

**ORDINANCE #67416**  
**Board Bill No. 353**

An ordinance recommended by the Board of Public Service; authorizing the Board of Public Service to execute and deliver of behalf of the City a design-build contract in substantially the form attached as Exhibit A with Animal House Fund, Inc., a Missouri not for profit corporation, for the design and construction by Animal House Fund, Inc., at its sole cost and expense, and donation to the City, of an animal shelter in a portion of Arsenal-Ellendale Park.

**WHEREAS**, the City's present animal shelter is obsolete and inadequate;

**WHEREAS**, the City does not currently have funds available for a new animal shelter;

**WHEREAS**, pursuant to its standard procedures, the Office of the President of the Board of Public Service caused the organization of a Selection Committee, which issued a Request for Proposals for funding and professional services for the design and construction of an animal care and adoption center to be located in Ellendale/Arsenal Park;

**WHEREAS**, in response to such Request for Proposals, Animal House Fund, Inc., a Missouri not-for-profit corporation, submitted a proposal in which it offered to design and construct an animal care and adoption center at such location, at no cost to the City, which it will donate to the City upon its completion, which proposal was approved by the Selection Committee;

**WHEREAS**, the provision of animal care and animal adoption services is both a recreational activity and a public service suitable for location by the City in a city park, provided that the design of the facility is compatible with the park;

**WHEREAS**, the proposal of Animal House Fund is for a Leadership in Energy and Environmental Design ("LEED") certified facility recessed in a hillside at a corner of an underused area of Arsenal/Ellendale Park, at an intersection of two major streets;

**WHEREAS**, a form of a design/build contract for the project is attached hereto as Exhibit A ; and

**WHEREAS**, the Board of Aldermen believes that the design and construction by Animal House Fund, Inc. of an animal care and adoption center is in the best interests of the City and of its citizens;

**Now Therefore,**

**BE IT ORDAINED BY THE CITY OF ST. LOUIS, AS FOLLOWS:**

**SECTION ONE.** Any provision of Ordinance 59171 (Ch. 22.42, Revised Code City of St. Louis 1994, Anno.) to the contrary notwithstanding, the President of the Board of Public Service is hereby authorized to execute and deliver, on behalf of the City of St. Louis, a contract between the City of St. Louis and Animal House Fund, Inc. for Design/Build Services for an Animal Care and Adoption Center at Arsenal/Ellendale Park, in substantially the form attached hereto as Exhibit A, which is incorporated herein by this reference, and to take such other actions consistent herewith and with Exhibit A hereto as are needed to effect the design and construction of the Animal Care and Adoption Center.

**112/19/06**

**CONTRACT BETWEEN**

**CITY OF ST. LOUIS AND ANIMAL HOUSE FUND, INC.**

**FOR**

**DESIGN/BUILD SERVICES**

DESIGN BUILDER: ANIMAL HOUSE FUND, INC.  
Federal ID. #: 30-0177612  
Contract No.:  
Contract Amount: n/a

Comptroller Document Number:

subject to revisions

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**CONTRACT NO.**

**CONTRACT BETWEEN CITY OF ST. LOUIS AND ANIMAL HOUSE FUND, INC.**

THIS CONTRACT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between the City of St. Louis, Missouri ("*City*"), and Animal House Fund, Inc., a Missouri not-for-profit corporation ( sometimes referred to as "*Design/Builder*"), shall govern all labor, material, equipment, and services to be provided by Design/Builder for City on the Project described herein.

WHEREAS, the City has need of the Project described in these Contract Documents; and

WHEREAS, the **DEPARTMENT OF THE PRESIDENT, BOARD OF PUBLIC SERVICE**, an agency or department of the City of St. Louis, under the provisions of Ordinance No. , duly approved \_\_\_\_\_, and by virtue of the authority vested in such agency or department by the Charter and general ordinances of the City, intends to enter into one or more contracts for the Project; and

WHEREAS, City desires to enter into a Contract with Design/Builder to obtain labor, material, equipment and/or services as set forth herein; and

WHEREAS, Design/Builder represents that Design/Builder is equipped, competent, and able to undertake such an assignment;

NOW THEREFORE, in consideration of the mutual covenants and considerations herein contained, IT IS HEREBY AGREED by the parties hereto as follows:

**ARTICLE I.**  
**DEFINITIONS**

- A. Contract. The written contract between City and Design/Builder covering the Work; other Contract Documents are attached to the Contract and made a part thereof as provided therein.
- B. City. The word "City" used herein refers to the City of St. Louis.
- C. City's Authorized Agent/Representative. The person authorized in writing by the City to act on the City's behalf with respect to the project.
- D. Commencement Date. The date specified in the Notice to Proceed.
- E. Contract Amount: The amount of the contract is \$-0-.
- F. Contract Documents. This Contract, Addenda (which pertain to the Contract Documents), the Request For Proposals, Design/Builder's Proposal, the Site Plan, Schematic Design drawings, Design Development drawings, Construction drawings, the Notice to Proceed, the Bonds, the General Conditions, the Supplementary Conditions, the General Requirements, the Specifications and the Drawings together with all Work Change Directives, Change Orders, Written Amendments, and Field Orders, issued on or after the Effective Date of the Contract. The Contract Documents also include those documents specifically identified by the City in the Request for Proposals.
- G. Comptroller. The word "Comptroller" used herein refers to the Comptroller of the City of St. Louis.
- H. Construction Manager. A Person or entity, including independent consultants, designated by the President of the Board of Public Service to serve as the liaison between the Design/Builder and the City. The Construction Manager plays a quality assurance role and makes certain that the contract documents are followed. If the Construction Manager is not a City employee, his compensation will be paid by the Design/Builder.

- I. Defective/Imperfect. An adjective which when modifying the term Construction refers to Construction that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to City's final acceptance, (unless responsibility for the protection thereof has been assumed by City at Substantial Completion).
- J. Design/Builder. The word "Design/Builder" used herein refers to the "Principal" party of the Contract, who has entered into this Contract, to wit: Animal House Fund, Inc.
- K. Drawings. Those portions of the Contract Documents prepared by or for Design/Builder and approved by City consisting of drawings, diagrams, illustrations, schedules and other data which show the scope, nature, extent, and character of the Work.
- L. Field Order. A written order issued by City which orders or approves Minor Changes in the Work but which does not involve a change in the project cost or the Contract Times.
- M. Fully Executed. The phrase "fully executed" used herein refers to those documents signed by the Design/Builder, the President and Secretary of the Board of Public Service, the Comptroller, the Register, and approved as to form by the City Counselor.
- N. Hazardous Condition. The presence at the site of the Project of asbestos, hazardous waste, PCB's, petroleum products or radioactive materials in such quantities or circumstances that there is a danger to persons or property.
- O. Holiday. New Year's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day are the only holidays granted and recognized by this Contract.
- P. Laws and Regulations. Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.
- Q. M/W/DBE. Minority Owned Business Enterprise, Women Owned Business Enterprise or Disadvantaged Business Enterprise.
- R. Minor Change. A change in the design or construction of the Project consistent with the intent of the Contract documents which does not involve an adjustment in the project costs and/ or the date of Substantial Completion and/ or Date of Final Completion; and does not materially and adversely affect the design of the Project, the quality of any of the materials or equipment specified in the Contract Documents, or the quality of workmanship required by the Contract Documents.
- S. Notice to Proceed. A written notice given by the City to Design/Builder establishing the date on which the Contract times will commence to run. Separate Notices shall be given for Design and for Construction.
- T. President. The word "President" used herein refers to the President of the Board of Public Service, or her/his Authorized Representative.
- U. Specifications. Those portions of the Contract Documents prepared by or for Design/Builder and approved by City consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Construction and certain administrative procedures applicable thereto.
- V. Proposal. The document submitted by Design/Builder in response to the Request for Proposals.
- W. Request for Proposals. The document prepared by or for City specifying and describing City's criteria, objectives and the procedure to be followed in preparing and submitting a Proposal and awarding a contract.
- X. Schedule. The schedule for the work which shall be prepared in accordance with the requirements of the Contract Documents and approved by the City.
- Y. Schedule of Values. A schedule prepared by Design/Builder and acceptable to City indicating that portion of the Contract Price to be paid for each major component of the Work.

- Z. Subconsultant. A duly licensed individual or entity designated by Design/Builder to perform or furnish specific design professional services in connection with the Work.
- AA. Subcontractor. An individual or entity other than a Supplier or Subconsultant having a direct contract with Design/Builder or with any other Subcontractor for the performance of a part of the Work.
- BB. Submittal. A written or graphic document prepared by or for Design/Builder which is required by the Contract Documents to be submitted to City by Design/Builder. Submittals may include Drawings, Specifications, progress schedules, shop drawings, samples, cash flow projections, and Schedules of Values. Submittals other than Drawings and Specifications are not Contract Documents unless specified otherwise in the Contract Documents.
- CC. Substantial Completion. The time at which the Construction (or a specified part) has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Construction (or a specified part) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Construction refer to Substantial Completion thereof.
- DD. Supplementary Conditions. The part of the Contract Documents which amends or supplements the Contract or General Conditions.
- EE. Treasurer. The word "Treasurer" used herein refers to the Treasurer of the City of St. Louis.
- FF. Work. The entire completed design, construction or the various separately identifiable parts thereof required to be performed or furnished under the Contract Documents. Work includes and is the result of performing or furnishing design professional services and construction required by the Contract Documents.
- GG. Work Change Directive. A written directive to Design/Builder, issued on or after the Effective Date of the Contract and signed by City ordering or approving an addition, deletion or revision in the Work, or responding to differing site conditions under which the Work is to be performed as provided in Article IV or to emergencies under Article XXIX.

**ARTICLE II.**  
**THE PROJECT**

Design/Builder shall provide all Work for the Project, which is generally described as follows:

Design and construction of an ANIMAL CARE AND ADOPTION CENTER ("ANIMAL HOUSE") at Ellendale/Arsenal Park, in a manner acceptable to the Board of Public Service at no cost to the City of St. Louis.

Design: The building shall be designed in a manner that improves the aesthetics of the impacted areas of park space. Design/Builder shall recess the building in the hillside at the upper northwest corner of an underused area of the park at the corner of McCausland and Arsenal in a manner acceptable to the Board of Public Service. The design and construction of the building shall meet the "LEED certified" criteria for sustainable design and construction.

The facility shall have the following features. All dimensions and numbers specified in this Article II may be increased or decreased by ten percent until conclusion of the Final Design Phase under Article V of this Contract, and may also be changed to comply with requirements of any applicable code or ordinance. Design/Builder may request the President to approve other changes in the features of the Facility until conclusion of the Final Design Phase for budgetary or other reasons, which approval shall not be unreasonably withheld.

Facility:

- 20,000 square foot enclosed heated and cooled structure with the ability to house 300 animals at any given time with an average length of stay being between two to three weeks based on health and behavior, including:
  - o Multi purpose community rooms
  - o Separate adoption and receiving lobbies
  - o Get acquainted rooms
  - o Modern kenneling system

- o Surgery suite
  - Veterinary Services and Surgery Offices
  - Spay/neuters
  - Euthanasia
- o Isolation wards
  - Quarantine
  - Euthanasia
- 1,000 square foot loading dock and trash storage area
- 26-car parking lot for combined employee and visitor use
- Parking area for ten (10) service vehicles set back from public view
- Fresh air exchange systems
- Other humane industry standards as appropriate
- Food Storage
- Laundry
- Office/Break Rooms/Volunteer workroom
- Gift shop
- All necessary structural, mechanical, electrical, HVAC, fire suppression, fire alarm and other components as required to provide an attractive and safe environment that meets all applicable building-related codes of the City of St. Louis.
- Finishes shall be designed in a manner that minimizes necessary maintenance.

The Design/Builder and each Sub-(Consultant/Contractor) shall evaluate and satisfy themselves, at no cost or expense to the City, as to the conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, and (4) availability and cost of materials, tools, and equipment. Design/Builder shall also take field measurements and verify field conditions, as applicable to its Work, before commencing Work. Design/Builder shall perform soil borings before commencing Work and shall design and construct the Work in accordance with the best practices of the design and construction trades as required to accommodate soil conditions. City makes no warranties on the condition of the project site. Neither the Contract Amount nor the Schedule shall be adjusted as a result of the Design/Builder’s or any Sub-(Consultant/Contractor’s) failure to comply with this paragraph.

Design/Builder shall perform all design and construction services, and provide all material, equipment, tools, labor and ancillary and associated services, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

The Design/Builder shall supervise and direct all Work, using the Design/Builder’s best skill and ability. The Design/Builder shall be responsible for all design/engineering services, construction means, methods, procedures and resources for the Work and its coordination.

**ARTICLE III.**  
**INTENT/REFERENCES**

**A. Intent**

1. The Contract Documents comprise the entire Contract between City and Design/Builder concerning the Work.

The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the laws of the State of Missouri and City of St. Louis.

2. It is the intent of the Contract Documents to describe a functionally complete Project to be designed and constructed in accordance with the Contract Documents. Any Work that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for. When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning unless modified by the Contract Documents.

#### **B. References**

Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code or Laws or Regulations in effect on the last day for receipt of Proposals except as may be otherwise specifically stated in the Contract Documents. In the event of conflict between the Contract and any such referenced standard, the Contract shall govern.

### **ARTICLE IV.**

#### **DIFFERING SITE CONDITIONS/HAZARDOUS SITE CONDITIONS**

#### **A. Differing Site Conditions**

Design/Builder shall within ten (10) days of discovery, and before the conditions are disturbed, give a written notice to City of (i) subsurface or latent physical conditions at the Site which differ materially from those indicated in the Contract Documents, or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character called for by the Contract Documents. Design/Builder shall promptly consult with City concerning appropriate measures to address such conditions, and shall, within twenty (20) days (or such additional time as may be specified by the President) after such discovery, provide a proposal for addressing such conditions, in accordance with the best practices of the design and construction trades, and an estimate of the impact on the additional time required, if any, to carry out the proposal. City shall review such conditions and such proposal and shall either approve or reject the proposal in writing within ten (10) days following submission to the City. If City rejects the proposal, City shall work with Design/Builder to devise a proposal acceptable to the City and to Design/Builder.

#### **B. Hazardous Site Conditions**

1. Design/Builder and any affected Subcontractor shall immediately (i) stop all Construction in connection with a Hazardous Condition discovered at the Site and in any area affected thereby (except in an emergency), and (ii) notify City (and thereafter confirm such notice in writing). City shall promptly determine the necessity of retaining a qualified expert to evaluate such Hazardous Condition or take corrective action. Design/Builder shall not be required to resume Construction in connection with such Hazardous Condition or in any such affected area until after City, at Design/Builder's sole cost and expense, has obtained any required permits related thereto and delivered to Design/Builder special written notice (i) specifying that such Hazardous Condition and any affected area is or has been rendered safe for the resumption of Construction, or (ii) specifying any special conditions under which such Construction may be resumed safely. If City and Design/Builder cannot agree as to entitlement to or the extent of an adjustment, if any, in Facility design or Contract Times as a result of such construction stoppage or such special conditions under which construction is agreed by Design/Builder to be resumed, the President shall resolve the matter or may terminate the Project.

### **ARTICLE V.**

#### **DESIGN/BUILDER'S RESPONSIBILITY**

All services, functions, duties and tasks of the Design/Builder under this Article V shall be performed at Design/Builder's sole cost and expense, and at no cost or expense to the City whatsoever, and, in compliance with all applicable codes, laws and Factory Mutual Standards.

As used in this Article V, "City" means the President of the Board of Public Service, or her/his designee, which may include other City agencies or outside entities or agencies.

A. Design and Other Professional Services

Standard of Care: Design/Builder shall provide all professional design services and all related services required to complete all phases of the design and produce all required contract documents for the entire Project. The standard of care for all such services shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality.

1. Preliminary Design Phase: After the Design Notice to Proceed is issued, Design/Builder shall:
  - a. Consult with City to understand City's requirements for the Project and review available data.
  - b. Provide City with a detailed schedule, acceptable to City, for the completion of the Preliminary Design Phase and the Final Design Phase, which schedule may be adjusted during the course of such Phases by mutual agreement of City and Design/Builder.
  - c. Advise City as to the necessity of City's providing or obtaining from others additional reports, data or services and assist City in obtaining such reports, data, or services.
  - d. Identify and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Design/Builder with whom consultation is to be undertaken in connection with the project.
  - e. Obtain such additional geotechnical and related information which Design Builder deems necessary for performance of the Work.
  - f. On the basis of the Conceptual Documents and Design/Builder's Proposal, prepare preliminary design documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
  - g. Furnish the preliminary design documents to, and review these documents with, City, and make any revisions necessary for City approval, within the time indicated in schedule submitted and approved pursuant to A.1.b. above.
  - h. Provide City with a Phase I Environmental Report concerning the project site.
2. Final Design Phase: After written acceptance by City of the preliminary design phase documents Design/Builder shall:
  - a. On the basis of the accepted Preliminary Design Phase documents, prepare final Drawings showing the scope, extent, and character of the Construction to be performed and furnished by Design/Builder, Specifications (which will be prepared, where appropriate, in general conformance with the sixteen division format of the Construction Specifications Institute), General Conditions, and Supplementary Conditions, and all other components of the Contract Documents.
  - b. Provide technical criteria, written descriptions and design data required for obtaining approvals of such governmental authorities as have jurisdiction to review and/or approve the final design of the Project, and assist City in consultations with those appropriate authorities.
  - c. Furnish the above documents, Drawings and Specifications to and review these documents with, City, and make any revisions necessary for City approval, within the time indicated in the schedule submitted and approved pursuant to A.1.b. above.
  - d. If the Phase I Environmental Report so indicates, provide City with a Phase II Environmental Report concerning the project site.

- e. Provide City with a detailed schedule, acceptable to City, for the completion of the Work, which schedule may be adjusted during the course of the performance of the Work by mutual agreement of City and Design/Builder.
3. Operational Phase: During the Operational Phase, Design/Builder shall:
    - a. Prepare a commissioning plan for the start-up, testing, refining and adjusting of any equipment or system.
    - b. Startup and test, and commission any and all equipment and systems;
    - c. Provide training for the City's staff to operate and maintain the Project; and
    - d. Develop systems and procedures and operations/maintenance manuals for control of the operation and maintenance of, and recordkeeping for, the Project.
- B. Supervision and Superintendence of Construction
1. After approval of the final design phase by the City, Design/Builder shall supervise, inspect and direct the construction competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to provide the construction in accordance with the Contract Documents. Design/Builder shall be solely responsible for the design, engineering, means, methods, techniques, sequences and procedures employed for the provision of construction. Design/Builder shall be responsible to see that the completed Construction complies accurately with the Contract Documents and shall keep City advised as to the quality and progress of the Construction.
  2. Design/Builder shall provide at the Project site at all times during construction a competent resident superintendent, who shall not be replaced without written notice to the City and the City's approval except if the Superintendent ceases employment with the Design/Builder. The superintendent will be Design/Builder's representative at the Project site and shall have authority to act on behalf of Design/Builder. All communications to the superintendent shall be as binding as if given to Design/Builder.
  3. Design/Builder shall complete the Work in accordance with the schedule submitted and approved pursuant to A.1.b. above.
- C. Labor, Materials and Equipment
1. Design/Builder shall provide and pay for competent, suitably qualified personnel to survey and lay out the construction and perform construction as required by the Contract Documents. Design/Builder shall at all times maintain good discipline and order at the Project site. Except as otherwise required for the safety or protection of persons or the Work or property at the Project site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all construction at the site shall be performed during regular working hours, and Design/Builder will not permit overtime work or the performance of construction on Saturday, Sunday or any legal holiday without City's written consent, which will not be unreasonably withheld.
  2. Unless otherwise specified in the Contract Documents, Design/Builder shall furnish or cause to be furnished, pay for, and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up, commissioning and completion of the Work, including the provision of utilities to the site as required for operation of the completed Work. Design/Builder, in the presence of City's personnel, will direct the commissioning of utilities and operations of systems and equipment.
  3. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of City. Design/Builder shall furnish to the City satisfactory

evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable supplier, except as specifically otherwise provided in the Contract Documents.

D. Progress Schedule

1. Design/Builder shall prepare and submit for City approval a Progress Schedule for the Project prior to the Notice to Proceed and shall adhere to the Progress Schedule as it may be adjusted from time to time.
2. Design/Builder shall submit to City for acceptance proposed adjustments in the Progress Schedule that will not change the Contract Times (or Milestones). Such adjustments will conform generally to the Progress Schedule then in effect.
3. Proposed adjustments in the Progress Schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article IX.

**ARTICLE VI.**

**TESTS, INSPECTION DEFECTIVE CONSTRUCTION**

A. Tests of Materials by City

All materials incorporated in the project are subject to inspection and testing by the City or its designee, without cost to the City, as and when the City may require. This is in addition to tests and inspections required by the Contract Documents to be performed by the Design/Builder.

B. Inspection and Rejection

All materials and workmanship shall be subject to the inspection and rejection of the President, and the Work performed to her/his satisfaction. The President shall have the right to appoint such assistants as she/he may deem necessary to properly inspect the work to be done and materials to be furnished under this Contract, and to see that same strictly corresponds to the Contract Documents. Any defective or non-conforming work or materials that may be discovered before the acceptance of the Work shall be corrected immediately, on the order of the President, notwithstanding that it may have been overlooked by the proper inspector. The inspection of the Work shall not relieve the Design/Builder of any obligation to perform sound and reliable work as required by the Contract Documents.

C. Tests and Inspections

1. If the Contract Documents or Laws or Regulations of any public body having jurisdiction require any part of the construction specifically to be inspected, tested or approved, Design/Builder shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish City the required certificates of inspection or approval. Design/Builder shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for City's acceptance of materials or equipment to be incorporated in the construction or of materials, mix designs, or equipment submitted for approval prior to Design/Builder's purchase thereof for incorporation in the construction.
2. Design/Builder shall give City reasonable notice, at least two business days in advance, of the planned schedule for all required inspections, tests or approvals.
3. If any Construction (or the construction work of others) that is required to be inspected, tested or approved is covered by Design/Builder without written concurrence of City, it must, if requested by City, be uncovered for observation at Design/Builder's expense unless Design/Builder has given City timely notice of Design/Builder's intention to cover the same and City has not acted with reasonable promptness in response to such notice.

D. Defective Construction

1. City shall have authority to disapprove or reject Defective construction and will have authority to require special

inspection or testing of the construction whether or not the construction is fabricated, installed or completed. If required by City, Design/Builder shall promptly, as directed, either correct all Defective construction, whether or not fabricated, installed or completed, or, if the construction has been rejected by City, remove it from the Project site and replace it with construction consistent with the Contract Documents. Design/Builder shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

2. Where Defective construction (and damage to other construction resulting therefrom) has been corrected, removed or replaced under this paragraph, the correction period hereunder with respect to such construction will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
3. If, instead of requiring such Defective construction correction or removal and replacement of defective construction, City prefers to accept such Defective construction, City may do so. Design/Builder shall pay all costs attributable to City's evaluation of and determination to accept such defective construction (such costs to include but not be limited to all fees and charges of engineers, architects, attorneys and other professionals).

**ARTICLE VII.  
EXPENSES**

Animal House Fund, Inc. will design, construct and install the facility at its sole cost and expense as provided herein. It is the intent of the parties that the City will incur no cost or expense, of any kind whatsoever, in the connection with or related to the design and construction of the facility. To facilitate Design/Builder's fundraising, Design/Builder may name features of the facility after donors, subject to the prior written approval of the President, which approval shall not be unreasonably withheld.

Unless stated to the contrary in the Contract Documents, the Design/Builder shall provide and pay for all labor, services, material, equipment, tools, machinery, transportation, and utilities necessary for completing the Work.

**ARTICLE VIII.  
CONTRACT TIME/EFFECT OF DELAY/TIME CHANGES**

**A. Schedule**

The general Schedule for this project is as follows. This general schedule may be revised by mutual written agreement of the City and Design/Builder. Once City has issued the Design Notice to Proceed, the schedule submitted and approved pursuant to Article V, Paragraph A.1.b., shall be the Schedule for the Design Phases. The schedule submitted and approved pursuant to Article V, Paragraph 2.e shall be the schedule of the remainder of the Work.

Fundraising by Design Builder: from the date of this Contract until February 1, 2009

Project Design: April 1, 2007 – August 30, 2007

Construction Notice to Proceed/Construction Begins: earlier of February 1, 2009 or when 75% of costs in hand after completion of design; in no circumstances and anything to the contrary in this Contract notwithstanding, Design/Builder may perform no construction work of any kind whatever until it has received the Construction Notice to Proceed;

Substantial Completion Notice: March 1, 2010

Facility opens: June 1, 2010

**B.** Animal House Fund, Inc. will advise the President in writing on a monthly basis, in a form approved by the President, beginning April 1, 2007, of the progress of its fundraising for the project.

If at any time the President believes that Animal House Fund Inc. is not pursuing its fundraising campaign in a manner that will result in timely completion of the facility, she/he may terminate this contract on thirty days notice.

If by February 1, 2009, Animal House Fund, Inc. does not have, in hand in cash or, in pledge form satisfactory to the President,

commitments of in-kind contributions to the project, of a value of seventy-five percent (75%) of the cost of the project as provided by the budget approved pursuant to Article XI, Paragraph A. 1, the President may terminate this contract on ninety days notice, or may revise the schedule provided herein, in her/his sole discretion.

C. Contract Times

Design/Builder's obligations to begin construction work shall begin upon the Commencement Date as specified in the Construction Notice to Proceed. This notice shall not be issued until both i) the final Contract Documents for the Project have been completed and approved by the City; and ii) Animal House Fund, Inc. has, in hand in cash or, in pledge form satisfactory to the President, commitments of in-kind contributions to the project, of a value of Three Million Dollars (\$3,000,000). Design/Builder shall comply with all time requirements established in the Contract Documents. All dates and time requirements are of the essence of this Contract, and may be amended only in writing signed by the President.

D. Effect of Delay

1. In the event the President reasonably determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents or that the Work is being unnecessarily delayed or will not be finished within the prescribed time, the President shall have, among other remedies, the right to order the Design/Builder to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, and facilities and (3) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). The President may also notify the Design/Builder's bonding company. Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Progress Schedule and other applicable provisions of the Contract Documents, and clearly indicates that all Contract Times will be met. The President's right to require Extraordinary Measures is solely for the purpose of ensuring the Design/Builder's compliance with the construction Schedule agreed to pursuant to Article V, paragraph A.1.b. The President may exercise the rights furnished the City pursuant to this paragraph as frequently as the President deems necessary to ensure that the Design/Builder's performance of the Work will comply with any schedule date or completion date set forth in the Contract Documents.
2. If the Design/Builder abandons the Work or, in the reasonable determination of the President, fails to take all Extraordinary Measures directed by the President as will insure timely and satisfactory completion of the Work, the President may direct Design/Builder to discontinue all Work under this Contract. Design/Builder shall immediately discontinue all Work upon receipt of such notice. In such case the President may terminate this Contract. In such event, the President may take any, or any combination, of the following measures: i) bid out the Work, or any part thereof, and Design/Builder shall be liable for costs and expenses related to the bidding out and completing of the Work; ii) direct Design/Builder to pay over to the City Comptroller all funds, materials, supplies, and/or commitments for in-kind work then held by Design/Builder for the Project, to be used by the City to complete the Work, with the Design/Builder having no further right to access or use any such funds, materials, supplies or commitments; iii) take control of and use for completing the Work all equipment or materials at the Project site or otherwise identifiable for the Work; or iv) direct Design/Builder, at its cost and expense, to restore the Project site to a park-like condition as approved by the President. Design/Builder hereby grants City a lien on all funds raised for the project, all commitments for in-kind services for the project, and all materials and equipment purchased for the project, and shall at the President's direction execute and/or file any document relating to or assisting in the perfection or enforcement of such lien.
3. If the Work is delayed by Act of God, fire, or other cause over which Design/Builder has no control and could not reasonably anticipate, the Schedule shall be extended as the President and Design/Builder shall reasonably agree; such extension shall be made only if Design/Builder notifies the President in writing of the reason for the delay, and its expected length, within seven (7) days from the commencement of the delay. Design/Builder shall immediately notify the President when the reason for such delay has ceased. In addition, Design/Builder shall continue with all portions of the Work not impacted by such cause of delay.

E. Change of Contract Times

1. The Progress Schedule, Contract Times (or Milestones) may only be changed by written order of the President. Any request for such a change shall be made by notice to the President.

- 2. The Progress Schedule and all Contract Times and Milestones are of the essence of the Contract.
- 3. City shall not be liable to Design/Builder for costs or damages arising out of or resulting from any delays, including but not limited to (i) delays caused by or within the control of Design/Builder, or (ii) delays beyond the control of both parties including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God or acts or neglect by governmental agencies, utility owners, or other Design/Builders performing other work.

F. City Cooperation

City agrees to cooperate with Design/Builder in connection with the Project, to respond in a timely manner immediately to reasonable inquiries from Design/Builder, and to confer with Design/Builder concerning the Project at Design/Builder’s reasonable request.

**ARTICLE IX.  
CONTRACT DOCUMENTS**

Any discrepancies or conflicts in any of the provisions of the Contract Documents are to be resolved in the best interest of the City as determined by the President.

No change, variation or deviation other than a Minor Change, from the final drawings or final specifications shall be made except by written order of the President. Should the Design/Builder find, at any time during the progress of the work, that, in his opinion, existing conditions demand, make desirable or beneficial a modification in requirements for any particular item or items, Design/Builder is required to promptly transmit such information to the President for her/his decision and instructions.

Design/Builder may make Minor Changes in the Work, provided the Design/Builder promptly notifies the City in writing of any such changes within seventy-two (72) hours and records such changes on the Record Documents maintained by the Design/Builder.

Plans, tracing, maps, specifications, completed surveys, design computations, and any other documents prepared under this Contract shall be delivered to and shall become the property of the City upon either termination of the Contract or completion of the Work contained herein. In addition, the City may at any time during the execution of this Contract, request basic survey notes, calculations, and other data prepared under this Contract. All such information produced under this Contract shall be available for use by the City without restriction or limitation of use. If the City incorporates any portion of the Work into a project other than that for which it was intended, the City shall hold the Design/Builder harmless from any claims and liabilities resulting from such use.

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

- 1. A Work Change Directive;
- 2. A Change Order;
- 3. A Field Order.

**ARTICLE X.  
NOTICE**

Unless otherwise specified herein, the following persons are designated by the respective parties to act on behalf of such party with respect to the Contract Documents, and to receive all written notices:

For City:

For Design/Builder: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 (Representative)

Design/Builder's Representative shall be available to meet with the City or its Authorized Representative at any time during the performance of the Work, and shall have full authority to act on Design/Builder's behalf on any matter related to this Contract and/or the Work.

Design/Builder acknowledges that only the City's Authorized Representative, or such other person as the Authorized Representative shall notify Design/Builder in writing, shall have the authority to initiate any modifications to this Contract.

**ARTICLE XI.**  
**BUDGET**

**A. Budget Submission**

1. By November 30, 2007, Design-Builder shall submit for City's review and approval a budget for all of the Work. The budget will include quantities and prices of items aggregating approximately \$4,000,000 and will subdivide the Work into component parts in detail and will include a Schedule of Values. The Schedule of Values shall include an indication of which work is intended to be paid for with cash, and which work is intended to be provided as an in-kind contribution. The approved budget will serve as the basis for City's review of Animal House Fund Inc.'s progress in completing the project.
2. The Design/Builder will submit a Monthly Report to the President on the fifth business day of each calendar month. The Monthly Report shall set out all payments made in connection with the Project in the preceding calendar month, and shall indicate how such payments conform to the Project Schedule and the Schedule of Values. The Monthly Report shall also indicate the amount invoiced for each respective item. Additionally, the payment documentation shall indicate the original budget amounts, the amounts paid to date, the amounts previously paid for each item and for any approved Change Order items. The Design/Builder shall include with each Monthly Report lien waivers for all payments and in-kind contributions made to or by each sub-consultant and/or sub-contractor and all other supporting documentation as the President may require. The Design/Builder shall sign each Monthly Report and shall certify that such Monthly Report is true and accurately represents the status of completion of the respective items.
3. The First Monthly Report must be submitted within sixty days (60) after start of the Project. Each subsequent Monthly Report shall be submitted when required under subparagraph 2, above.
4. If the City finds that any Monthly Report reflects that the Project Budget or Progress Schedule have not been adhered, or that there is a concern about the overall project cost, the President may direct the Design/Builder to confer with the President's designee concerning the matter.

**B. Waivers of Claims**

From time to time, as and when determined by the President, the Design/Builder may be required to submit a signed waiver of all rights of the Design/Builder to assert any claim under Mo. Rev. Stat. 107.170 or under Chapter 429 (to the extent applicable) for labor or material provided.

All lien waivers shall be in a form approved by the President and shall indicate that all debts for Work performed by each subcontractor from the Design/Builder have been satisfied, and that the Subcontractor waives and releases any claim and any right to bring action against the City or any other person or entity pursuant to Missouri Revised Statutes 107.170 and under Chapter 429 and other statutes relating to mechanic's liens (to the extent applicable) on account of labor and materials furnished for the Project.

**C. Substantial Completion**

When Design/Builder considers the Work ready for its intended use Design/Builder shall notify the President in writing that the Work is substantially complete (except for items specifically listed by Design/Builder as incomplete) and request that City issue a certificate of Substantial Completion. Within a reasonable time thereafter, City and Design/Builder shall make an inspection of the Work to determine the status of completion. If City does not consider the Work substantially complete, City will notify Design/Builder in writing giving the reasons therefor. If City considers the Work substantially complete, City will prepare and deliver to Design/Builder a certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a list of items to be completed or corrected before final acceptance. At the time of delivery of the certificate of Substantial

Completion, City will deliver to Design/Builder a written determination as to division of responsibilities pending final acceptance between City and Design/Builder with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties and guarantees.

D. Final Acceptance

Upon written notice from Design/Builder that the Work or an agreed portion thereof is fully complete, City will make a final inspection with Design/Builder and will notify Design/Builder in writing of all particulars in which this inspection reveals that the Work is incomplete or Defective. Design/Builder shall immediately take such measures as are necessary to complete such Work or remedy such Defective Work. The City will not accept the project until ALL requirements of the Contract are satisfied, including, but not limited to the following:

1. Completion of all punch list work.
2. Provide any specified Warranties/Guarantees.
3. Provide all specified Operations & Maintenance Manuals.
4. Provide any specified training.
5. Provide any specified extra (stock) materials or equipment.
6. Provide certificate of final inspection from other agencies as required (i.e. Electrical Inspection, Mechanical Inspection, Fire Marshal Inspection, MSD, etc.)
7. Submittal of acceptable "Record" set of drawings.
8. Submittal of Certified Weekly Payrolls from Design/Builder and all Subcontractors.
9. Submit specified final documentation.
10. Any claim from Subconsultants, Subcontractors, suppliers, utilities, railroads, adjacent property, and others must be cleared.

If City is satisfied that the Work has been completed and Design/Builder's other obligations under the Contract Documents have been fulfilled, City will, within ten days after receipt of the final Monthly Report, give written notice to Design/Builder that the Work is acceptable. Otherwise, City will return the Monthly Report, indicating in writing the reasons for refusing to accept it, in which case Design/Builder shall make the necessary corrections and resubmit the final Monthly Report. Within thirty days after the presentation to City of the acceptable final Monthly Report and accompanying documentation, in appropriate form and substance and with City's notice of acceptability, the President will recommend to the Board of Public Service that such Board accept the project as City property.

Acceptance of the project by the City shall release the City from any and all further obligations to the Design/Builder.

E. Prompt Payment

The Design/Builder agrees to pay each Sub-Consultant/Contractor under this for satisfactory performance of its contract when and as required by law. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both M/W/DBE and non-M/W/DBE Sub-Consultants/Contractors.

F. Title

Title to all material, equipment, and/or any other work provided by the Design/Builder shall pass to the City upon the City's acceptance of same.

**ARTICLE XII.  
CHANGES IN THE WORK**

The City, without invalidating this Contract, may order additions, deletions or revisions in the Work that do not substantially change the intent of the Work to be provided as outlined in the Contract and/or ordinance, or to any other terms of this Contract, except that City may not order such changes without the approval of Design/Builder except when such changes are necessary to properly complete the Work as described in the Contract Documents approved by City prior to commencement of construction. Design/Builder shall, other than a Minor Change, not deviate from the Contract Documents, absent a prior written direction or approval signed by the President, and shall not perform extra work or additional work without a written direction or approval from the President prior to Design/Builder's commencement of such extra work or additional work.

If the City issues written direction to the Design/Builder, signed by an Authorized Representative of the City, to modify the Work or to perform extra or additional work, which work is necessary to properly complete the Work described in the approved Contract Documents, the Design/Builder shall promptly comply with such direction. Within ten (10) calendar days after receiving such direction from the City, the Design/Builder shall prepare and present to the City a written Change Proposal. If the magnitude or complexity of the change is such that more time is required for preparation of the proposal, the Design/Builder shall submit a written request to the City for the additional time. If Design/Builder determines that such extra or additional work or modification to the Work is not required to properly complete the Work described in the approved Contract Documents, Design/Builder shall so notify the President, together with the reasons for Design/Builder's determination, and the parties will confer to resolve the matter.

The City may order other changes as necessary to conform to any applicable law or regulation.

The City agrees not to require any extra work or changes which will increase the cost of the project above \$4,000,000 without the prior written consent of the Design/Builder. If the Design/Builder believes that extra work or changes directed by the City will have such effect, and does not consent to the additional costs, it shall notify the President within ten days and the parties will confer to resolve the matter.

**ARTICLE XIII.  
WAIVER OF RIGHTS AND INSURANCE MATTERS**

City and Design/Builder intend that all policies of insurance purchased in accordance with the Contract Documents will protect City, Design/Builder, Sub-(Consultants/Contractors), and all other individuals or entities indicated in the Contract Documents to be listed as insureds or additional insureds in such policies and will provide primary and noncontributory coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. City and Design/Builder waive all rights against each other and their respective officers, directors, employees and agents for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Sub-(Consultants/Contractors), Suppliers, Engineers and all other individuals or entities indicated in the Supplementary Conditions to be listed as insureds or additional insureds under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by City as trustee or otherwise payable under any policy so issued. In addition, City waives all rights against Design/Builder, Subcontractors and Suppliers and the officers, directors, employees and agents of any of them for business interruption, loss of use of City's property and any other consequential damages caused by, arising out of or resulting from any of such insured perils or causes of loss or any other peril or cause of loss whether or not insured. Design/Builder agrees to provide or cause to be provided insurance acceptable to the City for all Sub-Contractors, regardless of whether such Sub-Contractors are making in-kind contributions to the Project or whether such Sub-Contractors are to be paid in cash.

**ARTICLE XIV.  
PATENT LIABILITY**

Design/Builder agrees to defend, indemnify and hold harmless the City, its officials, employees and agents from and against any claim, action or suit that may be brought against them for Design/Builder's infringement of any Letters Patent in the performance of this Contract or any breach or violation of trademark or proprietary or trade secret rights of others, as well as against any judgments, decrees, damages, costs and expenses sought, adjudicated, or recovered against any of them, on account of any such actual or alleged infringement.

**ARTICLE XV.**  
**GUARANTEE/WARRANTY**

Design/Builder shall exercise high professional skill, care and diligence in the performance of its Work, and shall carry out its responsibilities in accordance with customarily accepted good professional practices. Unless otherwise extended by Warranty, if any defects, as determined by the President, in the Work are discovered within one year from notice by President of start of the Warranty Period, Design/Builder shall promptly remedy such defects and provide, at its expense, all labor, material, equipment and services necessary to correct any errors or omissions of Design/Builder or any of its Sub-(Consultants/Contractors). The one-year warranty period shall recommence, upon correction, for the specific item corrected.

This obligation shall be in addition to Design/Builder's obligations to perform its Work properly. No provision in the Contract Documents shall remove the Design/Builder's obligation to complete the Work free of defects in workmanship and material.

Design/Builder agrees that it shall remain solely responsible for the proper performance of all Work required by the Contract Documents, notwithstanding any suggestions, comments, or observations made by any other person or entity, including the City, its employees or agents, with respect to the Work.

In addition to the above, the Design/Builder shall obtain, assign and furnish any manufacturer's warranties that are provided as customary trade practice or those specifically identified in the Contract Documents that differ from the one-year warranty specified above.

Should the Design/Builder fail to remedy any such defective work, the President may cause them to be remedied and charge the cost thereof to the Design/Builder.

**ARTICLE XVI.**  
**CLEANING UP**

During the term of this Contract, Design/Builder shall keep its Work area and the surrounding area free of debris, trash, and waste materials related to or resulting from its Work. Upon completion of the Work, and prior to final payment, Design/Builder shall remove all debris, rubbish, waste and surplus materials from the site and leave the work area in a clean and orderly condition. If Design/Builder fails to maintain, or leave, its work area in a clean condition, the City may cause such cleanup to be performed by others at Design/Builder's expense.

**ARTICLE XVII.**  
**CONVENANT AGAINST UNDUE INFLUENCE**

Design/Builder warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Design/Builder, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award of making of this Contract. For breach or violation of this warranty, the City shall have the right to terminate or void this Contract without liability.

Design/Builder hereby represents and warrants that no payments have been or shall be made, directly or indirectly, by or on behalf of Design/Builder to or for the benefit of any employee or agent of City who may reasonably be expected to influence the decision to requisition, issue or take any action with respect to this Contract. Design/Builder shall allow the City and the City's accountants and/or auditors to examine, at City's expense, such of Design/Builder's books and records as may be necessary, in the accountant's reasonable opinion, to verify Design/Builder's compliance with this paragraph.

Design/Builder hereby represents and warrants that it has complied with and is not in violation of §§ 105.450 to 105.464, RSMo., as amended.

**ARTICLE XVIII.**  
**RECORDS REGARDING PAYMENT**

For a period of at least three years after the completion of this Contract, Design/Builder shall maintain, in accordance with generally accepted accounting principles, such records as are necessary to substantiate that all Monthly Reports hereunder were valid and correct. Such records shall demonstrate that the proper percentages of completion and for payments to Sub-(Consultants/Contractors)

and suppliers were reflected in the Monthly Reports and supporting documentation. The records to be maintained hereunder include, but are not limited to, all contracts, subcontracts, material bills, correspondence, accounting records, time sheets, canceled checks, orders and invoices pertaining to the City's project.

**ARTICLE XIX.**  
**RIGHT OF AUDIT**

The City and the City's accountants and/or auditors and/or others designated by the City shall be afforded access to all of the Design/Builder's books and records without any limitation whatsoever for the purpose of conducting audits. All books and records shall be open to inspection and/or reproduction within no more than fifteen (15) calendar days of written request to the extent necessary to adequately permit evaluation and verification of Design/Builder's full compliance with Contract Documents. In those instances where Design/Builder's records have been generated from computerized data or records, in addition to hard copy (reports), Design/Builder shall provide such information in an electronic format acceptable to the City.

Design/Builder shall require all Sub-(Consultants/ Contractors) and lower-tiered Sub-(Consultants/ Contractors) (regardless of basis of compensation and specifically including lump sum) to comply with the provisions of this Article by inserting same audit rights into all subcontracts. The intent of such requirement is to provide City with full and complete audit rights to the same extent as City has with Design/Builder.

It is specifically understood that City has the right to examine all of Design/Builder's underlying cost structure for the purpose of conducting audits. Such rights specifically include, but are not limited to, accounting records, job costing systems and methodologies, original detailed estimates, change order pricing, fully-loaded labor rates, percentage markups and burdens, insurance and other allocations performed on a company-wide basis, overhead rate calculations and the derivation of fixed billing rates for specific elements of cost.

**ARTICLE XX.**  
**SUSPENSION OF THE WORK**

If Design/Builder performs Work which does not comply with the Contract Documents, the President's orders, fails to correct nonconforming Work, or breaches any material obligation of Design/Builder under the Contract Documents, the President may, by written order, direct Design/Builder to stop the Work until such noncompliant Work or the breach is corrected. Design/Builder shall receive no extension in the Schedule as a result of such suspension.

**ARTICLE XXI.**  
**TERMINATION OF CONTRACT**

The President may, for good cause shown, terminate this Contract (including termination for City's convenience) upon 10 calendar days' written notice to Design/Builder. Upon receipt of such termination notice, Design/Builder shall cease performance of all Work, and shall safeguard and protect from weather, theft and vandals, any Work, equipment, goods or supplies then in progress.

**ARTICLE XXII.**  
**COMPLIANCE WITH LAWS**

Design/Builder shall comply with all federal, state, and local laws, ordinances and regulations, as may be amended, related to the Work, including, but not limited to, the Prevailing Wages on Public Works Act, Mo. Rev. Stat. § 290.210 through § 290.340 (1996), the Public Works During Excessive Unemployment Act, Mo. Rev. Stat. §§ 290.550 through 290.580 (1993), and the Missouri Prompt Payment Act, Mo. Rev. Stat. §§ 34.057 and 34.058 (1993), as applicable.

For any Work performed under this Contract, Design/Builder shall comply with the prevailing wage as provided under § 290.230, RSMo. Any penalty imposed in connection with the project for violation of such law shall be borne by the Design/Builder.

The Design/Builder shall comply with any and all City Ordinances and the State and Federal Laws controlling or limiting, in any way, the actions of those engaged on the Work or affecting the materials used in such Work. Attention is specifically called to Section 6.04.100, Revised Code of Saint Louis, 1980, which requires that any action brought on the Design/Builder's bond for claims due for labor, material, etc., must be instituted within ninety (90) days after the completion of the Contract. Design/Builder shall comply with the City's Living Wage ordinance, to the extent applicable

Further attention is specifically directed to City Ordinance 51512, Section 3.44.120 of the Revised Code of Saint Louis, 1980, relating to the elimination and prevention of discriminatory practices in matters of employment and training for employment because of race, creed, religion, national origin or ancestry.

**ARTICLE XXIII.**  
**M/WBE PARTICIPATION GOALS**

Design/Builder acknowledges the City's policy of fully utilizing the skills of minority business enterprises (MBE's) and women's business enterprises (WBE's) in all sectors of the economy to best advance the City's economic and business development objectives. Design/Builder acknowledges that the City has established a goal of at least 25% MBE participation and at least 5% WBE participation in contracts where City funds are expended. Design/Builder shall comply with Executive Order 28, as amended and executed by the Mayor of the City of St. Louis, with respect materials and work or services purchased at market rates, and will solicit donated materials and services from MBEs and WBEs. Design/Builder shall also comply with all federal, state, and local equal employment opportunity laws.

The Airport DBE Office, St. Louis Airport Authority will monitor the project to ensure the M/WBE goals are met.

**ARTICLE XXIV.**  
**RECORD DOCUMENTS**

Design/Builder shall maintain in a safe place at the Project site one record copy of all Drawings, Specifications, Addenda, Change Orders, Field Orders and Work Change Directives, in good order and annotated to show all changes made during construction. These record documents together with all approved submittals will be available to City for reference. Upon completion of the Work, these record documents and submittals, including a reproducible set of record Drawings, shall be delivered to City.

**ARTICLE XXV.**  
**ACCESS TO SITE**

Design/Builder shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, around the Project site and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the Project site shall be free from all debris, building materials and equipment creating potentially hazardous conditions.

The President or her/his designee may inspect or review any Work performed by the Design/Builder, and consult with Design/Builder, at any time. No observation, inspection, or review of the Work, or any part thereof, shall constitute acceptance or approval of Work unless specifically stated in writing.

**ARTICLE XXVI.**  
**COMPETENCE**

Design/Builder confirms that it has the responsibility for it and its Sub-(Consultants/ Contractors) maintaining all necessary licenses, registration, competence and experience to perform all of the Work.

**ARTICLE XXVII.**  
**STORAGE OF MATERIALS AND EQUIPMENT/USE OF SITE**

A. Storage Of Materials And Equipment

Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Design/Builder. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. The insurance and protection of construction materials and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Design/Builder.

B. Use of Site and Other Areas

Design/Builder shall confine construction equipment, the storage of materials and equipment and the operations of construction workers to those lands and areas permitted by the City and other land and areas permitted by Laws and Regulations, rights-of-way,

permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. Design/Builder shall assume full responsibility for any damage to any such land or area, or to the City or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work. Should any claim be made by the City or any such occupant because of the performance of the Work, Design/Builder shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. Design/Builder shall, to the fullest extent permitted by laws and regulations, indemnify and hold harmless City, City representatives, City's Consultants and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from any claim or action, legal or equitable, brought by City or any such occupant against City, or any other party indemnified hereunder to the extent caused by or based upon Design/Builder's performance of the Work.

**ARTICLE XXVIII.**  
**SAFETY/EMERGENCIES**

A. Safety

Design/Builder shall be solely responsible for the safety of its workers and others on the Project site relating to its Work, notwithstanding the presence of City, its employees or agents. Design/Builder shall post all necessary warning and danger signs related to its Work and shall comply with all requirements of the Occupational Safety and Health Act as amended. Design/Builder shall also safeguard and protect from damage related to its Work, all materials and equipment to be incorporated into the Work, as well as the Work itself, and all property of the City and adjacent land. Design/Builder shall immediately rectify, at its expense, any damage Design/Builder, its employees, agents or Sub-(Consultants/Contractors) cause to the Work, or to the property of City or any third party. The City shall not be liable for the physical condition or safety of the Project site or any improvements thereon.

Design/Builder shall designate a qualified and experienced safety representative at the Project site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

The President may immediately suspend the Work if unsafe conditions or acts are observed, and the Design/Builder shall not receive an extension of the Schedule resulting from any safety suspension.

B. Emergencies

In emergencies affecting the safety or protection of persons or the construction or property at the Project Site or adjacent thereto, Design/Builder, without special instruction or authorization from City, is obligated to act to prevent threatened damage, injury or loss.

C. Blasting

Design Builder shall obtain prior written permission from the City before performing any blasting, for any purpose whatsoever, in connection with the Project.

**ARTICLE XXIX.**  
**CONFLICTS IN DOCUMENTS/DISPUTES**

A. Conflicts in Documents

Design/Builder shall promptly upon discovery advise the President of any conflict, omission, error, or ambiguity in the Contract Documents, or between any Contract Document and actual field conditions, and the President shall resolve such conflict, omission, error or ambiguity in its sole discretion. If Design/Builder performs any such unresolved Work, Design/Builder shall bear the costs of correcting such Work.

B. Disputes

The President will determine the amount, classifications, acceptability, and fitness of the several kinds of work to be done, and will decide all questions which may arise relative to the proper performance of this Contract, and her/his decisions shall be final and conclusive.

If any dispute arises between Design/Builder and the City, the President shall resolve the dispute. In the event of any dispute between the City and Design/Builder, Design/Builder shall continue with its performance of the Work unless directed by the City to cease its performance.

The President shall resolve all disputes and his/her decision shall be final.

**ARTICLE XXX.  
PERMITS AND LICENSES**

Design/Builder shall procure and pay for any and all building permits or other permits or licenses necessary for the Work.

**ARTICLE XXXI.  
NO PRESUMPTION AGAINST THE DRAFTER**

No assumption or inference against either party shall be made because of the preparation of this Contract.

**ARTICLE XXXII.  
NO WAIVER BY CITY**

The failure of City in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.

**ARTICLE XXXIII.  
ATTORNEYS FEES**

In the event of litigation between Design/Builder and the City concerning the Project or this Contract, no party shall be entitled to recover its attorney's fees, costs, and expenses from the other party arising from such litigation.

**ARTICLE XXXIV.  
ENTIRE CONTRACT/INDEPENDENT CONTRACTOR**

A. Entire Contract

This Document and Contract Documents, as defined herein, constitute the entire Contract between the parties with respect to its subject matter and any prior Contracts, understandings, or other matters, whether oral or written, are of no further force or effect.

B. Independent Contractor

Design/Builder acknowledges it is an independent Contractor, and neither Design/Builder nor any of its Sub-(Consultants/Contractors) or employees shall be deemed an employee or agent of the City for any purpose.

**ARTICLE XXXV.  
SUBCONTRACTS, ASSIGNMENT OR TRANSFER**

Design/Builder shall not assign or transfer any right, obligation or interest under this Contract except with the prior written consent of the City. The use of Sub-(Consultants/Contractors) shall in no way relieve the Design/Builder of its primary responsibility for the Work; Design/Builder shall remain solely responsible to the City for all acts, errors, and omissions of its employees, Sub-(Consultants/Contractors) and suppliers.

Design/Builder shall present to the President a List of Sub-(Consultants/Contractors) for his approval before the Contract is fully executed. Design/Builder shall not enter into any subcontract with a party as to whom the City has a reasonable objection, or has not approved, or is not on the List of Sub-(Consultants/Contractors), and no Sub-(Consultant/Contractor) or other entity can perform any work unless said Subcontractor or other entity is approved in writing by the President.

The Contract Documents shall not be construed as creating a contractual relationship of any type between the City and any Sub-(Consultant/Contractor) or supplier of Design/Builder.

**ARTICLE XXXVI.**  
**TAXES**

Design/Builder shall pay all sales, consumer, use, gross receipts and other similar taxes required to be paid by Design/Builder in accordance with the laws and regulations which are applicable during the performance of the Work.

**ARTICLE XXXVII.**  
**COMPLAINTS**

On the complaint of any citizen and taxpayer of the City of St. Louis that any work is being done contrary to this Contract, or the Work or material used is Imperfect, the City's Board of Public Service shall examine the complaint, and may appoint two or more members of the Board to examine and report on the Work. After considering the report of its members, the Board shall make such order as shall be just and reasonable and in the public interest, and such decision shall be binding on all parties. The cost of such examination shall be borne by the Design/Builder if such complaint is well founded, and by the complainant if found to be groundless.

**ARTICLE XXXVIII.**  
**NOTICE TO PROPERTY OWNERS**

The Design/Builder shall give due notice in writing at a reasonable length of time in advance of the Work to the property owners and occupants, and also to all persons who as agents, or otherwise, may be in charge of any building, or other property, streets, gas, or water pipes, conduits, tracks, or other utilities that may or might be affected by his operations and the Design/Builder shall allow all such persons or companies, ample time to take all such measurements as may be deemed necessary for the proper protection, or adjustment, of their property and shall not cause any hindrance to, or interferences with, any such persons, companies, or the employees thereof, engaged in carrying out such protection, or adjustment work.

**ARTICLE XXXIX.**  
**GOVERNING LAWS**

This Contract shall be deemed to have been made in, and construed in accordance with the laws of the State of Missouri, and is subject to the Charter, Ordinances and Executive Orders of the City of St. Louis. The Design/Builder shall comply with all local, state and federal laws and regulations relating to the performance of this Contract.

This Contract shall be governed by and constructed in accordance with the laws of the State of Missouri.

**ARTICLE XL.**  
**SECTION HEADINGS**

All section headings contained in this Contract are for the convenience of reference only and are not intended to define, enlarge or limit the scope of any provision of this Contract.

**ARTICLE XLI.**  
**CUMULATIVE REMEDIES**

The duties and obligations herein imposed and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, any general or specific warranties, guarantees and indemnities imposed upon Design/Builder and all of the rights and remedies available to City thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by laws or regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

**ARTICLE XLII.**  
**SURVIVAL OF OBLIGATIONS**

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

acceptance of the Work and termination or completion of the Contract.

**ARTICLE XLIII.**  
**SEVERABILITY**

Should any specific provision of this Contract be held unenforceable, the remaining provisions shall remain in full force and effect.

**ARTICLE XLIV.**  
**INSURANCE/INDEMNITY**

A. Insurance

1. Design/Builder or such other entity as may be acceptable to and approved by City in its discretion and each Sub-(Consultant/Contractor) shall maintain adequate primary and non-contributory insurance underwritten by a solvent insurance company, which is acceptable to City, is duly authorized to transact business in the State of Missouri as granted by the Director, State of Missouri Department of Insurance, and meets the requirements set forth in the Contract Documents. A certificate of authority, issued by the Director, Missouri Department of Insurance, may be requested by the City.
2. Insurance coverage shall meet minimum requirements as stated in the Contract Documents and shall be effective immediately upon the execution of this Contract to continue so long as Work is performed hereunder or for such longer period as specifically hereinafter provided.
3. A standard Certificate of Insurance (Exhibit C), which has been devised for use in the Board of Public Service contracts, is attached for completion. This form, and its legal use, has been approved by the City Counselor of the City of St. Louis.

B. Indemnity

1. Design/Builder shall defend, indemnify, and hold harmless the City, its officials, and employees from any and all loss, damages, costs, expenses, claims and causes of action (collectively, "Loss") which may be imposed upon or asserted against City, its officials, or employees where such Loss is caused or incurred, or alleged to be caused or incurred, in whole or in part as a result of the negligence or other actionable fault of Design/Builder, its employees, Sub-(Consultants/Contractors) or affiliates. This indemnity shall apply notwithstanding the joint, concurrent, contributory or comparative fault or negligence of the City or any third party. Nothing in this Article shall be deemed to impose liability on Design/Builder to indemnify City when the City's negligence or other actionable fault is the sole cause of Loss.
2. Design/Builder further agrees to defend, indemnify and hold harmless the City, its officials, agents and employees against all claims, liens, demands or suits which may be asserted by any Sub-(Consultant/Contractor), supplier, agent, or employee of Design/Builder relating to the Project.
3. In the event full indemnity pursuant to this Article is unenforceable under any law, Design/Builder and City shall bear any Loss in proportion to their respective fault.
4. Should any entity file a lien against the property, Design/Builder shall promptly act to remove the lien from the property. Should Design/Builder fail to remove the lien from the property within a time period deemed reasonable by the President, the City may make any payment City deems necessary to remove the lien and Design/Builder agrees to repay to the City the amount of such payment within ten (10) days following the City's payment.

**ARTICLE XLV.**  
**BONDS**

Design/Builder or such other entity as may be acceptable to and approved by City in its discretion shall obtain, within ten (10) calendar days after the Construction Notice to Proceed and before commencing work, a Performance and Payment Bond in an amount acceptable to and approved by City in its sole discretion. Bonds shall be executed by a surety company satisfactory to the City of

St. Louis and shall meet the requirements set forth in Contract Documents.

The bond shall guarantee and secure the payment of all Sub-(Consultants/Contractors) and suppliers for labor, equipment and/or materials supplied to or for the benefit of Design/Builder or the Work, as well as Design/Builder's proper performance of the Work. The performance bond shall remain in full force and effect for at least the specified Warranty Period.

A form of bond (Exhibit A) is attached.

**DESIGN/BUILDER:**

ATTEST: \_\_\_\_\_

COMPANY: \_\_\_\_\_

(SEAL)

SECRETARY

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

**BONDING CO.:**

(SEAL)

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

**CITY OF ST. LOUIS, MISSOURI:**

COUNTERSIGNED:

\_\_\_\_\_  
COMPTROLLER

Date

The foregoing Contract and Bond were approved by the Board of Public Service on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
PRESIDENT, BOARD OF PUBLIC SERVICE

\_\_\_\_\_  
SECRETARY, BOARD OF PUBLIC SERVICE

The foregoing Contract and Bond are in due form according to law.

\_\_\_\_\_  
City COUNSELOR Date

The foregoing Bond and Securities therein are hereby approved.

\_\_\_\_\_  
COMPTROLLER

Date

\_\_\_\_\_  
REGISTER

Date

COMPTROLLER DOCUMENT NUMBER: \_\_\_\_\_

CONTRACT NO.

CONTRACT NO.

**EXHIBIT A**

**Form of Bond For Payment and Performance**

FOR THE FAITHFUL PERFORMANCE of all and singular the terms and stipulations of this contract, in every particular, the said \_\_\_\_\_ as Principal, and \_\_\_\_\_

as Security, parties of the first part, hereby bind themselves and their respective heirs, executors, administrators, successors, and assigns, unto the said City of St. Louis, in the penal sum of \_\_\_\_\_ Lawful money of the United States, conditioned that in the event the said \_\_\_\_\_ shall faithfully and properly perform all the provisions and terms of the foregoing contract, including those under which the principal agrees to pay the

prevailing hourly rate of wages for each craft or type of workman required to execute this contract in the locality as determined by the Department of Labor and Industrial Relations of Missouri or by final judicial determination pursuant to the provisions of Sections 290.210 to 290.340, inclusive, of the Revised Statutes of Missouri, 1969, and shall as soon as the work contemplated by said contract is completed, pay to the proper parties all amounts due for material, lubricants, oil, gasoline, grain, hay, feed, coal and coke, repairs on machinery, groceries and food stuffs, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums, both compensation, and all other kinds of insurance, on said work, and for all labor performed in such work whether by sub-(Consultant/Contractor) or otherwise, then this obligation to be void, otherwise to remain in full force and effect, and the same may be sued on at the instance of any material man, laboring man, mechanic, or other interested party, in the name of the City of St. Louis, to the use of such parties, for any breach of the conditions hereof.

And \_\_\_\_\_ as Surety, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

EXHIBIT B - CERTIFICATE OF INSURANCE

NAME OF INSURED: \_\_\_\_\_

CONTRACT NO.:

KIND OF COVERAGE:

Workmen's Compensation: Policy Number: \_\_\_\_\_  
Insurance Co.: \_\_\_\_\_  
Dates of Coverage: From \_\_\_\_\_ to \_\_\_\_\_

Commercial General Liability Policy Number: \_\_\_\_\_  
Insurance Co.: \_\_\_\_\_  
Dates of Coverage: From \_\_\_\_\_ to \_\_\_\_\_  
Each Occurrence: \$ \_\_\_\_\_  
Aggregate: \$ \_\_\_\_\_

Automobile Public Liability and Property Damage: Policy Number: \_\_\_\_\_  
Insurance Co.: \_\_\_\_\_  
Dates of Coverage: From \_\_\_\_\_ to \_\_\_\_\_  
Combined Single Limit (each accident):  
\$ \_\_\_\_\_

Builders Risk: Policy Number: \_\_\_\_\_  
Insurance Co.: \_\_\_\_\_  
Dates of Coverage: From \_\_\_\_\_ to \_\_\_\_\_  
Coverage Amount: \_\_\_\_\_

Professional Liability: Policy Number: \_\_\_\_\_  
Insurance Co.: \_\_\_\_\_  
Dates of Coverage: From \_\_\_\_\_ to \_\_\_\_\_  
Coverage Amount: \_\_\_\_\_

If any policy described above is cancelled during its term by the company or the coverage afforded by it is reduced, the insurer will mail notice, by registered mail, thirty (30) days before the effective date of such cancellation or change to: Department of the President, Board of Public Service, Room 305 City Hall, St. Louis, Missouri 63103.

Such policy also covers the City of St. Louis, Missouri as an additional insured with respect to all operations covered under this

contract; however, reserving to the City all rights to recover damages to property owned by the City as a result of negligence of the Design/Builder, his Sub-(Consultants/Contractors), employees, or agents. Such insurance shall be primary and non-contributory.

The Compensation policy covers all employees of the named insured engaged in the operation, care and maintenance of the premises designated.

Such insurance as is afforded by the Liability policy with respect to liability assumed by the insured under a contract applies also to that part of contract between the named insured and City of St. Louis dated \_\_\_\_\_, reading:

"The Design/Builder shall take out and maintain during the life of this contract adequate Commercial General Liability Insurance in the amounts specified to protect the City of St. Louis, the Design/Builder, and any Subcontractor or Subconsultant performing work covered by this contract from all claims for damages for personal injury including accidental death, as well as from claims for property damages, which may arise from operations under this contract, whether such operations be by himself or by any Subcontractor, Subconsultant or by anyone directly or indirectly employed by either of them; and, he shall furnish the President with certificates of insurance showing such coverages." Such policy shall be primary and non-contributory.

Name of Insurance Company: \_\_\_\_\_

By Insurance Agent: \_\_\_\_\_  
(must be an original signature)

**Approved: February 16, 2007**