

AGREEMENT FOR PROFESSIONAL AND CONSTRUCTION SERVICES

THIS AGREEMENT FOR PROFESSIONAL AND CONSTRUCTION SERVICES (the "Contract") is made this **6th day of January, 2025** (the "Contract Date"), between **The City of Cape Girardeau** (hereinafter the "Owner") and **Penzel Construction Company, Inc.** (hereinafter "Contractor").

WHEREAS, Contractor is prepared and able to perform the professional design, engineering and construction services required by the Owner for construction of a **Youth Outdoor Sports Complex at 1157 South West End Blvd** in Cape Girardeau, Missouri (the "Project");

THEREFORE, in consideration of the mutual promises hereinafter set out, the Owner, and Contractor agree as follows:

1. GENERAL PROVISIONS

- 1.1 **The Contract Documents.** The Contract Documents consist of this Contract, Exhibits, drawings, specifications, other documents listed in this Contract, and modifications issued after execution of this Contract, all of which form the Contract and are as fully a part of the Contract as if attached hereto or repeated herein. Upon the Owner's acceptance of the Contractor's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.4.3.1 and identified in the Executed Guaranteed Maximum Price Proposal. The Contract represents the entire and integrated agreement between the parties hereto with respect to the Project and supersedes prior negotiations, representations or agreements, either written or oral.
- 1.2 **Scope of Work.** Contractor shall, in accordance with the requirements of this Contract, perform and provide the design, engineering and construction services described in the Scope of Work attached as **Exhibit A** hereto (the "Work"), as modified by the parties from time to time with respect to the scoping, design and construction phases. Contractor shall complete the performance and provision of the Work as specified in Section 2 herein.
- 1.3 The Contractor accepts the relationship of trust and confidence established by this Contract and covenants with the Owner to furnish the design, engineering and construction services set forth herein; to provide efficient administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information or other requests required by the Contractor and to make payments to the Contractor in accordance with the requirements of this Contract.

2. CONTRACTOR'S SERVICES

2.1 Scoping Phase Services

- 2.1.1 The Contractor shall provide a preliminary evaluation of the Owner's Program, schedule, space and site requirements, and budgetary requirements, each in terms of the other, as set forth in the Scope of Work.
- 2.1.2 The Contractor shall conduct an initial site visit and inspection, and such additional visits as needed by the Contractor, to assess the suitability of its use for the Project and provide the Owner a presentation of its findings as and to the extent set forth in the Scope of Work. The Contractor shall conduct preliminary meetings with City Development Review Group for project review to determine initial feedback and analysis of opportunities and constraints regarding overall site, access, stormwater, building codes, permits, etc.
- 2.1.3 The Contractor shall schedule and conduct meetings with the Owner, in person or via telephone conference or online meetings as reasonably determined by Contractor, to discuss such matters as procedures, progress, coordination and scheduling as and to the extent set forth in the Scope of Work. The Contractor shall advise on proposed site use and improvements, including, without limitation, access, traffic, drainage, building placement and parking, selection of special equipment and systems, and building systems and equipment.
- 2.1.4 Contractor shall research and review laws and regulations applicable to design and construction of the Project and correlate such laws and regulations with the Owner's Program requirements. In the performance of this obligation, Contractor shall meet with governmental authorities having or potentially having jurisdiction over the Project and make all commercially reasonable efforts to ensure that the design of the Project complies with applicable laws, codes, regulations and requirements, and any and all fire safety laws, codes, regulations, or requirements, including but not limited to all local, state and federal laws, codes, regulations and requirements. Contractor will notify Owner and at all times keep Owner advised of any potential challenge or obstacle to full and complete legal approval and compliance, including obtaining all applicable licenses and permits.

- 2.1.5 The Contractor shall investigate and determine the nature and identity of all permits, licenses and inspections as are necessary to commence and complete the Work. Contractor shall prepare a list of same, including associated costs and fees, and furnish it to the Owner. All fees charged by the City will be waived for this project.
- 2.1.6 Based upon the Contractor's review and analysis of the Owner's Program, the Contractor shall prepare a preliminary design, a preliminary project cost estimate, including cost estimates for any equipment systems, and a preliminary project schedule for the Owner's review and comment. If the cost estimate exceeds the Owner's budget, the Contractor shall make recommendations to the Owner on ways to reduce the preliminary cost estimate. The preliminary project schedule shall show the activities needed to satisfy the Owner's requirements for completing the Project.
- 2.1.7 For the Contractor's Scoping Phase Services described in Sections 2.1.1 through 2.1.6, the Owner shall compensate the Contractor as provided in **Exhibit B**. If Exhibit B is blank, Scoping Phase Services are not part of this Agreement.

2.2 Design Phase Services: Development of Documents

- 2.2.1 Design Documents. The Contractor shall prepare and submit to the Owner for review and written approval Design Documents based on the approved adjustments in the Program, budget and completion requirements authorized by the Owner. See Exhibit C. The Design Documents, as modified by the parties from time to time, shall consist of drawings, outline specifications and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems and elements, and such other elements as may be appropriate. The Contractor shall update the preliminary schedule and estimate based on the Design Documents and shall submit such update to the Owner for review and approval. The preliminary schedule and estimates shall be provided to the Owner in the formats set out in section 2.2.4. Upon submission to the Owner, the Contractor shall certify that, to the extent required of Contractor as set forth in the Scope of Work, the Design Documents: (i) are consistent with the Contract Documents; (ii) comply with applicable industry and professional practice standards; (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project; and (iv) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications. Design documents shall be uploaded into the City's plan review system for the plan review and permitting process.
- 2.2.2 Construction Documents. After the Owner's written approval of the Design Documents as specified in Exhibit C, the Contractor shall submit to the Owner for review and approval Construction Documents based on the approved Design Documents and any adjustments in the program, budget and completion requirements authorized by the Owner. The Construction Documents shall consist of drawings and specifications setting forth in detail the requirements for construction of the Project (the "Drawings and Specifications"). If the Guaranteed Maximum Price has not been established, the Contractor shall prepare further updates of the preliminary schedule and estimate and shall submit such updates to the Owner for review and approval. Sets of plans shall be provided to the Owner in the formats set out in section 2.2.4.
- 2.2.3 For the Contractor's Design Phase Services described in Section 2.2, the Owner shall compensate the Contractor as provided in **Exhibit D**. If **Exhibit D** is blank, Design Phase Services are not part of this Agreement.
- 2.2.4 Digital (PDF and CADD) and hardcopy Drawings and Specifications shall be provided of Design Documents and Construction Documents, and any revisions thereof. All drawings available on CADD shall be provided to the Owner on diskette or other electronic format accepted by Owner. As-builts shall be provided to the Owner at the completion of the Work. All CADD drawings provided shall be compatible with AutoCAD 2011.

2.3 Construction Phase Services

- 2.3.1 The Construction Phase will commence upon the issuance by the Owner of a written Notice to Proceed. See Exhibit E.
- 2.3.2 Those portions of the Work the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts with Contractor or, as applicable, by other appropriate agreements with the Owner. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

- 2.3.3 The Contractor shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Contractor shall prepare and promptly distribute minutes to the Owner.
- 2.3.4 Upon the execution of the Executed Guaranteed Maximum Price Proposal as provided in 2.4.1.6, the Contractor shall prepare and submit to the Owner a construction schedule for the Work and submittal schedule.
- 2.3.5 The Contractor shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Contractor shall hold regular progress meetings and shall submit written progress reports to the Owner, showing percentages of completion and other information required by the Owner. The Contractor shall also keep, and make available to the Owner, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner. See Exhibit F.
- 2.3.6 The Contractor shall develop a system of cost control for the Work, to include a forecast of anticipated costs and regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Contractor shall identify variances between actual and estimated costs and report the variances to the Owner and shall provide this information in its monthly reports to the Owner.
- 2.3.7 If Owner abandons the project prior to construction, the fees incurred by Contractor, including but not limited to those specified on Exhibits B and D are payable by Owner to Contractor.

2.4 Compensation for Construction Phase Services

2.4.1 Guaranteed Maximum Price Proposal

- 2.4.1.1 The Contractor shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Contractor's estimate of the Cost of the Work, including all costs and contingencies described in Section 2.4.1.4 and the Contractor's Fee, but shall not include any fees, costs or expenses incurred during the Scoping Phase or Design Phase.
- 2.4.1.2 To the extent that the Drawings and Specifications are anticipated to require further development, the Contractor shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.
- 2.4.1.3 The Contractor shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:
 - 2.4.1.3.1 A list of the Drawings and Specifications, including all Addenda thereto;
 - 2.4.1.3.2 A list of the clarifications and assumptions made by the Contractor in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.4.1.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
 - 2.4.1.3.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Contractor's Fee;
 - 2.4.1.3.4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
 - 2.4.1.3.5 A date by which the Owner must accept the Guaranteed Maximum Price.
- 2.4.1.4 In preparing the Contractor's Guaranteed Maximum Price proposal, the Contractor shall include its contingency for the Contractor's exclusive use to cover various miscellaneous expenses, unknown

minor costs, and various design and project omissions, and gaps in the bid scopes, as well as those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

- 2.4.1.5 The Contractor shall meet with the Owner to review the Guaranteed Maximum Price proposal. In the event the Owner discovers any inconsistencies or inaccuracies in the information presented, it shall promptly notify the Contractor, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.
- 2.4.1.6 If the Owner notifies the Contractor the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective. Promptly thereafter, Owner and Contractor shall both sign the Guaranteed Maximum Price proposal (hereinafter, the “Executed Guaranteed Maximum Price Proposal”). The Executed Guaranteed Maximum Price Proposal shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.
- 2.4.1.7 The Contractor shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs or except as provided in Exhibit B and D. See Exhibit G.
- 2.4.1.8 The Owner shall authorize the Contractor at Owner’s expense to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Executed Guaranteed Maximum Price Proposal. The Contractor shall notify the Owner of any inconsistencies between the Executed Guaranteed Maximum Price Proposal and the revised Drawings and Specifications.
- 2.4.1.9 The Contractor shall not be required to include in the Guaranteed Maximum Price any sales, consumer, use and similar taxes for the Work provided by the Contractor. All such taxes shall be paid as provided in Section 7.4, and the City will provide a tax exempt certificate to the Contractor covering all such taxes for this project promptly upon the execution of this Contract.
- 2.4.2 Contract Sum. For the Contractor’s performance of the Work as described in Section 2.3, the Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract, at such times as further provided in this Contract. The Contract Sum is the Cost of the Work as defined in Section 2.4.4.1 plus the Contractor’s Fee. See Exhibit U.
- 2.4.3 Guaranteed Maximum Price
 - 2.4.3.1 The Contractor guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Executed Guaranteed Maximum Price Proposal, as it is amended from time to time. Excluding any payment for taxes pursuant to Section 7.4, to the extent the Cost of the Work exceeds the Guaranteed Maximum Price; the Contractor shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner. To the extent the Cost of the Work is less than the Guaranteed Maximum Price, the Owner and the Contractor shall share in such savings and Owner shall pay Contractor fifty-cents for every dollar saved below the Guaranteed Maximum Price.
 - 2.4.3.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.
- 2.4.4 Costs to Be Reimbursed
 - 2.4.4.1 The term “Cost of the Work” shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner, which shall not be unreasonably delayed or withheld. The Cost of the Work shall include only the items set forth in Sections 2.4.5 through 2.4.10. See Exhibit U.

- 2.4.4.2 Where any cost is subject to the Owner's prior approval, the Contractor shall obtain this approval prior to incurring the cost. See Exhibit G. The parties shall endeavor to identify any such costs prior to executing the Executed Guaranteed Maximum Price Proposal.

2.4.5 Labor Costs

- 2.4.5.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.
- 2.4.5.2 Wages or salaries of the Contractor's supervisory and administrative personnel when engaged in the Scope of Work.
- 2.4.5.3 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 2.4.4.1 through 2.4.4.
- 2.4.5.4 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, with the Owner's prior approval.

2.4.6 Subcontract Costs. Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

2.4.7 Costs of Materials and Equipment Incorporated in the Completed Construction

- 2.4.7.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.
- 2.4.7.2 Costs of materials described in the preceding Section 2.4.7.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work, less reasonable expenses of Contractor in completing such sales.

2.4.8 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

- 2.4.8.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.
- 2.4.8.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Contractor-owned item may not exceed the purchase price of any comparable item. Rates of Contractor-owned equipment and quantities of equipment shall be subject to the Owner's prior approval, which shall not be unreasonably withheld.
- 2.4.8.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.
- 2.4.8.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.
- 2.4.8.5 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

- 2.4.8.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval, which shall not be unreasonably withheld.

2.4.9 Miscellaneous Costs

- 2.4.9.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverage's required by the Contract Documents, with the Owner's prior approval.
- 2.4.9.2 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.
- 2.4.9.3 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work.
- 2.4.9.4 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent, which shall not be unreasonably withheld. However, such costs of legal defenses, judgments and settlements shall not initially be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price.
- 2.4.9.5 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval, which shall not be unreasonably withheld.
- 2.4.9.6 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.
- 2.4.9.7 Subject to the Owner's prior approval, which shall not be unreasonably withheld, expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work.

2.4.10 Other Costs and Emergencies

- 2.4.10.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.
- 2.4.10.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.
- 2.4.10.3 Costs as provided in Section 2.4.1.4 and of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, to the extent that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

2.4.11 Costs Not To Be Reimbursed

- 2.4.11.1 The Cost of the Work shall not include the items listed below:
- 2.4.11.1.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, but subject to the provisions of Section 2.4.5.2;
- 2.4.11.1.2 Expenses of the Contractor's principal office and offices other than the site office;
- 2.4.11.1.3 Overhead and general expenses, except as may be expressly included in Sections 2.4.5 to 2.4.10;

2.4.11.1.4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;

2.4.11.1.5 Costs due to labor strikes and/or the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

2.4.11.1.6 Any cost not specifically and expressly described in Sections 2.4.5 to 2.4.10 unless such costs are actual costs required to complete the Work and approved in writing by Owner or are otherwise stated in this Contract;

2.4.11.1.7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and

2.4.11.1.8 Costs for services incurred during the Scoping and Design Phases other than those approved in writing in advance by Owner, which shall be paid by Owner as otherwise provided in this Contract.

2.4.12 Accounting Records. The Contractor shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner in the Owner's reasonable discretion. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit, at the Owner's expense, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. Due to the sensitive nature of the information that may be disclosed by Owner's audit, including financial, trade secret and work product information of the Contractor and subcontractors which may be beneficial to Contractor and subcontractor's competitors, Owner agrees that copies of the foregoing records and information shall only be provided to Owner upon Contractor's consent unless otherwise required by law.

2.4.13 Summary of Definitions regarding financial components.

2.4.13.1 Budget Items: Construction element or task that was bid out and subsequently contracted with a sub-trade supplier.

2.4.13.2 Allowance Items: Construction element or task that is anticipated, but not contracted with a sub-trade supplier. Amount of the allowance can be designated by (a) estimation, or (b) as a result of a RFP.

2.4.13.3 Contingency Items:

- a Construction element or task that is unintentionally omitted from the RFP process, but still required as part of the Scope.
- b Modification to an originally budgeted or anticipated construction element or task, as a result of local permitting, or code enforcement modifications.
- c Modification to an originally budgeted construction element or task, as a result of commodity pricing or component availability.
- d Contingency dollars could be used to cover "net overages" of Allowance Items.
- e Construction element or task that results in an immaterial deviation from the contracted (a) Proposal, (b) Drawings, (c) Plans, or (d) Specifications AND (e) deemed to be "in scope".

2.4.13.4 Change Order Items: Construction item or element that is a material deviation from the contracted (a) Proposal, (b) Drawings, (c) Plans, or (d) Specifications, AND (e) deemed to be "in scope" or "out of scope".

3. OWNER'S RESPONSIBILITIES

3.1 Owner's Responsibilities During Scoping Phase

3.1.1 The Owner shall provide the following to the Contractor:

- 3.1.1.1 Information regarding legal limitations, together with all information in the possession of the Owner regarding environmental, soil and subsurface conditions at the Site. The Contractor shall take all reasonable and prudent steps necessary to locate utility facilities as required for the Project.
 - 3.1.1.2 A program and other relevant information describing the Owner's Project objectives, constraints and requirements, including the Project budget and completion requirements.
 - 3.1.1.3 To the extent it is not within the Contractor's Scope of Work or the responsibility of the Contractor in Sections 4.6 and 4.7, Owner shall secure and pay for necessary easements and governmental approvals for the construction, use or occupancy of the Project, including legal services required therefor.
 - 3.1.1.4 Promptly respond to Contractors' inquiries and requested approvals as necessitated during the Scoping, Design and Construction Phase.
- 3.1.2 The information and services required by Paragraph 3.1.1 shall be furnished with reasonable promptness at the Owner's expense, and the Contractor shall be entitled to rely on their completeness and accuracy.
- 3.2 **Owner's Responsibilities During Design Phase**
 - 3.2.1 The Owner shall review (i) the Design Documents and other information furnished by the Contractor during the Design Phase as set forth under Section 2.2, and (ii) the Guaranteed Maximum Price Proposal as set forth in Section 2.4.1, each within 20 business days of receipt by Owner.
- 3.3 **Owner's Responsibilities During Construction Phase**
 - 3.3.1 The Owner shall at once report to the Contractor any errors, inconsistencies or omissions the Owner discovers in the Construction Documents. Failure by the Owner to report to the Contractor any such errors, inconsistencies or omissions shall not relieve the Contractor of any of its responsibilities with respect to such errors, inconsistencies or omissions, unless Contractor cannot reasonable infer such items from the Owner's Program.
- 3.4 **Legal Requirements.** The Owner shall furnish all legal and accounting services, including auditing services that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.
- 3.5 **Owner's Representative:** Notwithstanding anything in this Contract to the contrary, Contractor acknowledges and agrees that (i) **Doug Gannon, Parks and Recreation Director**, shall be Owner's representative for the administration of the Work (the "Owner's Representative"), (ii) no Change Order shall be deemed approved by Owner nor may Contractor have a claim for additional services unless a written change order has been executed and delivered by Owner's Representative, (iii) any work outside the scope of the Work set forth in this Contract and any properly executed Change Orders cannot be authorized by other representatives, agents, employees, officers, members or consultants, contractors of Owner (whether requested in writing or verbally by such other representative, agents, employees, officers, members, consultants or contractors). Owner's Representative shall be allowed (but not required to be) on the Site at all times, however, such shall not relieve or release Contractor from any of its obligations or responsibilities under this Contract.

4. CONTRACTOR'S RESPONSIBILITIES

4.1 Conduct of Services

- 4.1.1 Contractor represents and warrants to the Owner that Contractor is competent to perform and provide the services required by this Contract, and the Contractor has the necessary permits, licenses and qualifications to perform such services. When applicable law requires that services be performed by licensed professionals, the Contractor shall have those services provided through the performance of qualified persons or entities duly licensed to practice their professions, including but not limited to, lawfully licensed architects, engineers or other design professionals. Contractor shall exercise skill, care and diligence in the performance and provision of the Work required by this Contract. Contractor shall perform the services promptly and in conformity with the requirements of this Contract, and in this regard shall carry out its obligations under this Contract in accordance with customarily accepted practices. In the event that Contractor should fail to comply with any of the foregoing requirements or standards, Contractor shall perform at its own costs and without reimbursement from the Owner, the services necessary to correct deficiencies in the services or work which are so caused. Contractor's representations and warranties in this Section shall terminate at the times provided in Section 11.1.

- 4.1.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, architects, contractors, subcontractors, engineers, design professionals, and their agents and employees, and other persons or entities performing any portion of the obligations required to be completed by Contractor under the Contract Documents.
- 4.1.3 When requested, the Contractor shall obtain from each of the Contractor's professionals and furnish to the Owner certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (i) are consistent with the Contract Documents and the Design Documents, except to the extent specifically identified in such certificate, (ii) comply with applicable industry and professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.

4.2 Project and Payment Schedule

4.2.1 The Construction Schedule

- 4.2.1.1 Contractor shall prepare and maintain a schedule (the "Construction Schedule") to meet the "Milestones" identified in the attached Exhibit H, as modified from time to time by the parties. The Construction Schedule shall accurately represent and reflect, to the best of Contractor's knowledge, experience and ability, the total time and monies required to complete each task and the progress of the Work relative to the Substantial Completion Date (as hereinafter defined). The Contractor shall promptly revise the Construction Schedule as the scope of the Project changes and report any revisions in the Construction Schedule to "Owner's Representative".
- 4.2.1.2 Time is of the essence of this Contract. In the event that the Contractor does not meet the Milestones for reasons other than Excusable Delay, Contractor shall, at its sole cost and expense, implement remedial actions reasonably necessary to achieve Contract compliance. In addition, in the event the Owner determines the Work to achieve the Milestones has not progressed or reached the level of completion required by this Contract for reasons other than Excusable Delay, the Owner shall have the right at Owner's cost [through the use of Contractor's Contractual Contingency Fund] to order the Contractor to take corrective measures necessary to expedite the progress of the Work, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (collectively, the "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the Construction Schedule. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the Construction Schedule. The Contractor shall not be entitled to an adjustment in the Contract Sum or Construction Schedule (for reasons other than Excusable Delay) in connection with Extraordinary Measures required by the Owner under or pursuant to this paragraph unless this Contract otherwise expressly permits the same and Owner may exercise the rights furnished the Owner under or pursuant to this paragraph as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone date or completion date set forth in the Construction Schedule.

4.2.2 Substantial Completion

- 4.2.2.1 As used in this Contract, the term "Substantial Completion" or "Substantially Completed" shall mean the stage in the progress of the Work when the Work is sufficiently complete in accordance with the Contract Documents and verified by both Owner and Contractor, in order that the Owner can occupy or utilize the Project for its intended use.
- 4.2.2.2 The Work to be performed under this Contract shall be Substantially Completed as soon as reasonably practical but in no event later than June 30, 2026 (the "Substantial Completion Date"). The Substantial Completion Date may be modified by the parties as provided in Section 6.2 or 12.1. The period between the date of this Contract and the Substantial Completion Date shall be the "Contract Period".

4.2.3 Certificate of Substantial Completion

- 4.2.3.1 When the Contractor considers the Work to be substantially complete, the Contractor shall provide written notice to Owner. See Exhibit I. Promptly following Owner's receipt of such notice, Contractor and Owner's Representative shall meet at the Site, inspect the Work and review test results if any, in order for the Owner to determine whether the Work is substantially complete. Substantial completion shall not be considered by the Owner unless all required inspections have been performed and passed. Contractor and Owner's Representative shall also complete a comprehensive list of all items to be completed or corrected (the "Punchlist") by the Contractor. Failure to include an item on the Punchlist shall not alter the Contractor's responsibility to complete all Work in accordance with this Contract. Contractor shall commence with the correction and/or completion of any item on the Punchlist immediately thereafter. If the items set forth on the Punchlist are not corrected within the agreed upon timeframe as agreed to in writing by Owner and Contractor, Owner shall have the right to hire an independent contractor to complete the work on Contractor's behalf and shall have the right to deduct the direct costs of such work, including the cost of any supervision, from the Contractor's Contractual Contingency Fund, Final Payment, or bill Contractor for such costs. If an item cannot reasonably be corrected within a fourteen (14) day timeframe, the reasons therefore shall be explained in writing on the Punchlist to Owner's reasonable satisfaction. The Punchlist shall in no way waive or alter any other rights of Owner under this Contract pertaining to warranties, latent defects, or otherwise.
- 4.2.3.2 When the Owner approves the Work as substantially complete, the Owner shall prepare a Certificate of Substantial Completion to be executed by Contractor and Owner establishing the date of Substantial Completion, and the time within which Contractor shall finish the Punchlist items accompanying the Certificate. See Exhibit J. The Punchlist shall be attached to the Certificate of Substantial Completion. Warranties required by this Contract shall commence on the earlier of: (i) the date that the City of Cape Girardeau City Council accepts warrantied items; or (ii) 30 days after the work or items under warranty are placed in service by Owner, unless otherwise provided in the Certificate of Substantial Completion or in Section 11.1.

4.2.4 Certificate of Substantial Completion

- 4.2.4.1 Promptly following issuance of the Certificate of Substantial Completion, Contractor shall commence and complete all remaining Punchlist items as provided in the Certificate of Substantial Completion.
- 4.2.4.2 Upon completion of the Punchlist, the Contractor shall provide written notice to Owner and request an inspection by the Owner to determine whether the Project is "Commercially Operational." See Exhibit K. When the Owner determines that all Punchlist items are complete, it shall deem the Project "Commercially Operational." See Exhibit L. When the Project is Commercially Operational, Owner shall release the Retainage to Contractor as provided in Paragraph 7.3.

4.2.5 Delay Damages

- 4.2.5.1 Any delay by Contractor in performing its obligations under this Contract which is caused by an event beyond the reasonable control of the Contractor and which could not have been avoided by the Contractor without incurring additional cost through the use of work around plans including alternative sources or other means, constitutes an Excusable Delay. Events may include, but are not restricted to, riots, labor disputes, materials transport, materials fabrication, civil disturbances, actions or inactions of governmental authorities, provided Contractor has followed the provisions and timelines outlined by the authorities, delays in the granting of governmental and utility permits and approvals, provided Contractor has followed the provisions and timelines outlined by the authorities, epidemic, war, embargoes, severe weather, fire, earthquake, acts of God, or defaults by the other party. Excusable Delay shall also include such reasonable time following an event, including the time required to correct any damages and the time when Work cannot be completed due to unsuitable site conditions. Contractor shall give written notice to the Owner within seven (7) business days after the occurrence of the event that causes the Excusable Delay. See Exhibit M. The notice shall state the cause and circumstances of the delay and indicate the portion of the Work affected by the delay. Unless Contractor materially complies with the notice requirements set forth above, any delay that would otherwise constitute an Excusable Delay shall be deemed not to be an Excusable Delay. In the event of any such default, delay or failure to perform, any dates or times by which the Contractor otherwise is scheduled to perform shall be extended for a period of time equal in duration to the additional time required because of the excused default, delay or failure to perform and the parties

shall increase the Cost of the Work and Guaranteed Maximum Price for any additional Work directly relating to the Excusable Delay as provided herein.

- 4.2.5.2 Except for Excusable Delays where the Contractor has given timely written notice to the Owner, Contractor shall pay to Owner the amount of \$500 for each day after the date of Substantial Completion it takes Contractor to complete the Work. Substantial Completion shall not be met until all required inspections have been performed and passed. The maximum delay amount will be no greater than \$60,000. This amount represents a reasonable estimate of the damages to be suffered by Owner as a result of such delay and is not a penalty. Owner may deduct the above amount and withhold the same as liquidated damages from payments due or owing to Contractor. Such liquidated damages shall only relate to delay damages attributable to the acts or omissions of Contractor and its subcontractors, sub-subcontractors and suppliers and shall not affect any other rights, remedies or damages that the Owner may be entitled to at law or in equity for Contractor's default under this Contract. Contractor hereby waives any defense as to the validity of any liquidated damages stated in this Contract as they may appear on the grounds that such liquidated damages are void as penalties or are not reasonably related to actual damages.

4.3 Project Meetings

- 4.3.1 Contractor shall schedule and conduct periodic meetings in person or via telephone conference or online meetings as reasonably determined by Contractor that can be attended by the Owner's Representative and appropriate staff/project team, the "Contractor's Representative" (hereinafter defined), relevant subcontractors, relevant material suppliers, and other relevant parties. Such meetings shall serve as a forum for the exchange of information concerning the Project and review of the Construction Schedule, and may include verification that any Milestones have been met and that payment for achievement of the Milestone(s) is or may be due. Contractor shall prepare and distribute in advance an agenda for each meeting and shall record, transcribe and distribute minutes to all attendees for such meetings.

4.4 Materials and Engineering, etc.

- 4.4.1 Contractor warrants to Owner that materials and equipment that Contractor furnishes under this Contract are to Contractor's knowledge, information and belief, of good quality and new, except as otherwise expressly required or permitted by this Contract or approved by Owner, that the Work will be free from material defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract. Work not conforming to these requirements, including substitutions not properly approved or authorized by the Owner, shall be considered defective. Cure of such defect shall be by correction or replacement of the Work, at the Contractor's cost. If required by Owner, Contractor shall supply satisfactory evidence as to the kind and quality of materials and equipment.
- 4.4.2 The Contractor agrees: (i) that all materials incorporated by it during the Work and all materials delivered by it for incorporation in the Project shall be free of any and all liens, claims, chattel mortgages, security interests, and conditional sales agreements of third parties (ii) that any monies it shall receive in payment for Work performed under this Contract shall be received in trust and used to discharge its financial obligations with respect to the Work; (iii) that it will not file or cause to be filed any mechanic's lien for materials furnished or to be furnished and/or for labor performed or to be performed unless default shall first have been made by Owner in making a payment under this Contract and ten (10) business days prior written notice of such default shall have been given to Owner; (iv) that if any subcontractor or any materialman or anyone claiming by or through such subcontractor or materialman shall file or cause to be filed any lien, Contractor will upon notice from Owner, cause such lien to be canceled and discharged (by payment, bonding or otherwise) within ten (10) business days from such notice; (v) and in the event of Contractor's failure to observe any of the foregoing, Owner shall have the right to cause such lien to be canceled and the cost thereof, including the premiums upon any bond furnished for such cancellation and discharge and reasonable attorneys fees and disbursements, shall be paid by Contractor or at the option of Owner shall be deducted from any payment then due or thereafter becoming due from Owner to Contractor. Nothing contained in the preceding sentence or otherwise in this Contract shall be deemed to create a relationship between Owner and Contractor other than that of Owner and independent contractor. Said right shall be cumulative and shall be in addition to any and all other rights and remedies herein or otherwise by law given to Owner. Upon receipt of evidence of Contractor's default hereunder with respect to its obligations to make payments to its subcontractors and suppliers after Owner has made payment to Contractor with respect to same, Owner reserves the right (but not the obligation) to, after three (3) business days prior written notice, retain any money due Contractor and pay directly for labor, materials, equipment, tools, plant, facilities, services and all other obligations of Contractor and to deduct the

amount of any such direct payments from any payments or amounts then due or thereafter to become due to Contractor.

4.5 Supervision of the Work

4.5.1 Contractor's Representative: Owner acknowledges and agrees that Phil Penzel shall be Contractor's representative for the Project (the "Contractor's Representative"). Prior to the commencement of the Work, Contractor shall provide to Owner the Contractor's address, office and mobile telephone numbers, and other contact information for Contractor's Representative. Any changes to such information shall be provided in advance to Owner. Contractor's Representative (or Contractor's site manager) shall be in attendance at the Project site during the performance of the Work, accessible to the Owner at all times, and shall at all times maintain good discipline and order with its employees, subcontractors, suppliers, materialmen, and laborers. Contractor's Representative shall not be replaced or reassigned to any other project prior to the Substantial Completion Date without Owner's prior written consent. Contractor shall supplement its staff with whatever additional supervisory personnel are reasonably required to assure that the Work shall be finished by the Substantial Completion Date.

4.5.2 Changes to Supervisory Authority: Neither Contractor's Representative nor Owner's Representative shall be changed without five (5) business days' written notice to the other party.

4.6 Compliance with Laws

4.6.1 Contractor shall comply with all laws, ordinances, rules, regulations and lawful orders of public authority as bearing on the performance of the Work. The Contractor shall confirm that any information in the drawings and specifications portion of the Contract Documents provided by Contractor complies with applicable laws, regulations and codes and the Contractor shall immediately notify Owner in writing if said drawings and specifications are observed to be at variance with such laws, ordinances, rules, regulations and lawful orders of any public authority. In the event that a specific requirement of the Contract Documents conflicts with applicable laws, regulations and codes, the Contractor shall furnish Work which complies with such laws, regulations and codes.

4.7 Permits and Licenses

4.7.1 Upon the Owner's approval of the Design Documents, the Contractor shall make application for such permits and licenses as have been identified by Contractor as necessary for the design and/or construction of the Project. Owner and Contractor shall agree on which party has responsibility for obtaining the licenses and permits. See Exhibit N. The responsible party shall work diligently and continuously to obtain same. The cost for all such permits and licenses shall be paid as provided on Exhibit N. In the event all necessary permits and licenses are not obtained within a time to be agreed to by the parties, Owner shall have the right to terminate this Contract upon written notice to Contractor, whereupon this Contract shall be terminated and the parties released of all further obligations each to the other, except as otherwise expressly set forth herein, and with Owner paying Contractor such prorated fees and other costs which have occurred or accrued up to the date of termination. Immediately upon receipt of valid permits, Contractor shall provide copies to Owner.

4.8 Job Site Safety/Hazardous Materials

4.8.1 Job-Site Safety/Control of Work: Contractor shall use best efforts to maintain and protect the Work from damage and the elements and shall protect and take all reasonable precautions to protect Owner, the Project, any third party and the property of any third party from injury or loss during the course of the Work.

4.8.2 Contractor shall comply with all applicable rules and regulations of any public authority having jurisdiction for the safety of persons or property. Contractor shall erect and maintain as required by existing conditions and progress of the Work all reasonable safeguards for safety and protection, including posting danger signs, promoting safety regulations and notifying Owner and users of adjacent utilities and properties. The Contractor shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner's Representative.

4.8.3 If the severity of the elements makes it impossible to continue operations in a safe manner in spite of all reasonable precautions, Contractor shall cease work and immediately notify Owner. Anything damaged due to

Contractor's negligence shall be promptly removed and replaced with new work at Contractor's cost and expense.

- 4.8.4 Contractor shall keep the Project and surrounding area free from accumulation of debris or rubbish. At the completion of the Work, Contractor shall remove all waste materials, rubbish, tools, construction equipment, machinery and surplus materials not sold at the request of the Owner from the Project.
- 4.8.5 Disposal of Hazardous Samples/Materials and Contaminated Equipment: All samples and materials produced in the course of Contractor's work pursuant to this Contract containing or potentially containing hazardous materials or constituents are the property and responsibility of Owner and shall be returned to Owner for proper disposal. All laboratory and field equipment that cannot readily and adequately be cleansed of its hazardous contaminants shall be the property and responsibility of Owner. All such equipment shall be charged and turned over to Owner for proper disposal. Alternate arrangements to turn such equipment, materials and/or samples directly over to a licensed hazardous waste disposal facility may be made at Owner's direction and expense. The parties acknowledge and agree that Contractor is not, and has no responsibility as, a handler, generator, operator, treater, storer, transporter, or disposer of hazardous or toxic substances, waste or materials found or identified at the site. Owner shall accept responsibility for the removal and offsite disposal of any such hazardous materials. This provision does not apply if such hazardous materials, samples, or contaminated equipment is transported to the site by the Contractor or that is a result of the Contractor's negligent or unauthorized actions.
- 4.8.6 Notification of Hazardous Materials: Owner hereby warrants that, if it knows or has any reason to assume or suspect that hazardous materials may exist at the project site, it has so informed Contractor. Owner shall furnish to Contractor all documents and information known to Owner that relate to the identity, location, quantity, nature or characteristics of any hazardous materials or suspected hazardous materials, on or under the site.
- 4.8.7 Differing Site Conditions. If the Contractor encounters conditions at the Project site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract, the Contractor shall promptly provide written notice to the Owner before conditions are further disturbed. Contractor shall not be required to perform any work relating to the condition after providing written notice to Owner without the written mutual agreement of the parties. The Owner will promptly investigate such conditions and, if the Owner reasonably determines that the conditions differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will issue a Change Order adjusting the Contract Sum and/or the Contract Period. If the Owner determines that the conditions at the site are not materially different and that no change in the terms of the Contract is justified, the Owner will notify the Contractor in writing; provided, however, that the Contract Period will be extended for a period of time equal to the time from when Owner receives Contractor's written notice as provided in this Subsection and to the time Owner makes its determination as provided herein. If Contractor disputes the Owner's determination, it may proceed as provided in Section 12.1.

5. SUBCONTRACTORS

- 5.1 Definitions. A subcontractor is a person or entity who has a direct contract with the Contractor, to perform a portion of the Work at the Site. A sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Site.
- 5.2 Award of Subcontracts and Other Contracts for Portions of the Work
- 5.2.1 The Contractor has listed the names of subcontractors (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work on **Exhibit V**. The Owner hereby accepts such list and agrees that it has no objection to any subcontractor stated on such list.
- 5.2.2 In the event it becomes necessary to replace any subcontractor on Exhibit V or to add additional subcontractors, the Contractor shall propose a subcontractor in writing to Owner. Owner shall have 5 days after receiving such written notice to either accept or reject Contractor's proposal. Failure to reply within the 5 day period shall constitute acceptance by the Owner of the subcontractor(s). The Contractor shall not contract with a proposed person or entity to which the Owner has made reasonable and timely objection.

- 5.2.3 If the Owner has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner has no reasonable objection. The Project Construction Schedule shall be adjusted to the extent of any delay by Owner in objecting to a person or entity proposed by the Contractor and, in this regard, any such Owner delay will also be an Excusable Delay.
- 5.2.4 The Contractor shall not substitute a person or entity previously selected if the Owner makes reasonable objection to such substitution.
- 5.2.5 If the proposed but rejected subcontractor was reasonably capable of performing the Work, the Contract Sum may be increased or decreased by the difference, if any, occasioned by such change with an appropriate Change Order to be issued before commencement of work by the subcontractor.
- 5.3 Subcontractual Relations. By appropriate written agreement, the Contractor shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to the Contractor by terms of this Contract, and to assume toward the Contractor all the obligations and responsibilities, subject to Section 10.4, including the responsibility for safety of the subcontractor's Work, which the Contractor, by this Contract, assumes toward the Owner and, as applicable, the Owner, by this Contract, assumes toward the Contractor. Each subcontract agreement shall preserve and protect the rights of the Owner and Contractor under this Contract with respect to the Work to be performed by the subcontractor so that subcontracting thereof will not prejudice such rights. The Owner and Contractor shall require each of their respective subcontractors to enter into similar agreements with sub-subcontractors. The Contractor, shall make available to each proposed subcontractor, prior to the execution of the subcontract agreement, copies of the Contract to which the subcontractor will be bound, and, upon written request of the subcontractor, identify to the subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with this Contract. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors.
- 5.4 Contingent Assignment of Subcontracts
- 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that:
- 5.4.1.1 Assignment is effective only after termination of this Contract by the Owner for cause pursuant to Section 3.3 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- 5.4.1.2 Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to this Contract.
- When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.
- 5.4.2 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.
- 5.5 Owner's Right to Perform Construction and to Award Separate Contracts
- 5.5.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own employees and to award separate contracts in connection with other portions of the Project or other construction or operations on the site, if such portions are not included in the Work to be completed by Contractor. The term "separate contractor" shall mean any contractor retained by the Owner pursuant to this Section. The Contractor shall cooperate with the Owner and separate contractors whose work might interfere with the Contractor's Work. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Section 12.1.
- 5.5.2 The Contractor shall provide for coordination of the activities of the Owner's own employees and of each separate contractor with the Work of the Contractor. The Owner shall ensure that its own forces and its separate contractors cooperate with the Contractor in such coordination. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules as is necessary for coordination of the Project. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement with the Owner. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

6. CHANGES

- 6.1 Changes to Work by Owner. Owner shall have the right to make changes to the Work, without invalidating this Contract. All such changes shall be performed under the conditions of this Contract, except that no extra work or modification shall be done without prior written authorization from Owner's Representative, and shall not be paid for without a written Change Order from Owner's Representative in accordance with this Section 6 ("Change Order"). A form for the issuance of a Change Order is attached as Exhibit O. In order for the Owner to manage and track Change Orders and their impact on the total cost of the Work, Contractor must provide to the Owner prior to the issuance of a Change Order a cost breakdown for the item of extra work and a reference to the corresponding Milestone for which the work will be done as referenced in the Construction Schedule. Any Change Order which decreases the Work shall inure to the benefit of Owner and the Contract Sum shall be reduced by the actual cost savings to Contractor. If a Change Order increases the cost of the Work then the Contract Sum and Guaranteed Maximum Price shall be increased accordingly. Notwithstanding anything to the contrary in this Contract, if the Owner decides to increase or decrease the Work or otherwise alter the Work by deductions or additions, including without limitation the elimination of any one or more of the items as provided in the Contract, Contractor shall perform the Work as so altered and the Contract Sum and Guaranteed Maximum Price shall be reasonably increased or decreased accordingly. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the Construction Schedule. In this regard, on any Change Order which increases the Work, Contractor shall include all direct costs for subcontractors and materials, plus a markup [to be negotiated]. In addition, if the Change Order would reasonably add time to the Project timeline, Contractor shall include all reasonable costs of Contractor for the additional days of field supervision and all ancillary expenses required due to the extended Project timeline.
- 6.2 Change Order Required. Any extension of time for the completion of the Work as a result of a Change Order shall be agreed to by the parties and set forth within such Change Order. If the Work required under a Change Order would reasonably require an extension of time, then a reasonable time extension shall be given as a part of such Change Order. No order, statement or conduct of Owner or its representatives shall be treated as a Change Order, or entitle Contractor to an equitable adjustment in the Contract Sum or extension of the Contract Period, unless pre-approved in writing by Owner or Owner's Representative. Change Orders are intended to be all inclusive and exhaustive as to primary and foreseeable collateral conditions, situations and effect. Unless documented by a Change Order or written authorizations of Owner or Owner's Representative, any claims for additional work (other than Claims of Contractor as otherwise herein provided) performed by Contractor shall be deemed waived. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, shall be the basis of any claim to an increase in any amounts due under this Contract or a change in any time period provided for in this Contract.
- 6.3 Minor Changes. Owner shall have the authority to order (in writing) minor changes in the Work consistent with the intent of this Contract and not involving an adjustment in the Contract Sum or the Construction Schedule, but shall be paid by Owner from its contingency fund. See Exhibit P. In the event Contractor is unable to accommodate the change without initiating a Change Order, then Contractor shall notify Owner's Representative immediately and require direction.

7. METHOD OF PAYMENT

7.1 Invoicing

- 7.1.1 Throughout the course of this Contract, Contractor shall invoice Owner monthly pursuant to a format agreed to by Owner, including without limitation the requirements set forth in Exhibit Q attached hereto (an "Invoice"). All fees, costs and expenses for the Scoping Phase and Design Phase shall be paid with 30 days after the start of the Construction Phase.
- 7.1.2 Invoicing will take place in the third week of the month and will be based on progress and completion percentage. Invoices received by the Owner by the 20th of the month will be paid by the 10th of the immediate following month.

7.2 Monthly Progress Payments

- 7.2.1 Upon satisfactory progress of the Work and receipt by Owner, Owner's Representative and Owner's lender, if any, or its representative, if any, of an approved Invoice as defined in Section 7.1.1 including all supporting documentation described below, Owner will make monthly progress payments on this Contract as set forth in

Section 7.2.7, except when in Owner's reasonable opinion it is necessary to withhold an amount to protect Owner from loss due to:

- 7.2.1.1 defective work of Contractor not remedied;
 - 7.2.1.2 claims or liens filed on the Project as a result of Contractor's acts or omissions;
 - 7.2.1.3 failure of Contractor to make payment promptly to subcontractors or material suppliers for labor, materials or equipment;
 - 7.2.1.4 damage to Owner or another contractor as a result of Contractor's acts or omissions;
 - 7.2.1.5 reasonable evidence that the Work will not be completed in accordance with the Construction Schedule as a result of Contractor's acts or omissions; or
 - 7.2.1.6 a persistent failure by the Contractor to carry out the Work in accordance with this Contract.
- 7.2.3 Supporting Documentation. In addition to other required items, each Invoice shall be accompanied by the following, all in form and substance reasonably satisfactory to Owner:
- 7.2.3.1 Documentation that the relevant portion of the Work performed by the Contractor or its subcontractors is complete and has been inspected for compliance with the Contract.
 - 7.2.3.2 A duly executed and acknowledged Contractor's sworn statement (an "Affidavit of Payment"), See Exhibit R, showing all subcontractors with whom Contractor has entered into subcontracts, the amount of such subcontract, the amount requested for any subcontractor in the Invoice and the amount to be paid to Contractor from such progress payment, together with similar statements from all subcontractors and, where appropriate, from sub-subcontractors and suppliers of materials;
 - 7.2.3.3 When reasonably available, duly executed waivers and releases of mechanics' and materialmen's liens from Contractor and such relevant subcontractors, suppliers or sub-subcontractors or suppliers who may have or claim to have valid lien rights in accordance with applicable law (and sub-subcontractors and suppliers of materials, to each tier), establishing payment or claim to have or satisfaction of the payment requested by Contractor in the Invoice, which at a minimum, shall comply with the requirements of the law. See Exhibit S.
- 7.2.4 Right to Full Compliance. If Owner elects to make any payment without receipt of all required supporting documentation, any such payment shall not be deemed a waiver of Owner's right to demand the required documentation and Owner shall have the right to insist upon full compliance with the requirements hereof as a condition to any and all future payments.
- 7.2.5 Inspection of Work in Place. Upon 24 hours written notice, Owner may from time to time inspect the progress and sufficiency of the Work in place at Contractor's place of business or such other locations where the Work is being manufactured or assembled.
- 7.2.6 Retainage. The Owner may withhold from each payment a sum representing 5% of the payment amount to the Contractor for the Contractor's work to be held as Retainage and payable as provided herein; provided that any such Retainages shall be reduced from said 5% to 2% when 95% or more of Contractor's or any subcontractor's work is complete and both Owner and Contractor are reasonably satisfied with such work, and provided further that no Retainage amounts from any subcontractor shall be withheld by Owner for longer than sixty (60) days following the date in which any such subcontractor's work is fully completed.
- 7.2.7 Timing of Monthly Progress Payments. Contractor shall submit monthly Invoices to Owner for payment of Work achieved for such month, including any Change Order. Owner shall pay the amount due within thirty (30) days after receipt of an original Invoice that complies with Section 7.1 and the satisfaction of all other requirements set forth in Section 7.2. Submission of an Invoice that complies with Section 7.1 and the reasonable satisfaction of all requirements set forth in Section 7.2 are conditions precedent to payment from the Owner to the Contractor. Additionally, if there is a dispute as to the amount due, Owner shall pay the undisputed portion of the Invoice and the parties shall cooperate in good faith to promptly resolve the dispute with respect to the unpaid amount. Owner may set off against any payment due to Contractor under this Contract, or any other

agreement between the Owner Indemnified Parties (as hereinafter defined) and Contractor or its affiliates, any amounts that Owner spends or losses Owner incurs as a result of Contractor's uncured default as provided in Section 12.2.

7.3 Final Payment

7.3.1 Timing of Final Payment

7.3.1.1 Owner shall make the final payment (the "Final Payment") to the Contractor, including all Retainage, after the final acceptance of the project by the City of Cape Girardeau City Council. The City staff will submit the request for final payment, within thirty (30) days after: 1) the Owner deems the Project Commercially Operational as set forth in Section 4.2.4.2; 2) receipt of a final Invoice that complies with Sections 7.1 and 7.2; and 3) the satisfaction of all other requirements set forth in Section 7.3.4. Each of these three requirements are conditions precedent to Final Payment. Additionally, if there is a dispute as to the amount due, Owner shall pay the undisputed portion of the Final Payment and the parties shall cooperate in good faith to promptly resolve the dispute with respect to the unpaid amount. Owner may set off against any payment due to Contractor under this Contract, or any other agreement between the Owner Indemnified Parties (as hereinafter defined) and Contractor and its affiliates, any amounts that Owner spends or losses Owner incurs as a result of Contractor's uncured default under Section 12.2 of this Contract.

7.3.1.2 In the event Contractor does not timely comply with any of the requirements set forth above for the Final Payment, Contractor agrees that Owner shall retain such relevant portion of the Final Payment directly related to the failed material requirement to protect Owner against any lien rights or claims, until such requirements for the Final Payment have been satisfied.

7.3.2 The acceptance of the Final Payment by Contractor shall constitute a waiver of all claims by Contractor relating to the Work, but shall in no way relieve Contractor of liability for the obligations assumed under this Contract or for any faulty or defective work or services discovered after the Final Payment. Contractor shall include the terms of this Paragraph 7.3.2 in its agreement with all of its subcontractors and suppliers.

7.3.3 Payment by Owner to Contractor of any sums due pursuant to this Contract does not constitute or imply acceptance of any portion of the Work.

7.3.4 Prior to Final Payment, and as a condition precedent thereto, Contractor shall furnish Owner with the following:

7.3.4.1 All operating, safety and maintenance manuals;

7.3.4.2 Marked sets of the construction documents reflecting "as built" conditions; including the location of any concealed utilities, mechanical or electrical systems and components;

7.3.4.3 An assignment and/or transfer of all guaranties and warranties from subcontractors, vendors, suppliers and manufacturers;

7.3.4.4 A list of the names, addresses and phone numbers of all subcontractors and other persons providing guaranties or warranties;

7.3.4.5 An Affidavit of Payment and a duly executed Final Payment Certification, Release and Lien Waiver (see Exhibit T) from all of Contractor's subcontractors, suppliers or sub-tier subcontractors or suppliers who may have or claim to have valid lien rights in accordance with the law;

7.3.4.6 All permits, including, but not limited to, municipality controlled inspections, certificates of occupancy, certificates of completion or similar certification, all licenses and permits necessary for use, occupancy or maintenance of the Project; and

7.3.4.7 Certification of any other item or material and any other document reasonably requested by Owner.

7.4 Taxes

- 7.4.1 The rates or prices stated in this Contract, including the Guaranteed Maximum Price proposal have been prepared by Contractor and make no provision for any amounts relating to sales, consumer, use and similar taxes or duties payable with respect to this Contract. Any taxes, duties or other similar amounts eligible shall be paid by Contractor when due, but shall be reimbursed by Owner when invoiced by Contractor, in addition to any amounts due under the Guaranteed Maximum Price and in the Contract Sum pursuant to Section 2.4, with no deductions or penalties to be assessed against amounts otherwise due to Contractor under this Contract. The City will issue a tax exempt certificate for the Contractor covering all such taxes for this Project promptly after the execution of this Contract.

8. INDEMNITY AND LIMITATION OF LIABILITY

- 8.1 Indemnity from the Contractor. To the maximum extent permitted by law, Contractor agrees to save, indemnify, and hold harmless Owner and its affiliates, employees, officers, agents, successors and assigns (collectively, the "Owner Indemnified Parties") from and against any and all liability, claims, actions, losses, damages, costs, expenses, including reasonable attorneys' fees, or demands arising (i) from injuries or death of persons (Contractor's employees included) or damages to property related to this Contract, the Project or the Work, (ii) directly or indirectly out of an default of Contractor of the obligations herein undertaken, or (iii) directly or indirectly from the negligent performance of, or willful misconduct in performing, the Work by Contractor, including without limitation those arising in whole or in part by reason of any negligent act or omission of Contractor or any of its agents, employees, subcontractors or suppliers related to this Contract, the Project or the Work, save and except for that portion of any liability, claims, actions, loss, damages, costs, expenses or demands arising as a result of the negligence or willful misconduct of Owner Indemnified Parties, and will reimburse Owner Indemnified Parties for any loss, damages, costs and expenses, including reasonable attorneys' fees and litigation costs (including fees and expenses of consultants and/or expert witnesses), incurred by Owner Indemnified Parties in responding to all such claims, actions or demands. If requested by Owner, Contractor shall defend any such suits at the sole cost and expense of Contractor.
- 8.2 Indemnity from the Owner. To the maximum extent permitted by law, Owner agrees to save, indemnify, and hold harmless Contractor and its affiliates, employees, officers, agents, successors and assigns (collectively, the "Contractor Indemnified Parties") from and against any and all liability, claims, actions, losses, damages, costs, expenses, including reasonable attorneys' fees, or demands arising (i) from injuries or death of persons (Owner's employees included) or damages to property related to this Contract, the Project or related work, (ii) directly or indirectly out of default by Owner of the obligations herein undertaken, or (iii) directly or indirectly from negligent performance of, or willful misconduct in performing, any work performed by the Owner or its agents or contractors (excluding Contractor), including without limitation those arising in whole or in part by reason of any negligent act or omission of Owner or any of its agents, employees, subcontractors or suppliers (excluding Contractor) related to this Contract, the Project or related work, save and except for that portion of any liability, claims, actions, loss, damages, costs, expenses or demands arising as a result of the negligence or willful misconduct of Contractor, and will reimburse Contractor for any loss, damages, costs and expenses, including reasonable attorneys' fees and litigation costs (including fees and expenses of consultants and/or expert witnesses), incurred by Contractor in responding to all such claims, actions or demands. If requested by Contractor, Owner shall defend any such suits at the sole cost and expense of Owner. Any owner liability shall be subject to the liability limits for political subdivisions set forth in Section 537.610 of the Revised Statutes of Missouri (the "Statutes"), and shall be paid solely from the proceeds of the City's liability insurance covering that occurrence.
- 8.3 In no event shall the language of this Agreement constitute or be construed as a waiver or limitation of the rights or defenses of the Owner with regard to applicable sovereign, governmental, or immunities and protections as provided by federal and state constitution or law.
- 8.4 Limitation of Contractor's Liability. CONTRACTOR'S LIABILITY TO OWNER FOR ANY CLAIM, ACTION, OR DEMAND, ARISING FROM OR RELATING TO THIS CONTRACT OR THE PERFORMANCE HEREOF, UNDER ANY LEGAL THEORY, WHETHER IN CONTRACT, TORT, INDEMNITY OR OTHERWISE, SHALL NOT EXCEED THE LIMITS OF INSURANCE COVERAGE WHICH ARE SET FORTH IN SECTION 10.1. THIS LIMITATION OF LIABILITY SHALL NOT APPLY FOR WILLFUL, FRAUDULENT OR GROSSLY NEGLIGENT ACTS OF CONTRACTOR OR ITS AGENTS. THIS LIMITATION OF LIABILITY ESTABLISHES ONLY THE MAXIMUM AMOUNT OF CONTRACTOR'S LIABILITY PER CLAIM, ACTION OR DEMAND, IS NOT AN AGGREGATE LIMIT OF CONTRACTOR'S TOTAL LIABILITY TO OWNER UNDER THIS CONTRACT, AND IS NOT DEPENDENT UPON WHETHER COVERAGE EXISTS IN WHOLE OR IN PART FOR ANY LOSS OR LIABILITY UNDER ANY POLICY.

9. **RECORDS**

- 9.1 **Retention.** Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract. Contractor shall also keep all documents associated with the Work and the performance of this Contract. Contractor shall preserve these records for a period of three years after Final Payment, or for such longer period as may be required by law. In the event that any portion of the compensation to be paid to Contractor is to be paid on a time and materials basis or a cost reimbursement basis, Owner may audit Contractor's records to determine whether Contractor has properly invoiced Owner for the Work performed. Access to Contractor's records relating to the Project shall be as provided in Section 2.4.12.
- 9.2 **Ownership of Intellectual Property.** Owner and Contractor each shall be deemed the owner of the design and engineering for the Project and each shall retain all common law, statutory and other reserved rights, including copyrights. Owner and Contractor may each use the design and engineering developed pursuant to this Contract on other projects without the consent of the other. Owner and Contractor shall not divulge or use such technical information, inventions, or confidential information received from the other except as necessary to perform, maintain or repair the Work.

10. **INSURANCE AND BONDS**

- 10.1 Contractor agrees at all times during this Contract to maintain in full-force and effect at least the following insurance coverages as provided by Section 537.610 RSMo:

Workers' Compensation

Coverage A	Statutory
Coverage B - Employers Liability	\$1,000,000 each Bodily Injury by Accident \$1,000,000 policy limit Bodily Injury by Disease \$1,000,000 each occurrence Bodily Injury by Disease

Automobile Liability

Bodily Injury/Property Damage	\$3,448,710
Combined - Single Limit	Coverage is to apply to all owned, non-owned, hired and leased vehicles

Commercial General Liability

Bodily Injury/Property Damage	\$3,448,710 each occurrence \$3,448,710 general aggregate
Combined - Single Limit	\$3,448,710 products/completed operations aggregate

Excess/Umbrella Liability

Bodily Injury/Property Damage	\$10,000,000 each occurrence and general aggregate
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Professional Liability/Errors & Omissions

Insurance

"claims made" coverage	\$3,000,000 per occurrence more specifically as follows: \$2,000,000 for fire \$1,000,000 for mechanical \$5,000,000 for architectural \$1,000,000 for electrical \$2,000,000 for general contractor
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Builder's Risk

\$5,572,769 or for the full value of the construction contract

- 10.2 All such insurance policies will be primary without the right of contribution from any other insurance coverage maintained by Owner. Owner shall be shown as additional insureds on all policies except the Workers' Compensation policies. The fact that insurance is obtained by Contractor shall not release or diminish the liability of Contractor, including liability under the indemnity provisions of this Contract. Contractor agrees to waive any and all rights of subrogation it may have against Owner by virtue of any claims that may arise as a result of the Work, and Contractor also agrees to obtain a waiver of subrogation in favor of Owner from its insurance carrier(s).
- 10.3 All policies required herein shall be written by insurance carriers with a rating of A.M. Bests of at least "A-" and a financial size category of at least VIII. Insurance certificates evidencing the above requirements shall be furnished by Contractor to Owner before commencing the Work and provide for not less than 30 days prior notice to Owner of any cancellation or non-renewal of the policies. In addition, the following requirements apply:

- 10.3.1 The Commercial General Liability policy must include Contractual Liability coverage specifically covering Contractor's Indemnification of Owner.
- 10.3.2 Any liability policy shall also contain a Cross Liability/Severability of Interests provision assuring that the acts of one insured do not affect the applicability of coverage to another insured.
- 10.4 Contractor will ensure that each Subcontractor obtains and maintains during the course of the Project insurance coverage which, in the reasonable judgment of Contractor, is sufficient to cover each Subcontractor's operations on the Project.
- 10.5 Performance, Payment, Other Bonds
- 10.5.1 Payment or Performance Bonds. If requested by Owner, Contractor will provide Owner with payment and performance bonds, and such other bonds as Owner may request, in an amount equal to the Contract Sum naming Contractor as Obligor and Owner as Oblige and containing requirements in accordance with the terms of this Contract. Such bonds shall be on a form and with a surety company approved by Owner. The cost of the premium shall be paid by Contractor.

11. WARRANTIES

- 11.1 Contractor Warranty. Notwithstanding anything to the contrary in this Contract, Contractor warrants that all of the Work shall be done in a first class, workmanlike manner and in accordance with the Contract with new, quality materials and further warrants all work and materials against defects in the material or the workmanship for a period of one (1) year from the date of final acceptance of the City of Cape Girardeau City Council, unless stated otherwise in this Contract (the "Warranty Period"). With respect to the Design Documents and any portion of the Work performed by Licensed Professionals, the Contractor and Licensed Professionals warrant that they shall perform their services consistent with the professional skill and care ordinarily provided by professionals practicing in the same or similar locality under similar circumstances. The Contractor and Licensed Professionals shall perform their services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. Within the Warranty Period, and within a reasonable time after written notice of the discovery of a defect or deviation, Contractor shall remedy and repair same and any damage to other work resulting therefrom in a manner that does not substantially interfere with Owner's operations. Notwithstanding anything to the contrary in this Contract, the Warranty Period for any and all materials warranties are limited to the terms of the warranty as provided by the manufacturer.
- 11.2 Warranty Deficiencies. Contractor agrees to meet with Owner at least fifteen (15), but not more than thirty (30), days prior to the expiration of one (1) year from the start date of the commencement of the Warranty Period for a warranty inspection of the Work. All warranty deficiencies not caused by Owner shall be noted and the list of deficiencies shall be given to Contractor. Contractor agrees to correct all such deficiencies to which Contractor reasonably accepts and agrees within thirty (30) days after the date of the meeting. If the deficiencies that Contractor accepts and agrees are not timely corrected, Owner may hire an independent contractor to do the work and shall be reimbursed promptly by Contractor for all costs thereof. If any deficiency that Contractor accepts and agrees cannot, with reasonable diligence, be corrected within thirty (30) days, Contractor agrees to set forth in writing a reasonable schedule for completion of the work. If the schedule is not met, Owner may immediately upon notice to Contractor, complete the work and be entitled to prompt reimbursement from Contractor for all costs thereof.
- 11.3 Subcontractor Warranties. Contractor shall cause all of the subcontractors and sub-subcontractors to execute and deliver to Owner upon completion of the Work a written warranty covering all work performed by such subcontractors and sub-subcontractors. Such warranty shall be for at least the same period of time as Contractor's warranty to the Owner and begin at the date of Substantial Completion or the date the warranted item was placed into service, whichever is earlier, unless the warranty is a materials warranty and, in such event, all materials warranties are limited to the terms of the warranty as provided by the manufacturer. All warranties included in or as part of the Project and supplied to Contractor shall be assigned to Owner. Those subcontractors required to supply warranties to Owner include, but are not limited to: electricians, welders, roofers, HVAC suppliers and installers.

12. CLAIMS, DEFAULT AND TERMINATION

- 12.1 Claims
- 12.1.1 A claim is a demand or assertion by Contractor seeking, as a matter of right, the payment of money, or an extension of time or other relief with respect to the terms of this Contract (hereinafter "Claim"). Written notice of a Claim for an increase in the Contract Sum or for an extension of time must be given to Owner's

Representative by Contractor within twenty (20) calendar days after occurrence of the event giving rise to such Claim. Claims must be made by written notice which shall describe the Claim with reasonable specificity. Failure to give notice in the manner and within the time specified in this paragraph shall constitute a waiver of the Claim by the Contractor. Contractor shall bear the burden and responsibility of substantiating Claims. Pending final resolution of a Claim, unless otherwise agreed to in writing by Owner, Contractor shall proceed diligently with performance of this Contract and Owner shall continue to make payments in accordance with this Contract. Claims not resolved between the parties shall be resolved by litigation as provided in Section 14.

12.2 Default

12.2.1 Default by Contractor. Should the Contractor (a) become insolvent or make an assignment for the benefit of creditors; (b) refuse or fail to supply enough properly skilled workers or proper materials to complete the Project; (c) refuse to diligently prosecute the Work; (d) fail to make payments to subcontractors for material or labor in accordance with the respective agreements between the Contractor and subcontractors through no act or omission of Owner, unless a valid dispute exists between Contractor and a subcontractor over the amounts due to the subcontractor; (e) disregard the law; and/or (f) breach or violate the terms, conditions, provisions or obligations of this Contract, Contractor shall be deemed in Default of this Contract.

12.2.2 Remedies. If Contractor fails within ten (10) days after written notification of Default from Owner to commence and continue satisfactory correction of the Default with diligence and promptness until completion (which may reasonably require greater than said ten (10) days to cure the Default), then Owner, without prejudice, shall in its reasonable discretion have the right to exercise any and all legal and equitable remedies available including but not limited to:

12.2.2.1 supply workers, materials, equipment and facilities as Owner deems necessary for the completion of the Work or any part which Contractor has failed to complete or perform, and charge the reasonable cost, including reasonable overhead, profit, attorneys' fees, costs and expenses to Contractor;

12.2.2.2 contract with one or more additional contractors to perform such part of the Work as Owner determines will provide the most expeditious completion of the Work, and charge the reasonable cost to Contractor;

12.2.2.3 withhold any payments due or to become due Contractor pending corrective action in amounts reasonably sufficient to cover losses and compel performance to the extent required by and to the satisfaction of Owner; and/or

12.2.2.4 terminate this Contract.

12.2.3 Upon termination of this Contract, all Work in progress, including all design and engineering associated with the Work, shall become the property of Owner; provided, however, that this section shall be subject to the provisions of Section 9.2. Contractor shall immediately release all such Work in progress to Owner. Owner may also take possession of the Project site and of all materials and equipment (but specifically excluding all tools, materials, construction equipment and machinery thereon owned by Contractor) and may finish the Work by whatever reasonable method Owner deems expedient. Contractor shall not be entitled to receive further payment until the Work is Substantially Complete. If the unpaid balance of the Contract Sum exceeds the cost of fully completing the Work, such excess shall be paid to Contractor, less ten percent (10%) which shall be retained by Owner. If after Owner exercises commercially acceptable efforts to ensure that the cost will not exceed the Contract Sum, the Contractor shall pay the difference to the Owner within fifteen (15) days of receipt of a written demand for payment from the Owner.

12.3 Termination or Suspension

12.3.1 Without Cause. Owner may, without cause, order the Contractor, in writing, to suspend, delay, interrupt or terminate the Work in whole or in part for such period as the Owner may determine. In the event Owner suspends or terminates the Work under this Paragraph, Contractor shall be entitled to recover from the Owner, as its sole remedy, payment for the cost of the Work properly performed in connection with the suspended or terminated portion of the Work and related Contractor's Fee prior to the effective date of suspension or termination and for items properly and timely fabricated or partially fabricated off the Site including finished goods and work in progress of subcontractors and suppliers, delivered and stored in accordance with the

Owner's instructions, as well as actual costs for demobilization. The Contractor hereby waives and forfeits all other claims for payment and damages for the uncompleted portion of the Work, including, without limitation, anticipated profits. The Owner shall be credited for (i) payments previously made to Contractor for the terminated portion of the Work, (ii) reasonable claims that the Owner has against the Contractor under the Contract, and (iii) the disposition value of the materials, supplies, equipment or other items that are to be disposed of by the Contractor that are part of the Contract Sum.

12.3.2 Equipment and Subcontracts. Owner shall also pay Contractor fair compensation, either by purchase or rental at the election of Owner, for any equipment owned by Contractor that Contractor and Owner agree that Owner may retain. To the extent that Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), as provided in Section 5.4, Contractor shall, as a condition of receiving the payments referred to in this Contract, execute and deliver all such papers and take all such steps as Owner may require for the purpose of fully vesting in the Owner the rights and benefits of Contractor under such subcontracts or purchase orders.

12.3.3 Owner Inspections and Right to Stop the Work. Owner's Representative or his/her delegate shall have the right to inspect the Work, whether at the Site or at the Contractor's or a subcontractor's facility, at any time during the course of the Work. Owner may reasonably reject any aspect of the Work which does not conform to the Contract. If Contractor fails to correct defective work or fails to supply materials or equipment in accordance with this Contract, Owner may order Contractor to stop the Work until it is corrected and Contractor shall not be entitled to an extension for time. Owner also has the authority to stop the Work for the purpose of performing special inspections or testing of the Work. Should any work be found faulty as a result of special inspections or tests, Contractor shall repair the Work immediately and pay the fees for said inspections or tests and Owner and shall grant an appropriate extension of time to Contractor. Should the Work be satisfactory, Owner will bear such costs and will grant the appropriate extension of time to Contractor.

13. NOTICES

13.1 All notices to be delivered under this Contract shall be in writing, signed by the parties serving same and delivered personally or by registered or certified U.S. Mail postage prepaid, or by reputable private delivery service postage prepaid and providing a receipt to sender. Each such notice shall be deemed delivered upon actual delivery or refusal or forty-eight (48) hours after mailing whichever is earlier to the pertinent address as set forth below.

Notices shall be addressed as follows:

To Owner: City of Cape Girardeau
410 Kiwanis Drive
Cape Girardeau, MO 63701
Attention: Doug Gannon, Parks and Recreation Director

To Contractor: Penzel Construction Company, Inc.
325 W. Jackson Blvd.
PO Box 330
Jackson, MO 63755
Attention: Phil Penzel, CEO

14. MISCELLANEOUS PROVISIONS

14.1 This Contract is not assignable by Contractor without the prior written consent of Owner which consent shall not be unreasonably withheld, in its sole and absolute discretion, and Contractor shall not factor or pledge this Contract. Owner may assign this Contract, without the consent of Contractor, to its parent, affiliates, subsidiaries, and the affiliates or subsidiaries of Owner's parent or secured lenders, or to any party who succeeds to the Owner's interest in the Project, provided that the assignee is sufficiently capitalized.

14.2 No right or remedy conferred upon or reserved to a party in this Contract is intended to be exclusive of any other right or remedy herein or by law provided, but each shall be cumulative and in addition to every other right or remedy given herein or now or hereafter existing at law or in equity.

- 14.3 In the event of any inconsistencies within or between parts of the Contract, including the Contract Documents, or between the Contract and applicable laws, the Contractor shall (i) provide the better quality or greater quantity of Work, or (ii) comply with the more stringent requirement; either or both in accordance with Owner's reasonable interpretation.
- 14.4 In the event any provision of this Contract is found to be invalid or unenforceable, the remainder of this Contract shall continue in full force and effect.
- 14.5 This Contract shall be governed by and construed in accordance with the laws of the State of Missouri. The parties irrevocably consent to the jurisdiction of the federal and state courts situated in the state where the Project is located and agree that any lawsuit arising out of or related to this Contract shall be brought only in such courts. The parties hereby waive any claim that any proceedings brought in such courts have been brought in an inconvenient forum.
- 14.6 Owner and Contractor hereby irrevocably waive any right to a trial by jury in any legal proceedings or to have a jury participate in resolving any disputes or claims, whether any such disputes or claims relate to or arise in contract, tort or otherwise, whether in respect to the Contract or any other documents or instruments delivered in connection with the Contract.
- 14.7 Contractor hereby warrants, and covenants that (i) Contractor does not and will not during the course of the Work discriminate against any employee or applicant for employment based on race, color, sex, national origin, religion, age handicap, or other unlawful basis, and (ii) Contractor and all of its subcontractors, consultants and suppliers are and will be properly licensed and permitted with all governmental authorities having jurisdiction.
- 14.8 The parties expressly agree that this Contract was jointly drafted, and they both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Contract shall be construed in a neutral manner.
- 14.9 Independent Contractors. The relationship of the parties shall be that of independent contractors. Nothing herein shall be construed as to creating a partnership or joint venture between the Owner and the Contractor or creating liability on the part of one party for any act or omission of the other. Contractor shall have entire charge, control, and supervision of the Work as set forth in this Contract, and Owner shall not in any manner be answerable or accountable for any violation of law, or for any injury or damage occasioned by Contractor's negligence, or of any in its employ, to any person or their properties.
- 14.10 Owner shall have the right to let other contracts in connection with the Work pursuant to the provisions of this Contract to the extent such contracts do not conflict with or include Work to be completed by Contractor, and Contractor shall properly cooperate with any such other contractors in furtherance of the Work; however Contractor shall not be relieved hereunder by any subcontract or similar agreement for the Work which Contractor remains responsible, and provided further that Contractor shall not be responsible for the negligence, willful misconduct, or other acts or omissions of the third parties to which Owner lets other contracts in connection with the Work and shall be indemnified and held harmless therefrom.
- 14.11 Payments due and unpaid to Owner or Contractor under this Contract for a period of thirty (30) days after written demand shall bear interest from the date payment was due at the rate of one percent (1%) per annum in excess of the Prime Rate.
- 14.12 The Owner represents and warrants to Contractor that Owner is financially solvent, able to pay its debts as they mature and is possessed of sufficient capital to perform its obligations hereunder.
- 14.13 Entire Agreement. This Contract represents the entire agreement between the parties and supersedes all prior or contemporaneous written or oral communications with regard to the Project. This Contract may be amended or modified only by an instrument in writing signed by a duly authorized representative of both Owner and Contractor. This Contract shall not be construed to create a contractual relationship of any kind between any persons or entities other than Owner and Contractor. Notwithstanding any other provision herein, all subcontracts shall be in writing and shall specifically provide that the Owner is an intended third party beneficiary of such subcontract.
- 14.14 Attorney's Fees. In the event of any controversy arising hereunder or relating to the interpretation or implementation of this Contract or any breach thereof, the prevailing party shall be entitled to payment for all reasonable costs and attorney's fees (both trial and appellate) incurred in connection therewith.
- 14.15 Severability. The invalidity, in whole or in part, of any provision of this Contract will not affect the validity of any other provision of this Contract.

- 14.16 Captions. The captions contained in this Contract are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Contract or the intent of any provision contained in this Contract.
- 14.17 Counterparts. This Contract may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same agreement.
- 14.18 Waiver. The waiver by either party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Contract shall not be construed as a waiver of any future or continuing failure, whether similar or dissimilar thereto. Except as otherwise expressly provided herein, no waiver of any right shall be implied by any delay by a party in enforcing or acting under such right. Waivers shall be effective only if specifically set forth in writing signed by the party to be charged with such waiver.
- 14.19 This Contract is binding upon the parties, their heirs, successors and approved assignees.
- 14.20 Remedies Cumulative. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

IN WITNESS WHEREOF the parties hereto have, by and through their duly authorized officers in that regard, made and executed this Contract as of the date first written above.

SIGNED and DELIVERED

By: _____
Owner

By: _____
Contractor

Its: _____

Its: _____

Date: _____

Date: _____

[End of Signature Page]

EXHIBIT A
SCOPE OF WORK

EXHIBIT B

COMPENSATION FOR SCOPING PHASE SERVICES

EXHIBIT C

OWNER'S APPROVAL OF DESIGN DOCUMENTS

OWNER:. (the "Owner")

CONTRACTOR: Penzel Construction Company, Inc. (the "Contractor")

CONTRACT: Agreement for Professional and Construction Services (the "Contract")

DATE OF CONTRACT:

CONTRACT NO.:

PROJECT: (the "Project")

DATE OF DESIGN DOCUMENTS: (the "Design Documents")

The Contractor hereby verifies that it has submitted a complete set of Design Documents, stamped with the date listed above, for the Owner's review and approval pursuant to Section 2.2.1 of the Contract. The Contractor represents that to the best of its knowledge, information and belief the Design Documents: (i) are consistent with the Contract Documents, (ii) comply with applicable industry and professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project; and acknowledges (b) that the Owner and their consultants shall be entitled to rely upon the accuracy of the representations contained herein.

The Owner, by signing below, hereby verify that they have reviewed and approved the Design Documents submitted by the Contractor pursuant to Section 2.2.1 of the Contract and that the Design Documents comport with the Owner's Program, the intended scope of Work, and the parameters of the Project. By executing this approval, the Owner is **not** verifying that the Design Documents comply with the Contract Documents, industry and professional practice standards or applicable laws, ordinances, codes rules and regulations governing the Project.

CONTRACTOR:

PRINT NAME: _____
PRINT TITLE: _____

Date: _____

OWNER:

PRINT NAME: _____
PRINT TITLE: _____

Date: _____

EXHIBIT D

COMPENSATION FOR DESIGN PHASE SERVICES

EXHIBIT E

Penzel Construction Company, Inc.
325 W. Jackson Blvd.
PO Box 330
Jackson, MO 63755

OWNER: City of Cape Girardeau (the “Owner”)
CONTRACTOR: Penzel Construction Company, Inc. (the “Contractor”)
CONTRACT: Agreement for Professional and Construction Services (the “Contract”)
DATE OF CONTRACT:
CONTRACT NO.:
PROJECT: (the “Project”)

This is a Notice to Proceed with the Construction Phase for the above referenced project, effective as of the date of this letter, in accordance with Section 2.3.1 of the Contract. Please sign below and return this to me to acknowledge your receipt of this Notice.

I am looking forward to a successful project. If you have any questions or comments, please feel free to contact me.

OWNER'S REPRESENTATIVE

_____ **Date:** _____

CONTRACTOR

PRINT NAME: _____

PRINT TITLE: _____

EXHIBIT F
DAILY LOG

EXHIBIT G

Penzel Construction Company, Inc.
325 W. Jackson Blvd.
PO Box 330
Jackson, MO 63755

OWNER: City of Cape Girardeau (the “Owner”)

CONTRACTOR: Penzel Construction Company, Inc. (the “Contractor”)

CONTRACT: Agreement for Professional and Construction Services (the “Contract”)

DATE OF CONTRACT:**CONTRACT NO.**

PROJECT: (the “Project”)

Pursuant to Section 2.4.17 or 2.4.4.2 of the Contract, whichever is applicable, the Owner hereby authorizes Contractor to incur and to seek reimbursement from Owner as a Cost of the Work the reasonable costs of _____

OWNER'S REPRESENTATIVE

CONTRACTOR

PRINT NAME: _____

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EXHIBIT H

CONSTRUCTION SCHEDULE

EXHIBIT I

CONTRACTOR'S NOTICE OF SUBSTANTIAL COMPLETION

Date: _____

Penzel Construction Company, Inc.
325 W. Jackson Blvd.
PO Box 330
Jackson, MO 63755

OWNER: City of Cape Girardeau (the "Owner")
CONTRACTOR: Penzel Construction Company, Inc. (the "Contractor")
CONTRACT: Agreement for Professional and Construction Services (the "Contract")
DATE OF CONTRACT:
CONTRACT NO.:
PROJECT: (the "Project")

Dear _____:

Pursuant to Section 4.2.3.1 of the Contract, Contractor hereby notifies Owner that to the best of Contractor's knowledge, information and belief, the Work of the Contract is Substantially Complete as provided in Section 4.2.2 of the Contract, and requests the Owner's Representative to meet Contractor at the Site, inspect the Work and review test results, if any, and develop a Punchlist.

Sincerely,

OWNER'S REPRESENTATIVE

RECEIVED:

CONTRACTOR

Date: _____

PRINT NAME: _____

PRINT TITLE: _____

EXHIBIT J

CERTIFICATE OF SUBSTANTIAL COMPLETION

OWNER: City of Cape Girardeau (the “Owner”)

CONTRACTOR: Penzel Construction Company, Inc. (the “Contractor”)

CONTRACT: Agreement for Professional and Construction Services (the “Contract”)

DATE OF CONTRACT:

CONTRACT NO.:

PROJECT: (the “Project”)

The Contractor hereby affirms that to the best of the Contractor’s knowledge, information and belief, the Work performed under the Contract is substantially complete. Substantial Completion is the stage in the progress of the Work when the Work is sufficiently complete in accordance with the Contract Documents and verified by both Owner and Contractor, in order that the Owner can occupy or utilize the Project for its intended use. The date of Substantial Completion of the Project is the date of issuance established by this Certificate.

The Owner hereby affirms that it has inspected the Work performed under the Contract and agrees that it is substantially complete in accordance with the Contract Documents such that the Owner can occupy or utilize the Project for its intended use. By executing this certificate, the Owner is **not** accepting the Work. The Owner has not inspected or tested the Work and the Owner makes no decisions or representations herein that the Work has been performed in a good or workmanlike manner or in accordance with the Contract Documents.

DATE OF SUBSTANTIAL COMPLETION: _____

DATE BY WHICH PUNCHLIST (ATTACHED) SHALL BE COMPLETED: _____

CONTRACTOR:

Date: _____

PRINT NAME: _____

PRINT TITLE: _____

OWNER:

Date: _____

PRINT NAME: _____

PRINT TITLE: _____

EXHIBIT K

CONTRACTOR'S NOTICE OF COMPLETION OF PUNCHLIST

Date: _____

Penzel Construction Company, Inc.
325 W. Jackson Blvd.
PO Box 330
Jackson, MO 63755

OWNER: City of Cape Girardeau (the "Owner")
CONTRACTOR: Penzel Construction Company, Inc. (the "Contractor")
CONTRACT: Agreement for Professional and Construction Services (the "Contract")
DATE OF CONTRACT:
CONTRACT NO.:
PROJECT: (the "Project")

Dear _____:

Pursuant to Section 4.2.4.2 of the Contract, Contractor hereby notifies Owner that to the best of Contractor's knowledge, information and belief, the Punchlist has been completed, and requests that the Owner determine the Project to be "Commercially Operational."

Sincerely,

OWNER'S REPRESENTATIVE

RECEIVED:

CONTRACTOR

Date: _____

PRINT NAME: _____

PRINT TITLE: _____

EXHIBIT L

CERTIFICATE OF COMMERCIAL OPERATIONS

OWNER: City of Cape Girardeau (the "Owner")
CONTRACTOR: Penzel Construction Company, Inc. (the "Contractor")
CONTRACT: Agreement for Professional and Construction Services (the "Contract")
DATE OF CONTRACT:
CONTRACT NO.:
PROJECT: (the "Project")

The Owner hereby affirms that it has inspected the Work performed under the Contract and agrees that the Punchlist dated _____ is complete in accordance with the Contract Documents. The Owner declares the Project to be Commercially Operational. The issuance of this Certificate shall not relieve the Contractor of liability for obligations under the Contract or for any faulty or defective work or services discovered after the issuance of this Certificate or the making of Final Payment as provided in the Contract.

DATE: _____

CONTRACTOR:

Date: _____

PRINT NAME: _____

PRINT TITLE: _____

OWNER:

Date: _____

PRINT NAME: _____

PRINT TITLE: _____

EXHIBIT M

NOTICE OF EXCUSABLE DELAY

Date: _____

Penzel Construction Company, Inc.

325 W. Jackson Blvd.

PO Box 330

Jackson, MO 63755

OWNER: City of Cape Girardeau (the "Owner")

CONTRACTOR: Penzel Construction Company, Inc. (the "Contractor")

CONTRACT: Agreement for Professional and Construction Services (the "Contract")

DATE OF CONTRACT:

CONTRACT NO.:

PROJECT: (the "Project")

Pursuant to Section 4.2.5.1 of the Contract, the Contractor hereby provides notice of excusable delay as follows:

- (a) Event/circumstances causing delay:
- (b) Date of occurrence of event/circumstances:
- (c) Portion of work affected by delay:
- (d) Estimated period of delay: _____

CONTRACTOR:

Date: _____

PRINT NAME: _____

PRINT TITLE: _____

EXHIBIT N

PERMITS AND LICENSES

Date: _____

Penzel Construction Company, Inc.

325 W. Jackson Blvd.

PO Box 330

Jackson, MO 63755

OWNER: City of Cape Girardeau (the "Owner")

CONTRACTOR: Penzel Construction Company, Inc. (the "Contractor")

CONTRACT: Agreement for Professional and Construction Services (the "Contract")

DATE OF CONTRACT:

CONTRACT NO.:

PROJECT: (the "Project")

Pursuant to Section 4.7.1 of the Contract, the Contractor shall obtain the following licenses and permits necessary for designing and/or constructing the Project and shall include the cost of same in invoicing as a Cost of the Work:

Owner shall obtain the following licenses and permits for the Project at its own expense:

CONTRACTOR:

Date: _____

PRINT NAME: _____

PRINT TITLE: _____

OWNER:

Date: _____

PRINT NAME: _____

PRINT TITLE: _____

EXHIBIT O

CHANGE ORDER FORM

CHANGE ORDER # _____

Project No: _____ Agreement No: _____ Agreement Date: _____

CONTRACTOR: _____

TRADES AFFECTED: _____

The following **CHANGES** are hereby made to the Contract (attach separate explanation sheet if necessary):

JUSTIFICATION for Change to Contract:

CHANGE TO CONTRACT PRICE (Attach Detailed Calculation Sheets)

Original Contract Sum:	\$ _____
Current Contract Sum (as adjusted by previous change orders):	\$ _____
Increase or Decrease in Contract Sum by this Change Order:	\$ _____
New Contract Sum due to this Change Order:	\$ _____

CHANGE TO CONTRACT PERIOD (Attach Revised Schedule): _____

Increase or Decrease in Contract Period (calendar days): _____

New Substantial Completion Date will be: _____

APPROVALS REQUIRED - To be effective, this Change Order must be approved by the OWNER and CONTRACTOR.

Accepted by: _____ Dated: _____
(FIELD)

Accepted by: _____ Dated: _____
(Owner Project Manager)

Accepted by: _____ Dated: _____
(City Manager)

Accepted by: _____ Dated: _____
(CONTRACTOR)

EXHIBIT P

**OWNER'S AUTHORIZATION OF
MINOR CHANGE IN THE WORK**

OWNER: City of Cape Girardeau (the "Owner")
CONTRACTOR: Penzel Construction Company, Inc. (the "Contractor")
CONTRACT: Agreement for Professional and Construction Services (the "Contract")
DATE OF CONTRACT:
CONTRACT NO.:
PROJECT: (the "Project")
DATE OF DESIGN DOCUMENTS: (the "Design Documents")

Pursuant to Sec. 6.3 of the Contract, the Owner hereby authorizes the following minor change in the Work:

This change shall not result in any adjustment to the Contract Sum or the Contract Schedule. Contractor acknowledges and agrees to this minor change.

CONTRACTOR:

Date: _____

PRINT NAME: _____

PRINT TITLE: _____

OWNER:

Date: _____

PRINT NAME: _____

PRINT TITLE: _____

EXHIBIT Q

INVOICING SCHEDULE

EXHIBIT R

AFFIDAVIT OF PAYMENT

OWNER: City of Cape Girardeau (the "Owner")

CONTRACTOR: Penzel Construction Company, Inc. (the "Contractor")

CONTRACT: Agreement for Professional and Construction Services (the "Contract")

DATE OF CONTRACT:

CONTRACT NO.:

PROJECT: (the "Project")

DATE OF DESIGN DOCUMENTS: (the "Design Documents")

Pursuant to Section 7.2.3.2 of the Contract, Contractor affirms the following for Invoice No. _____:

	<u>Subcontractor</u>	<u>Amount of Subcontract</u>	<u>Amount Requested</u>
1	_____	_____	_____
2	_____	_____	_____
3	_____	_____	_____
4	_____	_____	_____

Amount to be paid Contractor for Invoice No. _____.

CONTRACTOR:

Date: _____

PRINT NAME: _____

PRINT TITLE: _____

OWNER:

Date: _____

PRINT NAME: _____

PRINT TITLE: _____

EXHIBIT S

Partial Payment Certification, Release and Lien Waiver

OWNER: _____

CONTRACTOR: _____

PROJECT: _____

CONTRACT NO: _____

In consideration of the sum of \$ _____, the undersigned hereby acknowledges receipt and payment in full for all labor, services, and materials furnished or supplied relating to the design, construction, addition, or development of the work and improvements concerning the above-referenced Project as stated on Invoice No. _____.

The undersigned hereby expressly waives, releases, and discharges the above-referenced Project, the Owner thereof, the interim lender, and the permanent lender, of and from any and all claims, liens, expenses and rights to any such claim or lien which the undersigned has or may have for labor, services, materials or otherwise, furnished by or through the undersigned in connection with the above-referenced Project and/or pursuant to the above-referenced Contract, for all Invoice Numbers stated above. The undersigned further represents, as a material inducement to the payment described above, that subcontractors and suppliers of the undersigned have been fully paid under the Invoices stated above and that all amounts due or to become due for labor, equipment or materials furnished by subcontractors and supplier of the undersigned shall be paid from such sum.

In the event the undersigned does not receive actual payment for the labor, materials, or services which is the subject hereof, the signing of this certification, release and waiver shall not constitute a release or waiver of any claim or lien rights for said labor, materials, or services.

Date: _____

_____ [Name of Contractor]

By: _____

Print Name: _____

Title: _____

STATE OF _____

CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me, _____, Notary Public, this ____ day of _____, 20__, by _____ [signatory], who is personally known to me. _____ [signatory] voluntarily acknowledged this instrument as _____ of _____, on behalf of the _____ [corporation, limited liability company, etc.].

Notary Public

Registration Number: _____

My commission expires: _____

Notary Seal (sharp, legible, photographically reproducible)

EXHIBIT T

Final Payment Certification, Release and Lien Waiver

OWNER: _____

CONTRACTOR: _____

PROJECT: _____

CONTRACT NO: _____

In consideration of the sum of \$_____, the undersigned hereby acknowledges receipt and final payment in full for all labor, services, and materials furnished or supplied relating to the design, construction, addition, or development of the work and improvements concerning the above-referenced Project.

The undersigned hereby expressly waives, releases, and discharges the above-referenced Project, the Owner thereof, the interim lender, and the permanent lender, of and from any and all claims, liens, expenses and rights to any such claim or lien which the undersigned has or may ever have for labor, services, materials or otherwise, furnished by or through the undersigned in connection with the above-referenced Project and/or pursuant to the above-referenced Contract. The undersigned further represents, as a material inducement to the payment described above, that subcontractors and suppliers of the undersigned have been fully paid to date and that all amounts due or to become due for labor, equipment or materials furnished by subcontractors and supplier of the undersigned shall be paid from the final payment referenced herein.

In the event the undersigned does not receive actual payment for the labor, materials, or services which is the subject hereof, the signing of this certification, release and waiver shall not constitute a release or waiver of any claim or lien rights for said labor, materials, or services.

Date: _____

_____ [Name of Contractor]

By: _____

Print Name: _____

Title: _____

STATE OF _____

CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me, _____, Notary Public, this ____ day of _____, 20__, by _____ [signatory], who is personally known to me. _____ [signatory] voluntarily acknowledged this instrument as _____ of _____, on behalf of the _____ [corporation, limited liability company, etc.].

Notary Public

Registration Number: _____

My commission expires: _____

Notary Seal (sharp, legible, photographically reproducible)

EXHIBIT U

Cost of Construction

EXHIBIT V

Subcontractor List