **Scope of Preliminary Design Services.** Subsequent to the establishment of the Project Concept and Project Budget, Design-Builder shall prepare for approval by Owner preliminary design documents for the Project consisting of drawings and other documents illustrating the basic scale and relationship of the Project components. Specifically, Design-Builder shall provide the following (as applicable based on the nature and scope of the Project as established in the Project Concept):
 - a. Complete preliminary designs and drawings relating to the site development work

for the Project, including but not limited to efficient positioning of the structure on the existing roadway, hydrologic and hydraulic evaluations, utility relocations, right-of-ways and easements, and other related items.

- b. Preliminary designs and drawings relating to the structure, including but not limited to foundations, framing/erection, end treatment, permits, and other related items.
- c. If appropriate a comprehensive specification booklet, including fully detailed specifications for all materials and workmanship required in connection with the site development work, and construction.
- d. Prequalification criteria for Subcontractors who will provide work or services in connection with the Project:

4. **Testing and Site Investigation.** In connection with the preliminary design services required by this Article, Design-Builder, in a manner consistent with good construction and design practice and applicable standards of professional skill, care and diligence, shall inspect, examine and investigate all existing conditions at the Project site to the extent necessary for the preparation of the Project's design. Design-Builder shall prepare and provide to Owner, as necessary, surveys, geotechnical surveys and topographic information including aerial photographs needs to establish line and grade, location of property lines and easements. Easements, both construction and permanent, shall be referenced to property lines by field surveys, and plans shall include the location of any improvement as it relates to property lines. **Owner expressly does not warrant any information provided by it to Design-Builder, in connection with preparation of the above-mentioned information;** Design-Builder, however reasonably may rely on information provided by Owner to the extent the information has been prepared by Owner or an independent consultant hired by Owner to prepare the information specifically for this Project, without absolving Design-Builder from its responsibility to independently review information for deficiencies, flaws, errors, and omissions that a reasonable, prudent professional engineer should or would detect and inquire about.
5. **Environmental Conditions.** Notwithstanding the provisions of Paragraph 4 in this Article, nothing in this Contract shall create any obligation for Design-Builder to provide testing for or to analyze or discover any conditions at the Project site relating to the presence of hazardous waste or other environmental pollution. In the event Design-Builder encounters any materials on the site, which Design-Builder believes to be hazardous (including but not limited to asbestos or PCBs), Design-Builder shall immediately stop all work on the Project in the area affected and shall report the condition to Owner. The work in the affected area shall not thereafter be resumed until the hazardous materials encountered have been properly remediated or rendered harmless.
6. **Schedule and Review.** In connection with the preparation of the preliminary design documents required by this Article, Design-Builder shall prepare a schedule for the performance of all design work on the Project. The schedule shall identify by task all significant decisions or information required to be supplied by Owner or any other persons or entities involved with the design of the Project (including Owner, architects, engineers, and applicable code officials) and shall set forth appropriate time frames for the supply of such decisions and information so as not to delay the completion of the Project's design. Once approved by the parties, this schedule shall govern the

performance of the design work on the Project, except to the extent modified or extended pursuant to the provisions of this Contract.

7. **Guaranteed Maximum Price.** Once agreed upon by Owner and Design-Builder, the GMP shall be set forth in a written GMP Amendment to this Contract (in the form attached hereto as **Exhibit 1**), which GMP shall be comprised of the Cost of the Work (as defined in Article 4, Paragraph 13) and Design-Builder's Construction Management Fee (established pursuant to Article 4, Paragraph 15). By executing the GMP Amendment, Design-Builder will be representing that the GMP established therein is adequate to compensate Design-Builder for all construction work required by this Contract and is sufficient to finance the cost of all labor, work, services, materials and equipment needed to fully, timely and properly perform such work, except and only to the extent that Design-Builder is entitled to an increase in the GMP pursuant to the provisions of this Contract. Design-Builder guarantees that the Cost of the Work and the Construction Management fee, plus any additions or deductions made by Change Order as provided herein, will not exceed the GMP. Design-Builder shall pay costs that would cause the GMP to be exceeded without reimbursement by Owner.
8. **Material Change.** Design-Builder acknowledges that the GMP will be established prior to the final delineation of the design for the Project and the completion of full construction documents. Design-Builder agrees, however, that the further delineation of the design for the Project, through the development of further drawings and specifications subsequent to the execution of the GMP Amendment, shall entitle Design-Builder to an increase in the GMP only to the extent that the later design is the result of a Material Change, i.e. a change to the Project that is initiated by Owner (or is the result of a condition entitling Design-Builder to additional compensation pursuant to Article 12, Paragraph 4 herein) and that requires work of a materially different nature, character, scope or quality (other than refinement) than that set forth in and/or reasonably intended by the documents in existence at the time that the GMP Amendment is signed. Design-Builder shall notify Owner in writing if it believes it is entitled to an increase in the GMP as a result of an alleged Material Change no later than thirty (30) days after the alleged Material Change is first communicated to Design-Builder. No construction work involving the alleged Material Change shall be commenced without such notification to Owner and Owner's subsequent approval. Design-Builder's failure to provide Owner with written notice of such claim within the applicable time frame shall mean that Design-Builder has waived such claim and shall perform all work associated with the change at issue without increase in the GMP. In the event of a Material Change to the Project for which a timely claim is made, the GMP shall be adjusted by the actual, substantiated increase in the Cost of the Work caused thereby.

ARTICLE 3. Design Services

1. **Scope.** Subsequent to the execution of a GMP Amendment by Design-Builder and Owner, Design-Builder shall commence the final design and engineering work necessary for the Project. In connection with such design and engineering work, Design-Builder shall provide Owner with plans, specifications, drawings and other design documents, as appropriate, which shall be adequate and sufficient, consistent with applicable standards

of professional skill, care and diligence, to fix and describe for each component of the Project details pertaining and relevant to the requirements for the construction of that component and its compatibility and relationship with the other components and aspects of the Project, in sufficient detail to allow those persons or entities performing construction work on the Project to complete such construction in accordance with the Project Concept and any applicable codes and regulations. The final construction documents for the Project shall include (as applicable based on the nature and scope of the Project as established in the Project Concept): final designs, drawings and details as required for construction and improvements.

2. **Design Work Responsibility.** Design-BUILDER shall provide, either directly or through Subcontractors retained by Design-BUILDER, all design services, labor, materials, and other facilities or services necessary for the proper execution and completion of the design work for the Project as required by the Project Concept, including all drawings, specifications, samples, and copies needed for distribution to all persons or entities performing work on the Project. In addition, Design-BUILDER shall be responsible for and shall coordinate the performance, sequencing, and completion of the design work on the Project and shall be responsible to Owner for the failure to provide such coordination. Design-BUILDER shall be responsible for the professional quality, technical accuracy and internal coordination of the designs, drawings, specifications and other design or engineering services provided to the Project and for the acts and omissions of any Subcontractors retained by Design-BUILDER to provide design work or services on the Project. Only qualified engineers, and other design professionals duly licensed, as necessary, in the State of Missouri, shall perform the design and engineering work required for the Project. The design and engineering work for the Project shall be performed in a manner consistent with applicable standards of professional skill, care and diligence, and all drawings, specifications and other design documents shall comply with governing codes, applicable laws and requirements of public authorities in effect when Owner and the Design-BUILDER execute the GMP Amendment. Design-BUILDER agrees that any errors, omissions or other defects in the Project's design will be corrected (either through revised drawings or through written or field modifications or clarifications, as appropriate) with reasonable promptness and at no cost to Owner. In addition, Design-BUILDER shall correct or replace any completed construction work that does not comply with applicable codes, promptly and at no cost to Owner.
3. **Meetings.** During the final design of the Project, Design-BUILDER shall meet with Owner (as appropriate based on the level of completion of the design) to review and discuss the significant aspects of the design documents. Design-BUILDER shall make such modifications to the design as may be directed by Owner at such meetings, and the final design documents for the Project shall not be deemed accepted by Owner unless approved pursuant to a meeting held as required by this Paragraph.
4. **Governmental Approvals.** As part of the design work required by this Contract, Design-BUILDER shall prepare and submit drawings, documents and applications incident to and shall file documents required to obtain any necessary approvals of the design and construction of the Project from governmental authorities having jurisdiction over the Project.
5. **Royalties.** Design-BUILDER shall pay all royalties and license fees, and shall defend any

suits or claims for infringement of patent rights, and shall save Owner harmless from loss on account thereof, to the extent that Design-Builder or any architect, engineer or design professional hired by Design-Builder has required a particular design, process or product of a particular manufacturer in connection with the Project. If Owner has required a particular design, process or product, Owner shall be responsible for any royalties and license fees and any suits or claims of patent infringement or other losses relating thereto.

6. **Design Fee.** Design-Builder shall be compensated for the design services required by this Article in such amount as is set forth in the GMP Amendment executed by the parties (the "Design Fee"). The Design Fee shall constitute full compensation to Design-Builder for all design and engineering services provided by Design-Builder or its Subcontractors for the Project and includes full compensation for the engineering site visits required by Article 4, Paragraph 7 below, and full compensation for all costs associated with the use of computer assisted design and drafting techniques or programs. The Design Fee shall not be increased except in the event of a Material Change, in which case Owner and Design-Builder shall agree on the additional compensation, if any, to be paid to Design-Builder for any additional design work required in connection with the Material Change.

ARTICLE 4. Construction Services

1. **Scope.** In connection with the construction of the Project, Design-Builder shall provide all labor, materials, equipment, machinery, tools, utilities, transportation and other facilities and services necessary to produce the completed construction required and contemplated by the Project Concept and the final design documents. Design-Builder's responsibilities in connection with the construction of the Project shall include all storage, unloading, uncrating, installation, fitting and hook-up of the equipment and machinery to be located in the Project (except as otherwise directed by Owner) whether or not such items are procured by Design-Builder or Owner or transferred from any of Owner's existing facilities. Design-Builder shall meet all prevailing wage requirements.
2. **Construction Work Responsibility.** The construction work required for the Project shall be performed by qualified construction contractors, suppliers and workmen selected and paid for by Design-Builder. All construction work on the Project shall be performed in a manner consistent with applicable standards of professional skill, care and diligence. Design-Builder shall be responsible for and shall coordinate all construction means, methods, techniques, sequences and procedures and all safety precautions and measures necessary in connection with the same. The construction work, materials and equipment provided by the construction contractors, suppliers and workmen retained by Design-Builder shall be new, and shall be of good quality, free from faults and defects and shall conform to the final designs for the Project and the Project Concept. Work not in conformance with these requirements shall be repaired or replaced promptly and at no cost to Owner. Design-Builder shall be responsible to Owner for the acts and omissions of all contractors, suppliers, workmen and any other persons or entities employed or retained by Design-Builder to perform construction work on the Project and of their agents and employees.
3. **Permits and Notices.** Design-Builder shall secure the building permit and other permits and governmental licenses and inspections necessary for the construction work required

on the Project. Design-Builder shall comply with and give all notices required by laws, ordinances, rules, regulations or building codes and statutes relating to the performance of the construction work required on the Project.

4. **Taxes and Tax Exempt Status.** All or certain items required for this Contract are for the constructing, repairing, or remodeling of facilities for an exempt entity and qualify for exemption from state and local sales and use taxes under RSMo. 144.062. Design-Builder must follow tax exemption provisions covering the submission of the application for tax exemption determination. For any taxes not properly governed by Tax Exempt Status, if any, Design-Builder shall pay or cause to be paid all sales, consumer, use and similar taxes for the construction work or portions thereof provided by Design-Builder and any Subcontractors retained by Design-Builder to perform construction work on the Project. Design-Builder, and each Subcontractor retained by Design-Builder to perform work on the Project, shall pay taxes measured by the wages of their respective employees as required by law, and shall be solely responsible and liable for the payment of such taxes.
5. **Clean-up.** Design-Builder shall be responsible to keep the Project site and any surrounding areas involving or affected by the construction work on the Project free from accumulation of waste materials or rubbish caused by the performance of such construction work. Design-Builder shall keep the job site free of improperly stored combustible materials. At the end of each day, all boxes, crates, etc. shall be placed in a dumpster provided by Design-Builder. At the completion of the construction work required for the Project, Design-Builder shall remove from and about the Project all waste materials, rubbish, tools, construction equipment, machinery and surplus materials.

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

6. **Supervision and Management of Construction.** Design-Builder shall supervise and direct the performance of all construction work on the Project, using appropriate skill and attention, and shall coordinate the construction work on the Project performed by Design-Builder and all Subcontractors employed or retained by Design-Builder. Prior to the start of construction, Design-Builder shall designate one (1) individual, subject to the approval and agreement of Owner, to serve as the full time Field Superintendent for the Project. The Field Superintendent shall be present on the site throughout each day when work is being performed on the Project up to and including the date of Final Completion and during each day shall observe in detail the administration and performance of construction on the Project and shall observe in detail the coordination of the construction work on the Project in order to determine if the work is proceeding in accordance with the Project Concept, the final design and applicable codes. On the basis of such on-site inspections and observations, Design-Builder shall keep Owner informed of the progress and quality of the work and shall exercise appropriate care and diligence to guard Owner against defects and deficiencies in the work of Design-Builder and its Subcontractors. The Field Superintendent shall be required to communicate with Owner and all other persons performing work on the Project as necessary for the full and faithful performance

and continuity of the work on the Project. The Field Superintendent shall not be discontinued (except upon Final Completion of the Project or in the event of resignation or disability or if Owner requests a replacement to resolve incompatible working relationships) and no new individual shall be designated as the Field Superintendent without the prior approval of Owner, which approval shall not be unreasonably withheld.

7. **Engineering Site Visits.** In addition to the field supervision required by Paragraph 6 of this Article, Design-Builder shall require the engineers retained to perform the design work for the Project to visit the Project site, at such intervals as may be appropriate to the stage of construction. The engineer shall observe the construction work relating to the design or engineering services provided by such engineer and determine if such work is proceeding in accordance with the applicable design requirements. Such engineers shall also be available, as and when necessary in connection with the construction of the Project, to provide field direction and clarification and to resolve any questions or problems relating to the design or engineering services provided by them.
8. **Drawings.** In connection with the construction work on the Project, Design-Builder shall maintain in good order one record copy of all drawings, specifications, product data, shop samples, shop drawings, Change Orders, modifications and other records relating to the construction work performed on the Project, marked to record changes made during the process of construction. Among other things, these marked drawings shall reflect:
 - a. All deviations from the construction drawings made during construction,
 - b. Details in the work not previously shown on the construction drawings,
 - c. Changes to existing conditions or existing conditions found to differ from those shown on the construction drawings or related existing drawings and,
 - d. The actual installed position of equipment, piping, conduits etc.These documents shall be made available to Owner for inspection and review during the course of construction on the Project, as requested by Owner. The Design-Builder shall provide information to the Owner for development of as-built.
9. **Meetings.** In connection with the construction work on the Project, Design-Builder shall hold regular progress meetings at the job site with all persons or entities then performing construction work on the Project. Such meetings shall be held as needed and at such other times as directed by Design-Builder or Owner, and during such meetings Design-Builder shall review and discuss the progress of the construction work with the subcontractors and suppliers then performing work on the Project. Owner shall be notified at least 24 hours in advance of each such meeting and may attend these meetings if it requests to do so. Design-Builder shall prepare minutes of each such meeting that will be distributed within three (3) days following the meeting. Hand written or type written minutes of meeting will be acceptable.
10. **Shop Drawings.** Design-Builder shall be responsible to coordinate the submittal of, and to review, approve or take other appropriate action upon, all submittals such as shop drawings, product data and samples for the purpose of determining their conformance with the information given and the design concepts expressed in the final design documents, including dimensions, materials and other specific instructions. Design-Builder shall keep Owner informed and shall provide Owner with copies of all communications by or with Design-Builder relating to shop drawings, product data, materials, samples, schedules and colors. Upon Owner's request, Design-Builder shall

deliver to Owner a copy of the shop drawing, product data, material sample, schedule or color at issue and Design-Builder shall take no action on the submittal until after it has received Owner's comments and approval. Design-Builder shall maintain a current shop drawing log containing a description of all submittals, the date when Design-Builder received each submittal and Design-Builder's actions taken in respect thereof.

11. Substitutions and Alternates. If, after execution of the Contract and prior to submittal of applicable shop drawings, the Design-Builder desires to submit an alternate product or method in lieu of what has been specified or shown in the Contract Documents, the Design-Builder may do so in writing to Owner setting forth the following (the decision whether or not to accept any proposed substitution or alternate shall be made by Owner in its sole and complete discretion):

- a. Full explanation of the proposed substitution and submittal of all supporting data including technical information necessary for a complete re-evaluation of the substitution;
- b. Reasons the substitution is advantageous and necessary, including the benefits to Owner and the work in the event the substitution is accepted;
- c. The adjustment, if any, in the GMP amount in the event the substitution is accepted; and
- d. The adjustment, if any, in the construction schedule in the event the substitution is accepted.

12. Work of Others. Owner reserves the right to perform construction or operations related to the Project with Owner's own forces and/or to award separate contracts in connection with other construction or operations on the Project site (including installation or furnishing of necessary equipment, machinery, furnishings and fixtures). Design-Builder agrees to cooperate and coordinate its work with any and all persons performing work on the Project and to use appropriate skills and resources and to employ its best efforts, consistent with applicable standards of professional skill, care and diligence in order to discharge Design-Builder's responsibilities and obligations under this Contract. Except as otherwise provided herein, the presence of other persons or entities performing work on the Project will not relieve Design-Builder from its responsibilities under this Contract.

13. Compensation, Cost of the Work. Design-Builder shall be compensated for the construction work performed on the Project in the amount of the Cost of the Work, as defined below, subject to the Cost of the Work limit established in the GMP Amendment executed by the parties (as it may be modified by any fully executed Change Orders). The Cost of the Work shall mean and include all substantiated costs and expenses necessarily and actually incurred by Design-Builder in the proper performance of the Project's construction (including costs of retaining Subcontractors to furnish labor, materials and supplies, the costs of general condition items such as temporary utilities, site trailers and the like and the costs of any insurance and bonds required by this Contract.

14. Allowances. The Cost of the Work shall include any allowances agreed upon by Design-Builder and Owner. Design-Builder will be compensated for the items of work included in any allowance category for Cost of the Work actually incurred with respect thereto. In the event the Cost of the Work incurred with respect to any allowance item is greater than the allowance established, amount exceeding approved allowance is subject to review and

approval by Owner, and the GMP shall be increased accordingly. In the event the Cost of the Work incurred with respect to any allowance item is less than the allowance established by the parties, all savings achieved thereby shall be returned and retained by Owner and the GMP shall be reduced accordingly.

15. **Savings.** In the event that the final Cost of the Work incurred by Design-Builder on the Project is less than the GMP established by the parties (as it may be modified pursuant to any fully executed Change Orders) Owner will be entitled to all such savings and Design-Builder will return to Owner any deposits or pre-paid cost of the work saved. The Construction Management Fee, however, shall, be measured by the GMP, as modified pursuant to the terms of this Contract, not the final actual Cost of the Work.
16. **Performance Bond and Payment Bond.** Design-Builder will be required to furnish a Payment and Performance Bond to the Owner prior to the issuance of the Notice to Proceed. Each bond shall be executed on the form provided by the Owner to the Design-Builder, signed and sealed by a surety company authorized to do business in the State of Missouri, and acceptable as surety to the Owner. With each bond there shall be filed with the Owner one copy of the power-of-attorney certified to include the date of the bond.

Article 5. Subcontractors

1. **Definition.** As used in this Contract, the term "Subcontractor" shall mean any person or entity who has a direct contract with Design-Builder to perform a portion of the work on the Project (including architects, engineers, materialmen and suppliers) and all other persons or entities (whether such persons or entities are subcontractors or sub-subcontractors) who provide materials, labor or services directly or indirectly to or for the Project through or under the supervision of Design-Builder or its Subcontractors.
2. **Performance of Work by Design-Builder.** At Design-Builder's option, Design-Builder may perform any portion of the work customarily performed with Design-Builder's own personnel. Design-Builder shall be compensated for such work, including all supervision, field office and associated support items needed with respect thereto, as part of the Cost of the Work, subject to the overall limitation established in the GMP Amendment, at such rates and/or in such amounts as are agreed to by the Owner and Design-Builder in the GMP Amendment.
3. **Owner's Participation.** Design-Builder agrees that Owner may be present at the receipt and evaluation of any subcontract bids and at any subsequent interview meetings held with the apparent low bidders regarding their bid proposals. However, such attendance or failure to attend by Owner shall not relieve Design-Builder of its responsibility to assure that bids are responsive and complete and shall not entitle Design-Builder to any increase in the GMP.
4. **Selection of Bidders.** As soon as practicable after the receipt and evaluation of the applicable subcontract bids, Design-Builder will prepare a list of recommended Subcontractors of the work for Owner's review and approval. Owner will identify to Design-Builder, in writing and with reasonable promptness, if Owner has any reasonable objection to any such proposed person or entity. If a specific bidder (a) is recommended to Owner by 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 final design without

reservation and exception, but Owner requires that another bid be accepted, then a Change Order shall be issued to adjust the Cost of the Work as set forth in the GMP Amendment by the difference between the bid of the Subcontractor recommended to Owner by Design-Builder and the amount of the Contract actually signed with the firm designated by Owner.

5. **Replacement of Subcontractors**. Design-Builder shall have the right to replace any Subcontractor retained by it to perform any portion of the work for the Project if, in the opinion of Design-Builder, such Subcontractor has failed to perform the work in a proper and timely fashion. If Design-Builder proposes to replace any such Subcontractor, Design-Builder shall notify Owner in writing, specifying the person or entity who shall be replaced and the name of the person or entity to be substituted, together with Design-Builder's reason for proposing the substitution. Design-Builder shall not contract with any proposed replacement Subcontractor without the prior approval of Owner, which approval shall not be unreasonably withheld.
6. **Contingent Assignment of Subcontracts**. In the event of the termination of this Contract by Owner because of the default of Design-Builder, Owner shall have the right (without any responsibility so to do) to assume the rights and responsibilities of Design-Builder under all or some of Design-Builder's subcontracts or purchase or rental agreements, which Owner in its sole discretion chooses to assume. While this provision shall constitute a present assignment of Design-Builder's rights with respect to any and all subcontract agreements and commitments which Owner so chooses to assume, Design-Builder, upon request from Owner, shall promptly execute and deliver to Owner written assignments of such contracts, agreements and commitments which Owner in its discretion so chooses to take by assignment. All of Design-Builder's agreements with its Subcontractors shall provide for this assignment.

ARTICLE 6. Owner's Responsibilities

1. **Information**. Owner shall provide Design-Builder, as and when requested, with information regarding Owner's design and construction objectives, constraints, criteria, schedule, space requirements and relationships, flexibility, expendability, special equipment, systems and site requirements. Owner shall also cooperate with Design-Builder in securing the building permit and other licenses and inspections.
2. **Representatives**. Owner shall appoint the project representatives who shall be responsible to communicate with Design-Builder with respect to the design and construction requirements of the Project, to observe the design and construction work on the Project, to furnish required information and services to Design-Builder and to render decisions pertaining to the work required by this Contract with reasonable promptness in order to avoid any delay in the orderly progress of the design and construction work on the Project. The representatives so designated shall be the sole persons authorized to act on behalf of Owner with respect to the Project (either overall or as to such limited aspects of the work for which the representative is designated).
3. **Review of Documents**. Owner shall review any documents submitted by Design-Builder requiring Owner's decision and shall render any required decisions pertaining thereto.
4. **Provide Notice of Defects**. In the even Owner knows of any material fault or defect in

the construction work, nonconformance with the Contract or of any errors, omissions or inconsistencies in the construction documents, Owner shall give prompt notice thereof in writing to the Design-Builder.

5. **Owner's Reviews, Inspections, Approvals, and Payments Not a Waiver.** Owner's review, inspection or approval of any construction work, design documents, submittals or pay requests by Design-Builder solely shall be for the purpose of determining whether such construction work and such documents are generally consistent with Owner's construction program and requirements. No review, inspection or approval by Owner of the construction work or documents shall relieve Design-Builder of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability or coordination of its design services or the construction work. Approval by any governmental or other regulatory agency or other governing body of any construction work and design documents shall not relieve Design-Builder of responsibility for the strict performance of its obligations under the Contract. Payment by Owner, pursuant to the Contract, shall not constitute a waiver of any of Owner's rights under the Contract or at law and Design-Builder expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by Owner.
6. **Right to Stop Construction Work.** In the event Design-Builder fails or refuses to perform the construction work in strict accordance with the Contract, or otherwise is in breach of this Contract in any way, Owner may, at its option, direct Design-Builder to stop the Work. In the event Owner stops the Work pursuant to this Paragraph and it is later determined that no cause existed for the exercise of such authority, Design-Builder shall be entitled to make claim for additional compensation and an extension of time as a result thereof pursuant to Article 13 below.

ARTICLE 7. Time; Completion

1. **Time of Essence.** Timely completion of the work is of the essence in this Contract. Accordingly, Design-Builder shall perform the services and work required by this Contract as expeditiously as practicable, consistent with good engineering and construction practice, applicable standards of professional care and diligence and the orderly progress of the design and construction work. The substantial completion of construction shall be within **One Hundred Fifty (150) calendar days** from and after the date of, or subsequent date authorized in, said order by the Owner to proceed. Design-Builder shall commence the construction work required for the Project pursuant to this Contract upon the Design-Builder's receipt of a written notice to proceed from the Owner and shall thereafter achieve Milestone Completion and Substantial Completion of such work not later than the dates so established in the GMP Amendment executed by the Owner and Design-Builder, subject only to delays caused by the acts or neglect of Owner or its employees or separate contractors, changes, suspensions, or delays ordered by Owner in the work on the Project, labor disputes or strikes, fire, unavoidable casualties or other causes beyond the reasonable control of Design-Builder and its Subcontractors (which such delays are referred to herein as an "Excused Delay"). A delay caused by any weather condition shall not constitute an Excused Delay unless the Design-Builder

provides data substantiating that the weather conditions was abnormal for period of time during which it occurred, could not have been reasonably anticipated and had an adverse effect on the critical path of the construction schedule. In the event Design-Builder fails to achieve Milestone Completion or Substantial Completion of all design and construction work required for the Project by the date set forth in the GMP Amendment (as it may be extended due to Excused Delays) and fails thereafter to take reasonable and diligent action to complete the work as quickly as practicable, Owner shall have the right, in addition to any other rights or remedies provided for in this Contract or under applicable law, to hire another person or entity to perform such work and Design-Builder shall be liable to Owner for any reasonable amount paid to such person or entity in order to procure such performance.

2. **Remedy for Excused Delays.** In the event of an Excused Delay, Design-Builder shall be entitled to an increase in the date established for Substantial Completion measured by the number of days or portions thereof that completion of the Project is actually delayed by such Excused Delay. In addition, in such event the Design-Builder shall be entitled to an increase in the Cost of the Work equal to the actual and direct increased costs of performing the Work required by this Contract caused by such Excused Delay. Notwithstanding the foregoing or any other provision to the contrary, the Design-Builder shall not be entitled to an increase in the Cost of the Work or other compensation for any Excused Delay or other delay that was not caused by the Owner or any agent or employee of the Owner.
3. **Schedule and Reports.** The Design-Builder shall prepare and maintain a detailed construction schedule for the performance of the construction work on the Project based on the date for Substantial Completion established in the GMP Amendment (as it may be modified pursuant to this Contract) and employing a computer-based or neatly hand written scheduling system acceptable to the Owner. The schedule shall identify and incorporate activities required for equipment modifications, procurement and installation and shall identify all material or equipment (Design-Builder and Owner furnished) that will require long delivery time and shall set forth the anticipated purchase and delivery dates for such materials and equipment. In addition, the schedule shall identify by task all significant decisions or information required to be supplied by Owner or any other persons or entities involved with the Project (including applicable code officials) and shall set forth appropriate time frames for the supply of such decision and information so as not to delay the Substantial Completion of the Project. Subsequent to the commencement of the construction work on the Project, Design-Builder shall prepare a monthly schedule summary report, in such form and detail as approved by Owner. These reports shall identify the significant schedule milestones achieved during the period, identify those milestones that were not achieved, explain why they were not achieved and detail Design-Builder's plan for recovering any lost time associated with such failure, identify and discuss any other events or problems which have affected or may affect completion of the Project and shall include an updated schedule for the remaining activities on the Project. The monthly schedule summary shall also contain a written statement from Design-Builder's Project Representative as to the progress of the Project, the overall status of conformance with the Project schedule and the Project Representative's expectation of completion as compared to the current schedule.

4. **Measures to Overcome Delays.** In order to achieve Substantial Completion of the Project by the date established in the GMP Amendment executed by the parties (as it may be extended due to Excused Delays), Design-Builder shall, without increase in the GMP or additional compensation of any kind, assign more personnel, work overtime and take such other measures as are necessary to overcome delays caused by Design-Builder and its Subcontractors. In addition, in the event of any significant delay to the Project's completion, Design-Builder shall, if requested by Owner, revise and modify the scheduling and sequencing of the work (to the extent possible) in order to allow Owner to use as much of the Project as soon as possible for its intended purpose.
5. **Milestone, Substantial and Final Completion.** As used herein, the term Milestone Completion shall refer to the date when the design and construction work on the Project is sufficiently complete in accordance with the Contract such that: the bridge is fully erected and open to traffic. As used herein, the terms Substantial Completion and/or Substantially Complete (whether capitalized or lower case) shall mean the date when the design and construction work on the Project is sufficiently complete in accordance with the Contract to allow Owner to begin to occupy and utilize the Project for its indicated purpose. The terms Final Completion and/or Finally Complete (whether capitalized or lower cased) shall mean the completion of all items of work on the Project, including satisfactory operation of all equipment installed by Design-Builder, completion and/or correction of all punch list items, delivery of warranty certificates, the issuance of required approvals and acceptances by any governmental authorities having jurisdiction over the Project and the removal of all rubbish, tools, scaffolding and surplus materials and equipment from the Project site.
6. **Inspection and Punch Lists.** When Design-Builder considers that the work on the Project is Substantially Complete, it shall so notify Owner in writing. The written notification from Design-Builder to Owner shall include a punch list of items to be completed or corrected and shall fix the time within which Design-Builder shall complete or correct said punch list items. Owner shall thereafter promptly inspect the work on the Project and either accept that the work is Substantially Complete, or shall notify Design-Builder in writing of the basis for Owner's position that the work is not Substantially Complete. If Owner and Design-Builder disagree as to whether the work is Substantially Complete, such disagreement shall be resolved pursuant to negotiation between Owner and Design-Builder, or if necessary, pursuant to Article 13 below. Upon notification from Design-Builder that the punch list items of work have been completed and corrected by Design-Builder, Owner shall again review the work on the Project to verify such completion and correction, and shall either accept that such punch list work has been completed and corrected or shall notify Design-Builder in writing of those punch list items which Owner believe remain to be completed or corrected. Upon the completion and correction of all punch list items, and Design-Builder's provision to Owner of any additional information or services required in connection with Final Completion of the Project, the Project will be considered Finally Complete and the Owner and Design-Builder shall execute a Certificate of Final Completion. Owner agrees that it shall not unreasonably withhold acceptance of the completion or correction of any punch list items of work. If Owner and Design Builder disagree as to whether the work is Finally Complete, including whether any punch list items have been completed or corrected, such

disagreement shall be resolved pursuant to negotiation between Owner and Design-Builder, or if necessary pursuant to Article 13 below. In addition, Design-Builder acknowledges that during the period when it is completing the punch list, Owner may be occupying or preparing to occupy the Project and that disputes may arise between Design-Builder and Owner as to the responsibility for correction of certain damage to the work. Design-Builder agrees that it shall promptly perform any such corrective work irrespective of any dispute as to Design-Builder's responsibility therefor, subject to Design-Builder's right to make claim for additional compensation resulting therefrom pursuant to the terms of this Contract.

7. **Reasonable Promptness.** As used herein, the terms "reasonable promptness" and "promptly" shall mean as quickly and expeditiously as practicable, consistent with applicable standards of professional care and diligence, in order to avoid any delay in the orderly and sequential process of the design and construction of the Project. In the event a specific date for performance is established by this Contract, reasonable promptness or promptly shall require performance on or before the date so established, except to the extent later performance is agreed to or permitted by terms of this Contract.
8. **Liquidated Damages.** Because the amount of damages that the Owner will sustain if the Design-Builder fails to complete the work on or before the dates scheduled for Substantial Completion cannot be readily ascertained as of the date on which this Agreement is executed, and because the Design-Builder and the Owner desire certainty with respect to their rights and obligations in the event that the work is not completed by the aforementioned dates, the parties agree that if the Design-Builder fails to achieve Substantial Completion on or before the respective dates set forth herein and the GMP Amendment, the Design-Builder shall pay the Owner as liquidated damages for delay the following amounts (which constitute reasonable approximations of the Owner's damages in the event of such failure by the Design-Builder): **Five Hundred Dollars (\$500.00)** per day for each day on which the Design-Builder has not accomplished Substantial Completion on or before the scheduled Substantial Completion date and continuing until the date on which Substantial Completion is actually achieved.

ARTICLE 8. Payment

1. **Amounts.** Design-Builder shall be paid for the performance of the work and services pursuant to this Contract in the amounts required by Article 3, Paragraph 6, Article 4, Paragraph 13 and Article 4, Paragraph 15, respectively. Before submitting a progress payment application with respect to the Cost of the Work, Design-Builder shall prepare and submit a schedule of values (in such form as is acceptable to Owner) based on the Cost of the Work established in the GMP Amendment (and revised as appropriate to reflect the actual amount of subcontracts entered into for the Project as they are executed) which allocates and divides the entire Cost of the Work to each separate portion of the construction work required for the Project. This schedule of values shall be used as a basis for processing Design-Builder's progress payment applications for the Cost of the Work.
2. **Progress Payments.** Progress payments of the amounts due to Design-Builder for work and services provided by Design-Builder pursuant to this Contract shall be made as

provided in this Paragraph. Design-Builder shall submit regular progress payment applications to Owner on or before the twenty-fifth day of each month. Each such payment application shall request payment for all design, construction and construction management work performed in the period covered by the payment application, shall describe the work performed, and shall identify the percentage of completion of the design and construction work on the Project as of the end of the period covered by the payment application, separately identifying such percentage of completion with respect to each separately compensable category of work or services identified in this Contract (i.e., Design, Cost of the Work and Construction Management). Not later than thirty (30) days after the receipt of any such payment application from Design-Builder, Owner shall pay Design-Builder an amount equal to that portion of the applicable Cost of the Work and fee for each category of work proportional to the percentage of the design, engineering and construction work then completed by Design-Builder in such category (as agreed by Design-Builder and Owner, and subject to the limits of the GMP Amendment with respect to the Cost of the Work), plus any amounts for work authorized by fully executed Change Orders and completed by Design-Builder as of the date of the payment application, minus retention as provided in Article 8, Paragraph 3. Each application for payment submitted by Design-Builder to Owner shall be accompanied by: (1) a partial waiver of lien executed by Design-Builder covering the entire amount of the payment requested by the relevant application for payment, (2) partial waivers of lien executed by each Subcontractor performing work or furnishing supplies or materials to the Project, covering the payment requested in and (3) such data substantiating the Design-Builder's right to payment as the Owner may reasonably request, such as copies of requisitions, invoices or payment applications from Subcontractors and suppliers. An updated project schedule as described in Article 7, Paragraph 3, shall accompany all monthly invoices.

3. **Retention.** Retention equal to five percent (5%) of all outstanding applications for payment shall be held by Owner until all work on the Project is Substantially Complete. At Substantial Completion, all retained amounts relating to the Cost of the Work shall be released to Design-Builder, except that a sum equal to 100% (one hundred percent) of the value of any work remaining to be completed on the Project shall be withheld until Final Completion, including the release of any liens asserted against the Project and final release of all claims of any Subcontractors who have performed any work on the Project. However, with respect to any specific category of work that is fully completed prior to the Substantial Completion of the overall Project, Owner may (at its discretion) release the retention withheld with respect to such work within thirty (30) days after its completion, subject to Owner's right to restore such retainage (by withholding amounts sufficient to recapture the amounts so released from future payments due to Design-Builder) if Owner believes that defects, deficiencies or other problems in such work have been discovered which require correction. Owner shall not be obligated to release retention applicable to any work performed on the Project, however, until Substantial Completion of the overall Project.
4. **Title to Work.** Design-Builder agrees that:
 - a. Title to the work, materials and equipment covered by any application for payment will pass to Owner neither by incorporation in construction or upon receipt of payment by Design-Builder for such work, whichever occurs first.

- b. Work, materials and equipment covered by previous applications for payment shall be free and clear of liens or other encumbrances, provided that payment has been made by Owner to Design-Builder as required by this Contract; and
- c. No work, materials or equipment covered by any application for payment will have been acquired by Design-Builder, or any Subcontractor retained or employed by Design-Builder to perform work on the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by Design-Builder or such other person or entity.

The applications for payment submitted by Design-Builder to Owner shall constitute a representation by Design-Builder to Owner that to the best of Design-Builder's knowledge, information and belief, the design and construction of the Project have progressed to the point indicated, the quality of the work covered by the application is in accordance with the Contract, and Design-Builder is entitled to payment in the amounts requested.

5. **Payments to Subcontractors.** Design-Builder shall make payment to each Subcontractor, within ten (10) days after receipt of payment from Owner, of the full amount paid to Design-Builder by Owner, pursuant to Design-Builder's application for payment, on account of the work performed by such person or entity (less any amounts being withheld as retention from such Subcontractor by Design-Builder). Design-Builder shall, by appropriate agreement with each Subcontractor, require each such person or entity to make payments to its subcontractors in a similar manner.
6. **Decisions to Withhold Payment.** Owner may decide not to make payment in the amounts requested by any application for payment to the extent that:
 - a. Design-Builder has performed defective or deficient work on the Project which has not been remedied;
 - b. Design-Builder and Owner cannot agree that the work is completed to the point indicated in the application for payment (in which event Owner shall make payment of the amounts required by the percentage completion which Owner believes has been achieved);
 - c. Design-Builder has failed to make required payments to those persons or entities employed or retained by Design-Builder to perform work or services in connection with the Project;
 - d. Design-Builder has caused damage to Owner which is the responsibility of Design-Builder pursuant to this Contract; or
 - e. Design-Builder has persistently failed to carry out the work in accordance with this Contract. If Owner decides to withhold payments pursuant to this Paragraph it shall notify Design-Builder in writing of the reasons for such withholding within thirty (30) days of the receipt of any application for payment. Owner shall make timely payment to Design-Builder, as required by this Contract, of all amounts not related to the reasons stated in such notification. Owner shall make payment of any amounts withheld pursuant to this Paragraph as part of the payments, if any, made in response to the next payment application submitted by Design-Builder after the reasons for such withholding are removed or corrected.
7. **Final Completion.** When Design-Builder believes that the work has been Finally Completed, it shall notify Owner in writing and upon receipt of said notice, Owner shall

inspect the work and either accept such work as being Finally Completed or identify in writing to Design-Builder that the work is not Finally Completed in the opinion of Owner and state specifically why Owner believes the work is not Finally Complete. Upon Owner's acceptance of the work as Finally Complete, the parties shall execute a Certificate of Final Completion. Design-Builder shall then submit a final payment application, specifically marked and noted as "Final" on the application, for all amounts remaining due and owing to Design-Builder under this Contract. Final payment shall not be due and owing and shall not be made to Design-Builder unless and until Design-Builder submits to Owner:

- a. An affidavit that all payrolls, bills for materials and equipment and other indebtedness connected with all work performed on the Project, for which Owner or its property might in any way be responsible, have been paid or otherwise satisfied;
 - b. executed lien waivers (subject only to receipt of final payment) signed by all Subcontractors who have performed work on the Project and who may be entitled to a lien against Owner's property (final and unconditional lien waivers from each such Subcontractor shall be provided to Owner by Design-Builder within seven (7) days of Design-Builder's receipt of final payment);
 - c. an executed lien waiver signed by Design-Builder discharging and waiving all liens, lien rights, and other claims which Design-Builder may have against Owner or Owner's property, effective upon receipt of final payment; and (4) delivery of all project closeout requirements set forth in Article 8, Paragraph 9.
8. **Waiver.** Progress payments by Owner to Design-Builder shall not constitute an acceptance of the work in place and shall not constitute a waiver or release of any claims arising out of or relating to any work on the Project or under this Contract. No payment, nor any partial or entire use or occupancy of the Project by Owner shall constitute an acceptance of any work not in accordance with this Contract. Acceptance of final payment from Owner by Design-Builder, however, shall constitute a waiver and release of all claims by Design-Builder and its Subcontractors arising out of or relating to the Project or this Contract.
9. **Project Closeout Requirements.** The Project will not be considered Finally Complete and Final Payment shall not be made until the Design-Builder has delivered the following to Owner:
- a. Final Lien Waivers, as required by Article 8, Paragraph 7 above.
 - b. Wall warranties and guarantees required by the Contract.
 - c. Release of surety, if applicable.
10. **Liens.** Design-Builder shall indemnify and hold harmless Owner and its agents and employees from and against all claims, demands, damages, losses and expenses, including, without limitation, attorneys' fees paid or incurred by Owner in connection with the settlement or defense of any claim by a Subcontractor retained to perform work on this Project, arising out of or in connection with the failure of Design-Builder to pay such person or entity as provided herein for the work that is the subject of such claim. Specifically, and in addition, if any such person or entity refuses to furnish a release or waiver required by Owner, Design-Builder shall either withhold payment from such person or entity or furnish a bond for 150% of the amount claimed and in a form

satisfactory to Owner to indemnify it against any such lien. In the event a Subcontractor files a mechanic's lien or claim for lien against the Project, Design-Builder shall cause such lien or claim for lien to be formally released, bonded against or satisfied, and shall reimburse Owner for all costs and expenses, including, but not limited to attorneys' fees incurred by them in contesting, discharging, releasing or satisfying such lien or claim for lien or defending or otherwise participating in such suit.

11. **Interest.** Amounts due and unpaid under this Contract shall not bear interest until they are more than thirty (30) days past due from the date when payment is required under this Contract, at which point they shall begin to accrue simple, annual interest at one point above the commercial lending prime rate then published in the Wall Street Journal for Citibank, N.A..
12. **Audit.** Each application for payment submitted by Design-Builder shall be notarized and shall be supported by such data substantiating the payments requested as Owner may reasonably require. Each payment application shall also include such forms and data needed to conform to Owner's purchase order procedures, rules and practices. Design-Builder and its Subcontractors shall maintain and produce any data which Owner may reasonably request for the purpose of determining the correctness and allowability of the charges made pursuant to this Contract and shall afford Owner reasonable access to such books, records, receipts, vouchers, etc. in order to verify the Cost of the Work (and any related savings) as represented in Design-Builder's payment applications. In regard to the foregoing and generally, Design-Builder hereby authorizes Owner to check directly with Subcontractors as to the charges for labor, materials and other items appearing in Design-Builder's payment applications and to obtain waivers of lien from such Subcontractors, if such information or items cannot be obtained through Design-Builder.

ARTICLE 9. Warranties, Correction of the Work and Insurance

1. **Payment, Performance and Maintenance Bond.** Design-Builder will be required to furnish a Payment, Performance and Maintenance Bond to the Owner prior to the issuance of the Notice to Proceed. Each bond shall be executed on the form provided by the Owner to the Design-Builder, signed and sealed by a surety company authorized to do business in the State of Missouri, and acceptable as surety to the Owner. With each bond there shall be filed with the Owner one copy of the power-of-attorney certified to include the date of the bond.
2. **Warranty.** The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Owner, that the Work will be free from any defects or deficiencies in workmanship or materials (ordinary wear and tear excepted) and that the work will conform with the requirements of the final construction documents. In addition, the Design-Builder represents and warrants to Owner that all Work, materials and equipment furnished under this Contract shall be free from failure under ordinary usage for a period of two (2) years from the date of Substantial Completion. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. The Design-Builder's warranties do not cover damage or failure of materials to the extent caused by any abuse, modification, improper or insufficient

maintenance or improper operation by the Owner. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment to be employed in the performance of the work. All manufactured articles, materials, and equipment shall be stored, applied, installed, tested, connected, erected, used, cleaned and conditioned by the Design-Builder as directed by the manufacturer unless otherwise specified. All warranties provided in this paragraph shall survive any termination of this Contract by the Owner due to the breach of the Contract of the Design-Builder. If Owner discovers defective work, Owner shall promptly notify Design-Builder and Design-Builder shall thereafter repair or replace any such defective work without cost or charge to Owner.

3. **Correction of Work.** During the course of the construction work on the Project, Design-Builder shall promptly cause to be corrected all work which is defective, fails to conform to the Project Concept or any applicable codes, or otherwise is not in accordance with the requirements of this Contract. If Owner prefers to accept construction work which is not in accordance with the requirements of this Contract, Owner may do so instead of requiring its removal and correction, in which case the amounts due to Design-Builder pursuant to this Contract will be reduced by the reasonable value of the removal and correction costs not expended by Design-Builder.
4. **Equipment and Material Warranties.** Any guarantees or warranties of equipment or materials furnished to Design-Builder by any manufacturer or supplier shall be deemed to run to the benefit of and shall be assigned to Owner. Design-Builder's warranty as provided in Paragraph 1 of this Article, however, shall not be extended based on the assignment of any such warranty. As a condition to final payment, the Design-Builder shall deliver to the Owner two (2) clean, complete and readable copies of all guarantees and warranties on equipment and materials furnished by all manufacturers and suppliers to the Design-Builder and all Subcontractors, together with duly executed instruments properly assigning the guarantees and warranties to the Owner, and shall also deliver to the Owner two (2) clean, complete and readable copies of all related manufacturer's instructions, related maintenance manuals, replacement lists, detailed drawings and any technical requirements necessary to operate and maintain such equipment and materials or needed to maintain the effectiveness of any such warranties.
5. **Design-Builder's Insurance.** Design-Builder shall purchase and maintain, from a company or companies authorized to do business in Missouri, insurance in such amounts and coverage as detailed below. All coverages shall be on an occurrence basis, except and only if occurrence based coverage is not reasonably available, in which event claims-made coverage shall be provided for a claims period acceptable to Owner. All insurance shall be procured from carriers maintaining an A.M. Best Rating of no less than A: VII; or an insurer approved by the Owner. Such Insurance must cover the following claims which may arise out of or result from Design-Builder's operations under this Contract:
 - a. claims under workers' or workmen's compensation, disability benefit and other similar employee benefit laws which are applicable to the work to be performed;
 - b. claims for damages because of bodily injury, occupational sickness or disease or death of Design-Builder's employees under any applicable employer's liability law;
 - c. claims for damages because of bodily injury, sickness or death of persons other

than Design-Builder's employees;

- d. claims for damages covered by usual personal injury liability coverage; and
 - e. claims for damages because of injury to or destruction of tangible property (other than the Work itself), arising from Design-Builder's activities pursuant to this Contract. Upon request, Design-Builder shall submit to Owner certificates of the insurance procured by Design-Builder with respect to the Project. With the exception of Workers' Compensation, the insurance coverage required by this Paragraph shall name Owner and its parent corporations as additional insureds and shall not be canceled or allowed to expire without thirty (30) days prior written notice to Owner. The coverage on all such policies required from Design-Builder pursuant to this paragraph shall be primary to any valid and collectible insurance carried by Owner. The insurance shall be written for not less than the following, or greater if required by law:
6. **Commercial General Liability.** Combined single limit of Bodily or Personal Injury and Property Damage of not less than One Million Dollars (\$1,000,000.00) each occurrence, Two Million Dollars (\$2,000,000.00) annual aggregate. Such insurance shall include:
- a. Premises/Operations.
 - b. Independent Contractors.
 - c. Products/Completed Operations.
 - d. Contractual Liability, including protection for the Design-Builder from claims arising out of liability in connection with this contract.
 - e. Personal Injury Liability.
 - f. Explosion, Collapse and Underground Hazards, as applicable.
7. **Workers' Compensation – Statutory.** Employer's Liability, One Hundred Thousand Dollars (\$100,000.00) each accident, Five Hundred Thousand Dollars (\$500,000.00) Disease – Policy and One Hundred Thousand Dollars (\$100,000.00) Disease – each employee.
8. **Automobile Liability.** (Owned, non-owned and hired). Combined single limit for Bodily Injury and Property Damage of One Million Dollars (\$1,000,000.00) each occurrence.
9. **Umbrella Liability.** One Million Dollars (\$1,000,000) each Occurrence. The above primary policies may be arranged by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy. Notwithstanding the foregoing the Owner shall have the right, at its sole discretion, to adopt a Project Specific Insurance Program ("PSIP") to provide some or all of the insurance for the Project. In the event a PSIP is implemented by the Owner, the Design-Builder and its Subcontractors shall participate as directed by the Owner. In such event, if a GMP has already been established based on the assumption that the Design-Builder and its Subcontractors would be required to purchase insurance that will be provided through the PSIP, those coverages which will be provided by the PSIP shall not be procured (or if purchased, shall be canceled) by the Design-Builder or its Subcontractors (and instead will be provided through the PSIP) and the GMP shall be reduced by the amount of the premium then saved. Portions of the Work that are not covered by or included in the PSIP (such as off-site work or uncovered subcontractors or suppliers) shall be insured in the nature, limits and amounts otherwise required by this paragraph.
10. **Errors and Omissions Insurance.** In addition to the insurance required by Paragraph 4

of this Article, Design-Builder shall procure and maintain professional liability insurance, in an amount not less than \$1,000,000.00, and the architect shall procure and maintain professional liability insurance, in an amount not less than \$1,000,000.00. All such insurance shall not be canceled or allowed to expire without thirty (30) days prior written notice to Owner.

ARTICLE 10. Ownership of Documents; Proprietary Information

All drawings, plans, specifications, renderings and models and other design work (including CADD diskettes) provided as part of Design-Builder's services for the Project shall be the joint property of Owner and Design-Builder (or its applicable Subcontractor) whether the Project is executed or not, and shall not be used by any person other than Owner on projects other than the Project unless expressly authorized in writing by Owner. Design-Builder specifically agrees to incorporate the provisions of this Paragraph in all contracts for the services of Design-Builder's architects, engineers and other Subcontractors. Owner agrees that Design-Builder may retain one set of drawings for record. Owner is permitted to retain copies, including reproducible copies, computer disks and electronic data, of the drawings and specifications and shall have the right to use the drawings and specifications and the ideas and designs contained therein for information and reference in connection with Owner's use, maintenance, repair and occupancy of the Project, and in connection with additions, alterations or future construction to the Project without paying Design-Builder or its Subcontractors any compensation other than the amounts required by this Contract. All drawings, specifications and other documents and copies thereof furnished to Design-Builder are for use solely with respect to this Project. They are not to be used by Design-Builder or any Subcontractor on other projects or for additions to this Project outside the scope of the work without the specific written consent of Owner. Subcontractors hired to perform work on this Project are granted a limited license to use and reproduce applicable portions of the drawings, specifications and other documents to and for use in the execution of their work under this Contract. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project shall not be construed to be a publication or derogation of the rights of Owner, Design-Builder or any Subcontractor with respect to such drawings, specifications and other documents.

ARTICLE 11. Protection of Persons and Property

1. **Safety.** Design-Builder shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (1) employees and workers on the Project and other persons who may be affected thereby; (2) materials and equipment to be incorporated in the work under the care, custody or control of Design-Builder or any Subcontractor employed or retained to perform work on the Project; and (3) other property at the Project site or adjacent thereto, such as Owner's furnishings, equipment and other personal property. In this regard, Design-Builder shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. Design-Builder shall be liable for all damages or loss to persons or property at the Project site to the extent caused by Design-Builder or any

Subcontractor retained to perform work in connection with the Project, and will indemnify and hold Owner harmless from all damages, including reasonable attorney's fees incurred, as a result of any such damage or loss.

2. **Emergencies.** In an emergency affecting safety of persons or property, Design-Builder shall act, at Design-Builder's discretion, to prevent threatened damage, injury or loss. Design-Builder shall be entitled to additional compensation and/or an extension of time on account of such emergency, to the extent that the emergency is not the result of any fault or negligence attributable to Design-Builder or any Subcontractor retained to perform work in connection with the Project.

ARTICLE 12. Changes in the Work; Site Conditions

1. **Changes.** Subsequent to the execution of the GMP Amendment, Owner may, without invalidating this Contract, order changes in the work on the Project within the general scope of this Contract, consisting of additions, deletions or other revisions, by providing Design-Builder with written notice of such changes as provided herein. In the event Owner requests a change which is a Material Change (as defined herein) Design-Builder shall be entitled to an increase in the date established for Substantial Completion of the Project and shall be entitled to an increase in compensation only as may be authorized by Owner, in advance and in writing, pursuant to a signed Change Order.
2. **Change Orders.** As used herein, a Change Order is a written order signed by Owner, issued after execution of the GMP Amendment, authorizing a change in the work and an adjustment in Design-Builder's compensation and/or the date for Substantial Completion of the Project. Design-Builder shall not commence the performance of any work involving a Material Change without first receiving Owner's written authorization to proceed with such work and Owner's agreement as to any increases in compensation and/or the date for Substantial Completion of the Project pursuant to a Change Order signed by Owner. The cost to Owner resulting from a Material Change shall be determined in one or more of the following ways:
 - a. by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluations;
 - b. by unit prices stated in the GMP Agreement or subsequently agreed upon;
 - c. by cost to be determined in a manner agreed upon by Owner and Design-Builder; or
 - d. pursuant to the provisions of Article 13, Paragraph 4, if applicable. A Change Order signed by Design-Builder indicates its agreement therewith, including any adjustments in compensation or the date for Substantial Completion of the Project as a result of the issuance of the Change Order and shall constitute a final settlement of all matters relating to the work required by the Change Order, including all delays, compression, impact or other costs or expensed associated therewith. Deductive Change Orders shall not decrease the Construction Management Fee payable to Design-Builder pursuant to Article 4, Paragraph 15.
3. **Performance of Changes Without Agreement Regarding Adjustments.** In the event Owner requests a change in the Project and the parties cannot agree as to whether it is a Material Change, Owner may nonetheless issue a Change Order requiring Design-Builder

to proceed with such work, and in such event Design-Builder shall be entitled to make claim for the increased costs associated with the change pursuant to Article 13 below. Design-Builder agrees to comply promptly and fully with any such Change Order.

4. **Site Conditions.** Design-Builder represents that it has visited the Project site, has conducted a reasonable examination of all information, data and documents regarding the conditions at the site made available to Design-Builder by Owner prior to the execution of the GMP Amendment, and has acquainted itself with the conditions relevant to the work. Design-Builder agrees that, in the event an obstruction, difficulty or condition is encountered at the site which was unforeseen or unanticipatable, Design-Builder shall notify Owner of such condition with reasonable promptness and thereafter shall meet with Owner to discuss recommendations and alternatives for responding to the condition and minimizing its impact on the GMP and the completion dates established for the Project. Design-Builder shall perform no work involving or affected by such condition until after notifying Owner and receiving specific directions from Owner as to the performance of such work. If the obstruction, difficulty or condition is one about which Design-Builder should not have reasonably known (based on a reasonable inspection of the site and a review of the then available information concerning the site) prior to the execution of the GMP Amendment, then Design-Builder shall be entitled to an increase in the GMP measured by the increase in the Cost of the Work caused by such obstruction, difficulty or condition, together with an extension of the date for Substantial Completion of the Project measured by the number of days or portions thereof that Substantial Completion of the work is delayed as a result of the existence of the obstruction, difficulty or condition. If, however, the obstruction, difficulty or condition is one about which Design-Builder should have reasonably known (based on a reasonable inspection of the site and a review of the then available information concerning the site) prior to the execution of the GMP Amendment, then Design-Builder shall not be entitled to any increase in the GMP or to any additional compensation or damages of any kind or to any extension of the completion dates as a result of the existence of the obstruction, difficulty or condition and Design-Builder shall perform all work required by or as a result of such obstruction, difficulty or condition as part of the Cost of the Work, subject to the GMP.

ARTICLE 13. Claims

1. **Claims.** As used in this contract, a "claim" by Design-Builder or Owner against the other means any demand or assertion that seeks an interpretation of the Contract, an adjustment in compensation, an extension of the completion dates for the Project or any other relief or damages with respect to any event, occurrence, condition, dispute or disagreement relating to or arising out of the Contract, the performance, termination or breach thereof, or the performance of any work on the Project.
2. **Dispute Resolution.** The parties agree that they shall endeavor in good faith to resolve all claims between them by negotiation. In the event that any claim involving an amount less than \$20,000 is not able to be resolved in such a fashion, the parties agree that it shall be decided by a neutral third-party mutually agreed upon and selected by the parties. All other claims or disputes between the parties to this contract, which are not resolved by negotiation, shall be decided by resort to litigation in any court of competent jurisdiction.

in the State and County where the Project is located.

3. **Time for Assertion of Claims.** Design-Builder agrees that it shall not be entitled to make claim for or to receive any increase in compensation, any adjustment in the completion dates for the Project, or any other relief with respect to any matter or occurrence occurring in connection with the Project, unless Design-Builder has given Owner written notice of such claim no later than thirty (30) days after the first occurrence of the event giving rise to such claim or within thirty (30) days after Design-Builder first is able to recognize the condition giving rise to such claim, whichever is later. No construction work involving or affected by the occurrence or event giving rise to the claim shall be commenced without such notification to Owner and Owner's subsequent approval. The failure of Design-Builder to provide Owner with such written notice within the applicable time frame or the commencement of the affected work without the provision of such notice shall mean that Design-Builder has waived any such claim and shall perform all work required by or in connection with any such occurrence or condition without any increase in compensation, any adjustment in the completion dates for the Project or any other damages or relief of any kind or nature.
4. **Recovery for Claims.** In the event a claim filed by Design-Builder is later determined to be valid, regardless of the asserted basis for the claim, Design-Builder's recovery shall be limited to an increase in compensation equal to the actual and direct increased Cost of the Work caused by the events or circumstances giving rise to the claim. Design-Builder shall be entitled to no other costs, damages or expenses in connection with any claim made against Owner.

ARTICLE 14. Termination

1. **Termination by Owner.** Owner may terminate this Contract, upon seven (7) days' written notice to Design-Builder, under any of the following circumstances:
 - a. Design-Builder fails or neglects to perform its work or services in accordance with the terms of this Contract and fails to commence, continue and make reasonable progress towards the correction of such nonperformance or breach within seven (7) days after receipt of Owner's notice of intent to terminate,
 - b. Design-Builder files or consents to the filing of a petition or complaint commencing a bankruptcy or other insolvency proceeding filed against it, or fails to have a petition or complaint in bankruptcy or other insolvency proceeding filed against it by a third-party dismissed within forty-five (45) days after it is filed, or makes a general assignment for the benefit of its creditors, or
 - c. Owner elects to abandon the Project or is unable to finance its completion without a substantial delay or interruption in the work.
2. **Suspension by Design-Builder.** Design-Builder may suspend the performance of work under this Contract if Owner fails to make payment to Design-Builder, within thirty (30) days after such payment is due, for work performed by Design-Builder and accepted by Owner pursuant to this Contract. In such event, Design-Builder may, upon seven days written notice to Owner, suspend the performance of the work under this Contract. Unless such payment is thereafter received by Design-Builder within seven days, the suspension shall take effect without further notice to Owner. In the event of a suspension of work

pursuant to this Paragraph, Design-Builder shall have no liability to Owner for delay or damage caused to Owner because of suspension of work.

3. **Design-Builder Remedies Upon Termination.** Upon termination of this Contract pursuant to Paragraph 1, subsection (c) above, Design-Builder shall be compensated for all work or services performed by Design-Builder up to and including the date of termination, which compensation shall be measured by the percentage of completion achieved by Design-Builder in connection with each applicable work category for which compensation is due (but shall not be less than the actual Cost of the Work then incurred or committed by Design-Builder, plus applicable Construction Management Fee, subject to the GMP). Further, in the event of such termination, Design-Builder shall be paid for services, materials and supplies ordered prior to the date of termination by Design-Builder, for use in connection with the Project and necessary for the reasonable discharge of Design-Builder's responsibilities under this Contract or if applicable cancellation charges for such services, materials and supplies, to the extent such services, materials and supplies cannot be discontinued by Design-Builder without cost or penalty upon notice of termination. Design-Builder shall be entitled to no other costs, damages or expenses in connection with the termination of this Contract by Owner.
4. **Owner's Remedies Upon Termination.** In the event of termination of this Contract pursuant to Paragraph 1, subsections (a) or (b) above, Design-Builder shall be entitled to no further payments from Owner and shall be responsible to Owner for all costs, expenses and damages incurred by Owner as a result of Design-Builder's failure to perform this Contract as required by the provisions herein. After all such costs, damages and expenses have been paid to Owner, Design-Builder shall be entitled only to such amounts as may then still be owing to Design-Builder pursuant to this Contract (after deduction of such costs, damages and expenses) for the Cost of the Work, relating to work actually and properly performed by Design-Builder as of the date of termination, subject to the GMP.
5. **Suspension by Owner.** Owner may order Design-Builder to suspend, delay or interrupt the work, in whole or in part, for any reason and for such period of time as Owner may determine. An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance, caused by suspension, delay or interruption ordered by Owner which lasts more than thirty (30) consecutive days. However, no adjustment shall be made to the extent:
 - a. That performance is, was or would have been so suspended, delayed or interrupted by another cause for which Design-Builder is responsible; or
 - b. That an equitable adjustment is made or denied under another provision of this Contract (except as to costs and expenses paid by Design-Builder to its Subcontractors and materialmen).
6. **Sole Remedy.** Design-Builder's sole and exclusive rights in the event of termination or suspension shall be those set forth in this Article, and Design-Builder shall be entitled to no additional compensation and shall have no additional or other rights of any kind, type or nature arising out of or under this Contract by virtue of such termination or suspension.
7. **No Waiver of Remedies.** Payment by Owner to Design-Builder of any monies pursuant to this Paragraph shall not constitute a waiver of any remedies which Owner may otherwise have against Design-Builder for any failure of Design-Builder to perform in accordance with this Contract.

8. **Drawings.** In the event Owner terminates this Contract pursuant to Paragraph 1 of this Article, Design-Builder shall deliver to Owner a complete set of all original drawings and specifications, and drawing files prepared for the Project by or through Design-Builder prior to the date of termination, within seven (7) days after the date of termination. Owner shall have the right to use such documents and the ideas and designs contained therein for the completion of the Project and for information and reference in connection with Owner's use and occupancy of the Project without compensation to Design-Builder (except as otherwise provided herein) provided Owner has terminated the Contract with just cause.

ARTICLE 15. Miscellaneous Provisions

1. **Design-Builder Acknowledgments.** This Contract shall be governed by the laws of the State of Missouri. The Owner and the Design-Builder agree that the performance of this Contract will be deemed to have occurred in the State of Missouri and that Design-Builder's performance under this Contract will be deemed the transaction of business in Missouri. Jurisdiction and venue for any claim or cause of action arising under this Contract shall be exclusively in the Sixteenth Judicial Circuit of Missouri and the Design-Builder submits to personal jurisdiction of and waives any personal jurisdiction or inconvenient forum objection to, that court. Furthermore, all contract documents, plans, design or other agreements prepared by the Design-Builder for Owner will be in conformance with, and require compliance with, these same laws, regulations and ordinances and such written contracts or agreements shall contain the language in this paragraph and the paragraph immediately following hereafter.

The Design-Builder acknowledges that the Owner has limited financial resources to fund the design and construction of each project. The Design-Builder acknowledges that the Owner, based upon the Design-Builder's delineation of the scope and nature of the design and construction of each project pursuant to this Contract and based upon the Owner's financing limitations for the project, will establish a firm and guaranteed maximum budget for the expected costs of the project ("Budget").

The Design-Builder shall prepare all design drawings for each project illustrating the essential scale and relationship of each project's design and fixing. Before the design proposed by the Design-Builder will be considered acceptable and complete, the projected cost for completion of each project must be within the Budget set forth above. In the event the actual bid amounts exceed the Budget, at Owner's option and at no further cost to Owner, Design-Builder will redesign each project to be within the Budget.

2. **Entire Agreement.** This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements either written or oral. This Contract may be amended or modified only by a written instrument executed by Owner and Design-Builder. This Contract shall be governed by the law of the State of Missouri.
3. **Successors and Assigns.** Owner and Design-Builder respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to the

partners, successors, assigns and legal representatives of such other party in respect to the covenants, agreements and obligations contained herein. Neither party to this Contract shall assign the Contract, in whole or in part, without the written consent of the other party, except that Owner may conditionally assign the Contract to any lender to the Project (i.e. contingent on Owner's default under the applicable loan documents) and may assign the Contract to any parent, subsidiary or affiliate of Owner to any successor in interest to Owner by virtue of a merger or acquisition involving Owner. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under this Contract.

4. **Titles and Captions.** The paragraph titles, headings and captions contained in this Contract are used for convenience and reference only and are not intended and shall not in any way enlarge, define, limit or extend the rights or obligations of the parties or affect the meaning or construction of this Contract or any provision of this Contract.
5. **Invalidity.** In case any provision of this Contract is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of all remaining provisions shall not be affected.
6. **Design-Builder's Indemnification.** To the fullest extent permitted by law, Design-Builder shall indemnify and hold harmless Owner and its respective agents, consultants, representatives and employees from and against all claims, damages and losses to the extent that such claims, damages and losses, including without limitation attorneys' fees, arise out of or result from the performance of the Design-Builder's Work on the Project, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by the negligent acts or omissions of the Design-Builder, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, loss, damage or expense is caused in part by a party indemnified thereunder.
7. **Partial Occupancy.** Owner shall have the right to occupy or use ahead of schedule all or any substantially or partially complete portion of the work on the Project when such occupancy and use are in its best interest, notwithstanding the time of completion for all of the work. If such occupancy or use increases the Cost of the Work or delays its completion, Design-Builder shall be entitled to an appropriate increase in compensation and an appropriate extension in the completion dates for the Project. Owner shall be responsible for utilities, security and safety for those areas partially occupied upon the commencement of such occupancy. The date of partial occupancy shall also constitute the commencement of the warranty period for those areas so occupied.
8. **Rights and Duties.** The duties and obligations imposed by this Contract, and the rights and remedies available hereunder, shall be in addition to and not in limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.
9. **Labor Unions.** Design-Builder shall be entitled to additional compensation or an extension of time as a result of labor disputes, union or non-union, concerning the Project, only to the extent that they are not avoidable by reasonable actions taken by Design-Builder prior to commencing the work on the Project.
10. **Project Sign.** The Design-Builder and any entity for whom the Design-Builder is

responsible shall not erect any sign on the Project site without the prior written consent of Owner, which may be withheld in the sole discretion of Owner, unless required by ordinance, OSHA or other regulatory body.

11. **Drug Free Work Policy.** Design-Builder shall comply with Owner's "Drug Free Work Policy".

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year first above written.

CITY OF INDEPENDENCE MISSOURI
Party of the First Part (Owner)

By _____
Zachary Walker, City Manager

ATTEST:

Rebecca Behrens, City Clerk

Radmacher Brothers Excavating Co., Inc.
Party of the Second Part
(Design-Builder)

By 

SEAL:

2201 North 7 Highway, Suite B
Address

ATTEST:

Pleasant Hill, MO 64080
City & State


Corporate Secretary

The foregoing contract and bond(s) are in due form according to law and are hereby approved.

ATTORNEY FOR OWNER:

Shannon M. Marciano, City Counselor

Design-Build Contract Truman and Harris Emergency Repairs Project (70571703)

Exhibit 1. Guaranteed Maximum Price (GMP) Amendment

That the Owner shall pay to the Design-Builder for the performance of the work embraced in this contract, and the Design-Builder will accept as full compensation therefore, a sum (subject to change orders approved by the City Council not to exceed Seven Hundred Twenty Seven Thousand Seven Hundred Ninety Six Dollars and 84/100 (\$727,796.84) for all the work covered by and included in the contract award.