

**NEOSHO COUNTY COMMUNITY COLLEGE
BOARD OF TRUSTEES**

AGENDA

**May 9, 2013 – 5:30 P.M.
Student Union, Room 209**

- I. Call to Order**
- II. Roll Call**
- III. Public Comment**
- IV. Approval of the Agenda**
- V. Consent Agenda**
 - A. Minutes from April 11, 2013, Meeting
 - B. Claims for Disbursement for April 2013
 - C. Personnel
 - D. Course Inventory Revisions/Additions
- VI. Reports**
 - A. Ash Grove Valuation – Randy Pryor
 - B. Faculty Senate – Charles Babb
 - C. Student Learning Division – Jim Genandt
 - D. Treasurer’s Report – Sandi Solander
 - E. President’s Report – Dr. Brian Inbody
- VII. Old Business**
 - A. Executive Session: Employer-Employee Negotiations
 - B. Resolution 2013-19: Approval of the 2013-14 Negotiated Agreement
- VIII. New Business**
 - A. Resolution 2013-27: 2012-2013 Budget Amendment
 - B. Resolution 2013-28: Chanute Biology Lab Design Build Contract
 - C. Resolution 2013-29: Eastern Kansas Technology Center (EKTC) Project Design Build Contract
 - D. Resolution 2013-30: Student Learning Division Restructure
 - E. Resolution 2013-31: Allied Health Instructor for Ottawa Campus
 - F. Resolution 2013-32: Welding Instructor for the Eastern Kansas Rural Technology Center in Garnett
 - G. Resolution 2013-33: Career and Technical Education Coordinator
 - H. Executive Session: Non-Elected Personnel
 - I. Executive Session: Attorney/Client Privilege
 - J. First reading: Weapons Security Policy
 - K. Executive Session: Non-Elected Personnel
- IX. Adjournment**

**NEOSHO COUNTY COMMUNITY COLLEGE
BOARD OF TRUSTEES**

MINUTES

May 9, 2013 – 5:30 P.M.

Student Union, Room 209

I. Call to Order

David Peter called the meeting to order at 5:30 p.m. in room 209 of the Student Union.

II. Roll Call

The following members were present: Patricia Griffith, Lori Kiblinger, David Peter and Dennis Peters.

Also attending were Charles Babb, Chanute Tribune, Marie Gardner, Jim Genandt, Denise Gilmore, tim Heenan, Dr. Brian Inbody, will Jordan, Jason Kegler, Bridger Keyes, Brenda Krumm, Haylee Merrill, Kent Pringle, Randy Pryor, Sarah Robb, Ben Smith, Sandi Solander, and Forrest Turner.

III. Public Comment

The Trustees recognized Bridger Keyes for winning the Kansas State Welding Championship. This is the fifth year in a row that an NCCC student has won this award. They also recognized Forrest Turner and Haylee Merrill, two members of the Academic Excellence Challenge Team in attendance. The team placed second in state competition. Forrest Turner won MVP for scoring the most points in the State of Kansas throughout the full competition this year.

IV. Approval of the Agenda

On motion by Dennis Peters and second by Lori Kiblinger the agenda was approved as printed.

V. Consent Agenda

On motion by Dennis Peters and second by Lori Kiblinger the following items were approved by consent:

- A. Minutes from the April 11, 2013, Meeting
- B. Claims for Disbursement for April 2013
- C. Personnel

- 1. Resignation of Part-time Library Clerk

It was the president's recommendation that the Board accept the resignation of Chloe Donaldson, part-time Library Clerk. Ms. Donaldson's resignation was effective May 2, 2013.

- 2. Nursing Instructor

It was the president's recommendation that the Board approve the employment of Kristen Varner-Lee as Nursing Instructor. Ms. Varner-Lee received a Bachelor of Science in Nursing from Washburn University and is currently pursuing her Master of Science in Nursing Education at MidAmerica Nazarene University.

Ms. Varner-Lee has been an adjunct clinical instructor for NCCC since 2006, was an RN Staff Nurse/House Supervisor and Obstetrical Supervisor at Coffey County Hospital, an RN Staff Nurse at St. Francis Health Center in Topeka, and an RN Staff Nurse at Topeka-Shawnee County Health Agency.

Ms. Varner-Lee will be paid at MS, Step 10 level (\$37,760 – to be adjusted after negotiations are complete for 2013-14) with a beginning date of August 19, 2013.

3. Resignation of Assistant Men's Basketball Coach

It was the president's recommendation that the Board accept the resignation of Brandon Lesovsky, Assistant Men's Basketball Coach. Mr. Lesovsky's resignation shall be effective May 17, 2013.

D. Course Inventory Revisions/Additions

Before each semester begins, the Kansas Board of Regents asks coordinated institutions to submit a list of courses that the college is capable of teaching in that semester, but is not compelled to offer. This list of courses is referred to as the course inventory. Each change to the inventory must be approved by the academic department where it originated, the curriculum committee, the Chief Academic Officer, the President of the College and finally, the College Board of Trustees, as per NCCC policy.

**Course Inventory Changes
May 2013 Board Meeting**

New Courses

ALMA 135	Coding Basics for the Medical Office, 3 credit hours
BIOL 280	Human Dissection, 2 credit hours
HPER 204	Introduction to Athletic Training, 2 credit hours
HPER 207	Care and Prevention of Athletic Injuries and Lab, 3 credit hours
PSYC 253	Human Sexuality, 3 credit hours

**NEOSHO COUNTY COMMUNITY COLLEGE
MASTER COURSE SYLLABUS**

COURSE IDENTIFICATION

Course Code/Number: ALMA 135
Course Title: Coding Basics for the Medical Office

Division: Applied Science (AS) Liberal Arts (LA) Workforce Development (WD)
 Health Care (HC) Lifetime Learning (LL) Nursing Developmental

Credit Hour(s): 3
Effective Date: Fall 2013
Assessment Goal Per Outcome: 70%

COURSE DESCRIPTION

This course is designed to study the basic concepts of Current Procedural Terminology (CPT), International Classification of Diseases (ICD-10-CM) and Level II Health Care Common Procedural Coding System (HCPCS) Coding. The student will gain an understanding of how these coding methods serve the medical office for reimbursement and management of healthcare services. The course is designed for medical assistant students or those wanting a basic understanding of the medical coding process and may also assist students in the requirement to sit for the national Certified Professional Coder (CPC) exam through the American Association of Professional Coders (AAPC).

MINIMUM REQUIREMENTS/PREREQUISITES AND/OR COREQUISITES

ALHE 105 Medical Terminology and ALMA 125 Human Body in Health and Disease; or permission of program coordinator.

TEXTS

* The official list of textbooks and materials for this course is found on Inside NC.
<http://www.neosho.edu/ProspectiveStudents/Registration/CourseSyllabi.aspx>

GENERAL EDUCATION OUTCOMES

1. Practice Responsible Citizenship through:
 - identifying rights and responsibilities of citizenship,
 - identifying how human values and perceptions affect and are affected by social diversity,
 - identifying and interpreting artistic expression.
2. Live a healthy lifestyle (physical, intellectual, social) through:
 - listing factors associated with a healthy lifestyle and lifetime fitness,
 - identifying the importance of lifetime learning,
 - demonstrating self-discipline, respect for others, and the ability to work collaboratively as a team.
3. Communicate effectively through:
 - developing effective written communication skills,
 - developing effective oral communication and listening skills.
4. Think analytically through:
 - utilizing quantitative information in problem solving,
 - utilizing the principles of systematic inquiry,

- utilizing various information resources including technology for research and data collection.

COURSE OUTCOMES/COMPETENCIES (as Required)

At the end of this course, a student should be able to do the following:

- 1) Identify the basic concepts of CPT coding and its purpose.**
 - a. Explain why the CPT coding system was developed and its significance.
 - b. Demonstrate an understanding of the CPT structure in the paper and electronic format including the CPT code format, manual sections, symbols and unlisted procedures.
 - c. Analyze the principles of Evaluation and Management (E/M) code assignment and modifiers.
- 2) Identify the basic concepts of ICD-10 coding and its purpose.**
 - a. Explain reasons for conversion to ICD-10-CM system and identify internal and external customers of coded data and their unique needs.
 - b. Demonstrate an understanding of the ICD-10-CM structure in the paper and electronic format.
 - c. Define the steps to diagnosis coding and examine how this relates to different body systems.
- 3) Identify the basic concepts in HCPCS Level II coding and its purpose.**
 - a. Explain what the HCPCS coding system was designed for and the different levels.
 - b. Explain the HCPCS code structure and modifiers.
- 4) Perform workplace related tasks associated with medical coding professionals.**
 - a. Explain the purpose of coding for reimbursement, disease reporting, influence of quality improvement & risk management.
 - b. Assign and sequence the appropriate diagnostic and procedural codes based on using each coding system with appropriate modifiers, assigned procedures and to the highest specificity.
 - c. Examine accuracy and productivity standards and how these are assessed for employment.
 - d. Evaluate national standards for Ethics of Coding and explain causes for legal action, such as upcoding.

MINIMUM COURSE CONTENT

- 1) Introduction to ICD-10 Coding.
- 2) Introduction to CPT Coding.
- 3) Introduction to HCPCS Level II Coding.
- 4) Ethics and professionalism for medical professionals performing coding in the workplace.

STUDENT REQUIREMENTS AND METHOD OF EVALUATION

The instructional method is designed for the online platform, so a reliable internet provider and computer are required for success in the course. Students must participate in all activities, as well as complete all assignments in a timely manner to be successful. Each concept builds upon the next, so one cannot advance through the course without completing each section as laid out throughout the course. Students will be assigned a variety of reading assignments, discussion forums, scenarios, and written assignments and any or all of the following: research projects, group projects, exams, written reports, course projects, simulation modules and case studies.

Grading Scale:

- A = 90 to 100%
- B = 80 to 89%
- C = 70 to 79%
- D = 60 to 69%
- F = 59% and below

ASSESSMENT OF STUDENT GAIN

The purpose of assessing student learning at Neosho County Community College is to ensure the educational purposes of the institution are met and appropriate changes are made in program development and classroom instruction to allow for student success. The instructor(s) of this course will determine the methods of assessment most appropriate and complete an assessment report at the end of the course.

ATTENDANCE POLICY

1. NCCC values interactive learning which promotes student engagement in the learning process. To be actively engaged, the student must be present in the learning environment.
2. Unless students are participating in a school activity or are excused by the instructor, they are expected to attend class. If a student's absences exceed one-eighth of the total course duration, (which equates to one hundred (100) minutes per credit hour in a face-to-face class) the instructor has the right, but is not required, to withdraw a student from the course. Once the student has been dropped for excessive absences, the registrar's office will send a letter to the student, stating that he or she has been dropped. A student may petition the chief academic officer for reinstatement by submitting a letter stating valid reasons for the absences within one week of the registrar's notification. If the student is reinstated into the class, the instructor and the registrar will be notified. Please refer to the Student Handbook/Academic Policies for more information
3. Absences that occur due to students participating in official college activities are excused except in those cases where outside bodies, such as the State Board of Nursing, have requirements for minimum class minutes for each student. Students who are excused will be given reasonable opportunity to make up any missed work or receive substitute assignments from the instructor and should not be penalized for the absence. Proper procedure should be followed in notifying faculty in advance of the student's planned participation in the event. Ultimately it is the student's responsibility to notify the instructor in advance of the planned absence.

ACADEMIC INTEGRITY

NCCC expects every student to demonstrate ethical behavior with regard to academic pursuits. Academic integrity in coursework is a specific requirement. Definitions, examples, and possible consequences for violations of Academic Integrity, as well as the appeals process, can be found in the College Catalog, Student Handbook, and/or Code of Student Conduct and Discipline.

ELECTRONIC DEVICE POLICY

Student cell phones and other personal electronic devices not being used for class activities must not be accessed during class times unless the instructor chooses to waive this policy.

NOTE:

Information and statements in this document are subject to change at the discretion of NCCC. Students will be notified of changes and where to find the most current approved documents.

NOTE:

If you are a student with a disability who may need accommodation(s) under the Americans with Disabilities Act (ADA), please notify studentdevelopmentteam@neosho.edu, Chanute Campus, 620-431-2820, Ext. 213., or Ottawa Campus, 785-242-2067 ext. 305, as soon as possible. You will need to bring your documentation for review in order to determine reasonable accommodations, and then we can assist you in arranging any necessary accommodations.

COURSE NOTES

Please see Syllabus Supplement for any additional course details.

NEOSHO COUNTY COMMUNITY COLLEGE MASTER COURSE SYLLABUS

COURSE IDENTIFICATION

Course Code/Number: BIOL 280
Course Title: Human Dissection

Division: Applied Science (AS) Liberal Arts (LA) Workforce Development (WD)
 Health Care (HC) Lifetime Learning (LL) Nursing Developmental

Credit Hour(s): 1-2
Effective Date: May 2013
Assessment Goal Per Outcome: 80%

COURSE DESCRIPTION

This course is designed to provide advanced study of the human species through the dissection of a cadaver. Students will learn and utilize effective dissection techniques, review and enhance prior knowledge of human anatomy and physiology, and gain a real and experiential appreciation for human anatomy. The dissection activity will prepare specimens for demonstration purposes in Human Anatomy and Physiology (BIOL 257/258).

MINIMUM REQUIREMENTS/PREREQUISITES AND/OR COREQUISITES

Prerequisite: BIOL 257/258 with a "B" or better or permission of instructor.

TEXTS

The official list of textbooks and materials for this course is found on Inside NC.
<http://www.neosho.edu/ProspectiveStudents/Registration/CourseSyllabi.aspx>

GENERAL EDUCATION OUTCOMES

1. Practice Responsible Citizenship through:
 - identifying rights and responsibilities of citizenship,
 - identifying how human values and perceptions affect and are affected by social diversity,
 - identifying and interpreting artistic expression.
2. Live a healthy lifestyle (physical, intellectual, social) through:
 - listing factors associated with a healthy lifestyle and lifetime fitness,
 - identifying the importance of lifetime learning,
 - demonstrating self-discipline, respect for others, and the ability to work collaboratively as a team.
3. Communicate effectively through:
 - developing effective written communication skills,
 - developing effective oral communication and listening skills.
4. Think analytically through:
 - utilizing quantitative information in problem solving,
 - utilizing the principles of systematic inquiry,
 - utilizing various information resources including technology for research and data collection.

COURSE OUTCOMES/COMPETENCIES (as Required)

1. Demonstrate effective dissection techniques used to identify, isolate and preserve structures of the human cadaver.
2. Identify specific details of the human anatomical structure as listed by the course instructor.
3. Demonstrate respect for the cadaver through compliance with all guidelines of the course.
4. Present to other students through cadaver demonstrations.

MINIMUM COURSE CONTENT

The following topics must be included in this course. Additional topics may also be included. The timing and availability for each portion of the dissection will be flexible depending on the nature of the cadaver and the skill set of the students in the course.

1. Introduction and Safety Procedures/Guidelines
2. Skin removal and Muscle Dissection
 - Anterior Cervical and Buccal Muscles
 - Anterior Thoracic and Acromial Muscles
 - Anterior Abdominal Muscles
 - Posterior Cervical and Acromial Muscles
 - Dorsal Muscles
 - Upper Extremities: Brachial, Antebrachial, and Palmar Muscles
 - Lower Extremities: Coxal, Femoral, Crural, and Pedal Muscles
3. Organs of the Thoracic and abdominopelvic cavities
 - Cervical and Facial Organs
 - Thoracic Organs (heart, lungs, diaphragm)
 - Abdominal Organs (Digestive organs, Blood Vessels, Kidneys)
 - Pelvic Organs (Urinary and Reproductive organs)
4. Cranial Cavity
 - Removal and Dissection of Brain
5. Individual Cadaver Projects

STUDENT REQUIREMENTS AND METHOD OF EVALUATION

90 – 100 %	A
80 – 89 %	B
70 – 79 %	C
60 – 69 %	D
0 – 59 %	F

Dissection Participation

Students will be required to attend class with the instructor once a week. Additionally, students will log 90 additional minutes per week of individual dissection.

Lab Practical Exams

Individual Cadaver Project

Oral Presentations/Demonstrations

ASSESSMENT OF STUDENT GAIN

The purpose of assessing student learning at Neosho County Community College is to ensure the educational purposes of the institution are met and appropriate changes are made in program development and classroom

instruction to allow for student success. The instructor(s) of this course will determine the methods of assessment most appropriate and complete an assessment report at the end of the course.

Attendance Policy

1. NCCC values interactive learning which promotes student engagement in the learning process. To be actively engaged, the student must be present in the learning environment.
2. Unless students are participating in a school activity or are excused by the instructor, they are expected to attend class. If a student's absences exceed one-eighth of the total course duration, (which equates to one hundred (100) minutes per credit hour in a face-to-face class) the instructor has the right, but is not required, to withdraw a student from the course. Once the student has been dropped for excessive absences, the registrar's office will send a letter to the student, stating that he or she has been dropped. A student may petition the chief academic officer for reinstatement by submitting a letter stating valid reasons for the absences within one week of the registrar's notification. If the student is reinstated into the class, the instructor and the registrar will be notified. Please refer to the Student Handbook/Academic Policies for more information
3. Absences that occur due to students participating in official college activities are excused except in those cases where outside bodies, such as the State Board of Nursing, have requirements for minimum class minutes for each student. Students who are excused will be given reasonable opportunity to make up any missed work or receive substitute assignments from the instructor and should not be penalized for the absence. Proper procedure should be followed in notifying faculty in advance of the student's planned participation in the event. Ultimately it is the student's responsibility to notify the instructor in advance of the planned absence.

ACADEMIC INTEGRITY

NCCC expects every student to demonstrate ethical behavior with regard to academic pursuits. Academic integrity in coursework is a specific requirement. Definitions, examples, and possible consequences for violations of Academic Integrity, as well as the appeals process, can be found in the College Catalog, Student Handbook, and/or Code of Student Conduct and Discipline.

ELECTRONIC DEVICE POLICY

Student cell phones and other personal electronic devices not being used for class activities must not be accessed during class times unless the instructor chooses to waive this policy.

NOTE:

Information and statements in this document are subject to change at the discretion of NCCC. Students will be notified of changes and where to find the most current approved documents.

NOTE:

If you are a student with a disability who may need accommodation(s) under the Americans with Disabilities Act (ADA), please notify studentdevelopmentteam@neosho.edu, Chanute Campus, 620-431-2820, ext. 213., or Ottawa Campus, 785-242-2067 ext. 305, as soon as possible. You will need to bring your documentation for review in order to determine reasonable accommodations, and then we can assist you in arranging any necessary accommodations.

COURSE NOTES

A written set of safety guidelines and laboratory rules will be provided to you in writing on the first day of class. You must read them and sign an acknowledgement form before you may gain access to the dissection laboratory.

Maintaining integrity and respect for the cadaver will be essential for all students. We may use live imagery technology inside the lab and for testing purposes, however no images of the cadaver will be allowed to be removed from the laboratory. Any derogatory, disrespectful, or offensive comments made about the cadaver to other students, or on any social network (Facebook, Twitter, etc.) will not be tolerated and **can result in an immediate academic withdrawal by the instructor**. This course will follow the NCCC academic honesty policy especially with regard to “behavior...which is disruptive of a course of study” and the Code of Student Conduct and Discipline. Please refer to the college catalog and/or the NCCC Student Handbook for more information. This course is entirely dependent on your active participation in the dissection procedures. It is expected that you will attend all required hours. Also, it is expected that you will take an active interest in dissection work beyond your own.

NEOSHO COUNTY COMMUNITY COLLEGE MASTER COURSE SYLLABUS

COURSE IDENTIFICATION

Course Code/Number: HPER 204
Course Title: Introduction to Athletic Training

Division: Applied Science (AS) Liberal Arts (LA) Workforce Development (WD)
 Health Care (HC) Lifetime Learning (LL) Nursing Developmental

Credit Hour(s): 2
Effective Date: Fall 2013
Assessment Goal Per Outcome: 80%

COURSE DESCRIPTION:

The student will be presented with: the definition of what an athletic trainer is and does, the “sports medicine team,” legal concerns, environmental considerations, protective equipment selection, fit and proper use, mechanism and types of injury incurred by the physically active, emergency procedures and on-and-off the fields acute care of injury with discussion specific.

MINIMUM REQUIREMENTS/PREREQUISITES AND/OR COREQUISITES

None

TEXTS

* The official list of textbooks and materials for this course is found on Inside NC.
<http://www.neosho.edu/ProspectiveStudents/Registration/CourseSyllabi.aspx>

GENERAL EDUCATION OUTCOMES

1. Practice Responsible Citizenship through:
 - identifying rights and responsibilities of citizenship,
 - identifying how human values and perceptions affect and are affected by social diversity,
 - identifying and interpreting artistic expression.
2. Live a healthy lifestyle (physical, intellectual, social) through:
 - listing factors associated with a healthy lifestyle and lifetime fitness,
 - identifying the importance of lifetime learning,
 - demonstrating self-discipline, respect for others, and the ability to work collaboratively as a team.
3. Communicate effectively through:
 - developing effective written communication skills,
 - developing effective oral communication and listening skills.
4. Think analytically through:
 - utilizing quantitative information in problem solving,
 - utilizing the principles of systematic inquiry,
 - utilizing various information resources including technology for research and data collection.

COURSE OUTCOMES/COMPETENCIES (as Required)

At the end of this course, a student should be able to:

1. Describe the different types of protective equipment and how to make proper adjustments to better fit the athlete.
2. Understand basic concepts of legal liability as they apply to the certified athletic trainer and his/her performance of job responsibilities (tort, negligence, standard of care, etc.).
3. Describe the role of the certified athletic trainer as a health care provider, a promoter of athletic training as a professional discipline, and a provider of instruction in athletic training/sports medicine subject matter areas.
4. Demonstrate how to evaluate injuries and illnesses commonly sustained by the competitive athlete and formulate an impression of the injury/illness for the purpose of administering proper first aid and emergency care.

MINIMUM COURSE CONTENT

1. Labs (Amato: 18 total):
 Modalities (Amato: 18 total)

TMOD-1: Ice Bag	TMOD-2: Moist Heat	TMOD-3: Parafin Bath
TMOD-6: Ice Massage	TMOD-7: Contrast Baths	TMOD-9-13: Massage
TMOD-14: Compression	TMOD-15-17: Ultrasound	TMOD-19: E-Stim
TMOD-4: Cold Whirlpool	TMOD- 8: Hot Whirlpool	TMOD-22: Cleaning Whirlpool
2. Modules (Knight: 12 total):

B1: Policy/Procedures	B2: Injury Record Keeping	
C1: Emergency/Acute Care	C2: Initial Assessment	C3: Emergency Action Plan
C4: CPR	C5: Choking/Shock	C6: Emergency Transportation
C7: Health Services	C10: Universal Precautions; BBP	
Q1: Athletic Training Practices		Q3: NATA

STUDENT REQUIREMENTS AND METHOD OF EVALUATION

Attendance/Participation	10%
Assignments	20%
Presentations	10%
Chapter Quizzes (8 total)	25%
Practical Quizzes (2 total)	10%
Labs (30 total)	15%
Final Comprehensive Exam	<u>10%</u>
Total	100%

GRADING SCALE

100- 90%	A
89-80%	B
79-70%	C
69-60%	D
59- 0%	F

ASSESSMENT OF STUDENT GAIN

The purpose of assessing student learning at Neosho County Community College is to ensure the educational purposes of the institution are met and appropriate changes are made in program development and classroom instruction to allow for student success. The instructor(s) of this course will determine the methods of assessment most appropriate and complete an assessment report at the end of the course.

ATTENDANCE POLICY

1. NCCC values interactive learning which promotes student engagement in the learning process. To be actively engaged, the student must be present in the learning environment.
2. Unless students are participating in a school activity or are excused by the instructor, they are expected to attend class. If a student's absences exceed one-eighth of the total course duration, (which equates to one hundred (100) minutes per credit hour in a face-to-face class) the instructor has the right, but is not required, to withdraw a student from the course. Once the student has been dropped for excessive absences, the registrar's office will send a letter to the student, stating that he or she has been dropped. A student may petition the chief academic officer for reinstatement by submitting a letter stating valid reasons for the absences within one week of the registrar's notification. If the student is reinstated into the class, the instructor and the registrar will be notified. Please refer to the Student Handbook/Academic Policies for more information
3. Absences that occur due to students participating in official college activities are excused except in those cases where outside bodies, such as the State Board of Nursing, have requirements for minimum class minutes for each student. Students who are excused will be given reasonable opportunity to make up any missed work or receive substitute assignments from the instructor and should not be penalized for the absence. Proper procedure should be followed in notifying faculty in advance of the student's planned participation in the event. Ultimately it is the student's responsibility to notify the instructor in advance of the planned absence.

ACADEMIC INTEGRITY

NCCC expects every student to demonstrate ethical behavior with regard to academic pursuits. Academic integrity in coursework is a specific requirement. Definitions, examples, and possible consequences for violations of Academic Integrity, as well as the appeals process, can be found in the College Catalog, Student Handbook, and/or Code of Student Conduct and Discipline.

ELECTRONIC DEVICE POLICY

Student cell phones and other personal electronic devices not being used for class activities must not be accessed during class times unless the instructor chooses to waive this policy.

NOTE:

Information and statements in this document are subject to change at the discretion of NCCC. Students will be notified of changes and where to find the most current approved documents.

NOTE:

If you are a student with a disability who may need accommodation(s) under the Americans with Disabilities Act (ADA), please notify studentdevelopmentteam@neosho.edu, Chanute Campus, 620-431-2820, Ext. 213., or Ottawa Campus, 785-242-2067 ext. 305, as soon as possible. You will need to bring your documentation for review in order to determine reasonable accommodations, and then we can assist you in arranging any necessary accommodations.

COURSE NOTES

**NEOSHO COUNTY COMMUNITY COLLEGE
MASTER COURSE SYLLABUS**

COURSE IDENTIFICATION

Course Code/Number: HPER 207

Course Title: Care & Prevention of Athletic Injuries & Lab

Division: Applied Science (AS) Liberal Arts (LA) Workforce Development (WD)
 Health Care (HC) Lifetime Learning (LL) Nursing Developmental

Credit Hour(s): 3

Effective Date: Fall 2013

Assessment Goal Per Outcome: 80%

COURSE DESCRIPTION:

The student will be introduced to the mechanism and types of injuries that occur by the physically active with information specific to the foot, ankle, lower leg, knee, thigh, hip, pelvis, shoulder, elbow, wrist, hand, fingers, head, and spine. Wrapping and taping techniques will also be presented and practiced.

MINIMUM REQUIREMENTS/PREREQUISITES AND/OR COREQUISITES

None

TEXTS

* The official list of textbooks and materials for this course is found on Inside NC.

<http://www.neosho.edu/ProspectiveStudents/Registration/CourseSyllabi.aspx>

GENERAL EDUCATION OUTCOMES

1. Practice Responsible Citizenship through:
 - identifying rights and responsibilities of citizenship,
 - identifying how human values and perceptions affect and are affected by social diversity,
 - identifying and interpreting artistic expression.
2. Live a healthy lifestyle (physical, intellectual, social) through:
 - listing factors associated with a healthy lifestyle and lifetime fitness,
 - identifying the importance of lifetime learning,
 - demonstrating self-discipline, respect for others, and the ability to work collaboratively as a team.
3. Communicate effectively through:
 - developing effective written communication skills,
 - developing effective oral communication and listening skills.
4. Think analytically through:
 - utilizing quantitative information in problem solving,
 - utilizing the principles of systematic inquiry,
 - utilizing various information resources including technology for research and data collection.

COURSE OUTCOMES/COMPETENCIES (as Required)

At the end of this course, a student should be able to:

1. Demonstrate a basic knowledge of normal anatomical structures of the human body.

2. Identify common injuries that athletes sustain on major body parts.
3. Demonstrate the techniques and procedures for an evaluation of common athletic injuries including: history, inspection, palpation, and special evaluation techniques.
4. List common risk factors and causes of athletic injuries in various sports identified by contemporary epidemiological studies and athletic injury/illness surveillance systems.
5. Demonstrate a necessary amount of knowledge on how to correctly apply tape for support of various athletic injuries.

MINIMUM COURSE CONTENT

1. Application of appropriate preventive taping and wrappings consistent with sound anatomical and biomechanical principles.
2. Evaluation procedures for various joints and specific injuries.

STUDENT REQUIREMENTS AND METHOD OF EVALUATION

Attendance/Participation	10%
Assignments	10%
Chapter Homework	10%
Chapter Quizzes	20%
Practical Quizzes	20%
Labs	10%
Final Comprehensive Exam	<u>20%</u>
Total	100%

GRADING SCALE

100- 90%	A
89-80%	B
79-70%	C
69-60%	D
59- 0%	F

ASSESSMENT OF STUDENT GAIN

The purpose of assessing student learning at Neosho County Community College is to ensure the educational purposes of the institution are met and appropriate changes are made in program development and classroom instruction to allow for student success. The instructor(s) of this course will determine the methods of assessment most appropriate and complete an assessment report at the end of the course.

ATTENDANCE POLICY

1. NCCC values interactive learning which promotes student engagement in the learning process. To be actively engaged, the student must be present in the learning environment.
2. Unless students are participating in a school activity or are excused by the instructor, they are expected to attend class. If a student’s absences exceed one-eighth of the total course duration, (which equates to one hundred (100) minutes per credit hour in a face-to-face class) the instructor has the right, but is not required, to withdraw a student from the course. Once the student has been dropped for excessive absences, the registrar’s office will send a letter to the student, stating that he or she has been dropped. A student may petition the chief academic officer for reinstatement by submitting a letter stating valid reasons for the absences within one week of the registrar’s notification. If the student is reinstated into the class, the instructor and the registrar will be notified. Please refer to the Student Handbook/Academic Policies for more information

- Absences that occur due to students participating in official college activities are excused except in those cases where outside bodies, such as the State Board of Nursing, have requirements for minimum class minutes for each student. Students who are excused will be given reasonable opportunity to make up any missed work or receive substitute assignments from the instructor and should not be penalized for the absence. Proper procedure should be followed in notifying faculty in advance of the student's planned participation in the event. Ultimately it is the student's responsibility to notify the instructor in advance of the planned absence.

ACADEMIC INTEGRITY

NCCC expects every student to demonstrate ethical behavior with regard to academic pursuits. Academic integrity in coursework is a specific requirement. Definitions, examples, and possible consequences for violations of Academic Integrity, as well as the appeals process, can be found in the College Catalog, Student Handbook, and/or Code of Student Conduct and Discipline.

ELECTRONIC DEVICE POLICY

Student cell phones and other personal electronic devices not being used for class activities must not be accessed during class times unless the instructor chooses to waive this policy.

NOTE:

Information and statements in this document are subject to change at the discretion of NCCC. Students will be notified of changes and where to find the most current approved documents.

NOTE:

If you are a student with a disability who may need accommodation(s) under the Americans with Disabilities Act (ADA), please notify studentdevelopmentteam@neosho.edu, Chanute Campus, 620-431-2820, Ext. 213., or Ottawa Campus, 785-242-2067 ext. 305, as soon as possible. You will need to bring your documentation for review in order to determine reasonable accommodations, and then we can assist you in arranging any necessary accommodations.

COURSE NOTES

**NEOSHO COUNTY COMMUNITY COLLEGE
MASTER COURSE SYLLABUS**

COURSE IDENTIFICATION

Course Code/Number: PSYC 253
Course Title: Human Sexuality

Division: Applied Science (AS) Liberal Arts (LA) Workforce Development (WD)
 Health Care (HC) Lifetime Learning (LL) Nursing Developmental

Credit Hour(s): 3
Effective Date: Summer 2013
Assessment Goal Per Outcome: 70%

COURSE DESCRIPTION

This course is designed to introduce students to the broad range of topics pertaining to the historical, sociocultural, biological and behavioral aspects of human sexuality including contemporary issues of legal and political significance.

MINIMUM REQUIREMENTS/PREREQUISITES AND/OR COREQUISITES

Students must be at least 18 years of age to enroll in PSYC 253 (Human Sexuality).

TEXTS

The official list of textbooks and materials for this course is found on Inside NC.
<http://www.neosho.edu/ProspectiveStudents/Registration/CourseSyllabi.aspx>

GENERAL EDUCATION OUTCOMES

1. Practice Responsible Citizenship through:
 - identifying rights and responsibilities of citizenship,
 - identifying how human values and perceptions affect and are affected by social diversity,
 - identifying and interpreting artistic expression.
2. Live a healthy lifestyle (physical, intellectual, social) through:
 - listing factors associated with a healthy lifestyle and lifetime fitness,
 - identifying the importance of lifetime learning,
 - demonstrating self-discipline, respect for others, and the ability to work collaboratively as a team.
3. Communicate effectively through:
 - developing effective written communication skills,
 - developing effective oral communication and listening skills.
4. Think analytically through:
 - utilizing quantitative information in problem solving,
 - utilizing the principles of systematic inquiry,
 - utilizing various information resources including technology for research and data collection.

COURSE OUTCOMES/COMPETENCIES (as Required)

Upon successful completion of this course students should be able to:

OUTCOME No.1 – Identify and describe the philosophical approaches and scientific methodologies used in the study of human sexuality.

- Describe the principles of critical thinking.
- Identify and describe the historical, biological, evolutionary, cross-species, sociological, and psychological perspectives of human sexuality.
- Explain feminist theory and queer theory.
- Describe the scientific method as it pertains to the study of human sexuality, including the sampling method, case study method, survey method, naturalistic observation, ethnographic observation, participant observation, and the laboratory observation method.

OUTCOME No. 2 – Identify and describe the anatomical and physiological components of male and female sexual anatomy and sexual arousal/response mechanisms.

- Identify the female internal and external sex organs and their function.
- Describe the female menstrual cycle.
- Identify the male internal and external sex organs and their function.
- Identify common health problems associated with the male urogenital system.
- Explain typical male sexual functions.
- Describe the relationship of the anatomical, hormonal, and cerebral components of the human sexual arousal/response mechanism.
- Identify and describe the Masters and Johnson, and Kaplan's sexual response cycles.

OUTCOME No. 3 – Demonstrate an understanding of the role gender plays in human sexuality.

- Identify the role that genes and hormones play in gender development.
- Describe the issues of nature vs. nurture, and transgenderism.
- Identify the various issues involved in gender sexual identity including sexism, gender roles, and sexual behavior, as well as cognitive, personality, and social-behavioral differences.
- Describe the issues of physical attractiveness and the different perspectives on the types and mechanisms of love.
- Describe the issues of dating, self-disclosure, jealousy, communication, and loneliness as they relate to human sexuality.

OUTCOME No. 4 – Identify common sexual behaviors and fantasies and the role sexual orientation plays in human sexuality.

- Identify common methods of masturbation.
- Identify common techniques associated with human sexual contact.
- Identify and describe common sexual fantasies.
- Explain the classifications of sexual orientation including the historical, cross-cultural, biological, and psychological perspectives.
- Identify and describe the contemporary sociocultural and legal issues associated with sexual orientation including gay activism, homophobia, and the coming-out process.

OUTCOME No. 5 – Explain the processes involved in human reproduction and demonstrate an understanding of common forms of contraception.

- Identify common male and female fertility problems.
- Identify the early signs and problems associated with pregnancy.
- Identify and describe the stages of prenatal development.
- Describe potential teratogens and their effects on prenatal development.

- Identify and describe the stages and methods of childbirth.
- Identify issues associated with the postpartum period including the advantages and disadvantages of breastfeeding.
- Identify and describe common forms of birth control.
- Identify and discuss issues pertaining to abortion and the determination of the beginning of life.

OUTCOME No. 6 – Describe sexuality throughout the life-span.

- Discuss the issues of masturbation, sexual curiosity, genital play, co-sleeping, and parental sexual orientation as they relate to childhood sexuality.
- Identify and describe the biological, hormonal, and psychological changes associated with the onset of puberty.
- Identify sexual behaviors in adolescence including teenage pregnancy.
- Describe the issue of sex education.
- Identify and describe various issues associated with being single including cohabitation.
- Identify and describe the issues involved in marriage, including infidelity and divorce.
- Identify issues related to sex in the later years including physical and cognitive disabilities.

OUTCOME No. 7 - Identify and describe the various social, behavioral, psychological, and medical dysfunctions and maladies associated with human sexuality.

- Identify common sexual dysfunctions and their treatment
- Identify and describe the causes and treatments of common sexually transmitted infections (STI's).
- Identify and describe common paraphilias and their treatment.
- Identify and describe various types of rape, childhood sexual abuse, and sexual harassment
- Describe the issues of prostitution, pornography, and obscenity.

MINIMUM COURSE CONTENT

The following topics must be included in this course. Additional topics may also be included.

The outcomes and competencies included in the previous section of this syllabus constitute the minimum course content for PSYC 253.

STUDENT REQUIREMENTS AND METHOD OF EVALUATION

Grade Scale

- A 90-100 %
- B 80-89 %
- C 70-79 %
- D 60-69 %
- F 0-59 %

ASSESSMENT OF STUDENT GAIN

The purpose of assessing student learning at Neosho County Community College is to ensure the educational purposes of the institution are met and appropriate changes are made in program development and classroom instruction to allow for student success. The instructor(s) of this course will determine the methods of assessment most appropriate and complete an assessment report at the end of the course.

Attendance Policy

1. NCCC values interactive learning which promotes student engagement in the learning process. To be actively engaged, the student must be present in the learning environment.

2. Unless students are participating in a school activity or are excused by the instructor, they are expected to attend class. If a student's absences exceed one-eighth of the total course duration, (which equates to one hundred (100) minutes per credit hour in a face-to-face class) the instructor has the right, but is not required, to withdraw a student from the course. Once the student has been dropped for excessive absences, the registrar's office will send a letter to the student, stating that he or she has been dropped. A student may petition the chief academic officer for reinstatement by submitting a letter stating valid reasons for the absences within one week of the registrar's notification. If the student is reinstated into the class, the instructor and the registrar will be notified. Please refer to the Student Handbook/Academic Policies for more information
3. Absences that occur due to students participating in official college activities are excused except in those cases where outside bodies, such as the State Board of Nursing, have requirements for minimum class minutes for each student. Students who are excused will be given reasonable opportunity to make up any missed work or receive substitute assignments from the instructor and should not be penalized for the absence. Proper procedure should be followed in notifying faculty in advance of the student's planned participation in the event. Ultimately it is the student's responsibility to notify the instructor in advance of the planned absence.

ACADEMIC INTEGRITY

NCCC expects every student to demonstrate ethical behavior with regard to academic pursuits. Academic integrity in coursework is a specific requirement. Definitions, examples, and possible consequences for violations of Academic Integrity, as well as the appeals process, can be found in the College Catalog, Student Handbook, and/or Code of Student Conduct and Discipline.

ELECTRONIC DEVICE POLICY

Student cell phones and other personal electronic devices not being used for class activities must not be accessed during class times unless the instructor chooses to waive this policy.

NOTE:

Information and statements in this document are subject to change at the discretion of NCCC. Students will be notified of changes and where to find the most current approved documents.

NOTE:

If you are a student with a disability who may need accommodation(s) under the Americans with Disabilities Act (ADA), please notify studentdevelopmentteam@neosho.edu, Chanute Campus, 620-431-2820, ext. 213., or Ottawa Campus, 785-242-2067 ext. 305, as soon as possible. You will need to bring your documentation for review in order to determine reasonable accommodations, and then we can assist you in arranging any necessary accommodations.

COURSE NOTES

Students enrolled in Human Sexuality (PSYC 253) will be required to sign a statement within the first week of classes acknowledging that they are aware of the sensitive and graphic nature of the content of this course. Further, it is understood that students in this course will be exposed to potentially embarrassing and/or controversial subject matter, and that all content outlined in the Outcomes/Competencies section of this syllabus, as well as any additional materials introduced by the instructor, will constitute a required course of study.

VI. Reports

- A. Ash Grove Valuation – Randy Pryor spoke about Ash Grove’s tax appeal with the State of Kansas.
- B. Faculty Senate – Charles Babb presented a Faculty Senate report. See Attachment.
- C. Student Learning Division – Jim Genandt reviewed a draft of the HLC self-study.
- D. Treasurer’s Report – Sandi Solander gave a treasurer’s report. Revenue for the month of April was \$2,056,967.86 and disbursements were \$2,321,824.02. See Attachments.
- E. President – Dr. Brian Inbody gave a president’s report. See Attachment.

Following Agenda Item VI the Board recessed for a 5 minute break at 7:05 p.m. The meeting reconvened at 7:10 p.m.

VII. Old Business

On motion by Dennis Peters and second by Lori Kiblinger the Board recessed into executive session for 5 minutes to discuss matters relating to employer-employee negotiations and to include the President, Vice President for Student Learning, Vice President for Operations, Chief Financial Officer, and the college attorney.

The Board entered executive session at 7:10 pm. The Board returned to open meeting at 7:15 pm.

Resolution 2013-19

RESOLVED, that the Board of Trustees of Neosho County Community College approves the 2013-14 Negotiated Agreement with the NCCCPEA as presented.

Upon motion by Lori Kiblinger and second by Dennis Peters the above resolution was approved. Motion passed unanimously.

ARTICLE 2

Workload and Calendar

- A. Contract Length and Calendar. The contract length shall be 180 days each contract year subject to exceptions provided elsewhere in this contract. A member of the Association will be appointed to the committee responsible for recommending the calendar. The Professional Employees and the Administration will jointly recommend by February 1 each contract year one or more annual calendars to the Board of Trustees for approval subject to changes made by the Board, including any modifications to the calendar made by the Board to make up days lost due to an extended emergency closing of the College. The calendar will include class days, final exams, holidays, and in-service days with each day and duty specified by date. The Administration shall provide a copy of the Professional Employee calendar, as adopted by the Board, to all employees at least two weeks prior to the beginning of the fall semester.
- B. Normal Professional Work Load. The professional work load shall consist of 30 credit hours of teaching (or the equivalent as determined by the Administration) per academic year. In addition, other assigned duties may include faculty workshops, in-service days, assistance with enrollment, student registration, student academic advisement, recruitment, committee assignments, outcomes assessment duties, and sponsoring activities related to the Professional Employee's teaching assignments. Committee assignments shall be limited to two standing committees per academic year and ad hoc committees as needed. Standing Committee assignments will be announced on or before the fall semester in-service meeting and are subject to change due to vacancies or reorganization. The standing committee chairs shall be announced during the spring semester prior to the effective date of assignment.
- C. Professional Work Days. Professional Employees shall be required to be ~~on-campus~~ **present at an assigned site** 5 days a week for 35 hours per week exclusive of meals, or equivalent as determined by the Administration, including regular class time (other than overload class time), regular posted office hours, and other assigned duties. Professional work load schedules shall be subject to the approval of the Administration. The Administration may approve time off from regular duties for the conducting of college business, attendance at conferences, workshops, or seminars, or for other purposes which benefit the College. Overload class time is in addition to the 35 hour- per- week requirement described above.

ARTICLE 12

2013-14 Salary Schedule

Base \$31,725

Step	Instructor	MS	MS 15	MS 30	MS 45	MS 60	DOC
1	\$30,480	\$31,725	\$32,642	\$33,722	\$34,902	\$35,902	\$38,902
2	\$31,135	\$32,576	\$33,494	\$34,574	\$35,754	\$36,754	\$39,754
3	\$31,790	\$33,427	\$34,346	\$35,426	\$36,606	\$37,606	\$40,606
4	\$34,446	\$34,280	\$35,197	\$36,548	\$37,457	\$38,457	\$41,457
5	\$33,100	\$34,935	\$36,048	\$37,130	\$38,308	\$39,308	\$42,308
6	\$33,756	\$35,590	\$36,900	\$37,981	\$39,160	\$40,160	\$43,160
7	\$34,410	\$36,246	\$37,556	\$38,832	\$40,012	\$41,012	\$44,012
8	\$35,066	\$36,900	\$38,210	\$39,684	\$40,864	\$41,864	\$44,864
9	\$35,721	\$37,556	\$38,865	\$40,339	\$41,715	\$42,715	\$45,715
10	\$36,375	\$38,210	\$39,521	\$40,994	\$42,566	\$43,566	\$46,566
11		\$38,865	\$40,175	\$41,650	\$43,418	\$44,418	\$47,418
12		\$39,339	\$40,831	\$42,305	\$44,073	\$45,073	\$48,073
13		\$39,815	\$41,485	\$42,959	\$44,729	\$45,729	\$48,729
14		\$40,290	\$42,141	\$43,615	\$45,383	\$46,383	\$49,383
15		\$40,765	\$42,616	\$44,121	\$46,039	\$47,039	\$50,039
16		\$41,240	\$43,091	\$44,628	\$46,693	\$47,693	\$50,693
17		\$41,715	\$43,567	\$45,135	\$47,349	\$48,349	\$51,649
18		\$42,190	\$44,041	\$45,642	\$48,004	\$49,004	\$52,004
19		\$42,666	\$44,517	\$46,149	\$48,510	\$49,510	\$52,510
20		\$43,140	\$44,991	\$46,655	\$49,016	\$50,016	\$53,016
21		\$43,616	\$45,467	\$47,162	\$49,524	\$50,524	\$53,524
22		\$44,090	\$45,941	\$47,669	\$50,030	\$50,580	\$54,030
23			\$46,417	\$48,176	\$50,538	\$51,088	\$54,538
24			\$46,892	\$48,682	\$51,044	\$51,594	\$55,044
25			\$47,367	\$49,189	\$51,550	\$52,100	\$55,550
26					\$52,058	\$52,608	\$56,058
27					\$52,564	\$53,114	\$56,564
28					\$53,071	\$53,621	\$57,071

ARTICLE 13

Supplemental

- A. A supplemental contract shall be issued to each Professional Employee accepting assignments that are not part of the primary contract as described in the master agreement. These assignments include, but are not limited to, overload teaching, summer teaching, and sponsorship/supervising duties. All supplemental contracts shall include a statement of the duties to be performed.
- B. For Professional Employees on extended or supplemental contracts, Memorial Day and the Fourth of July will be considered as paid holidays if they occur within the period of the extended or supplemental contract.
- C. Except for Professional Employees who have head coaching duties as a part of the primary contract, all sponsorship, coaching, or special extra-duty assignments will be paid according to an amount mutually agreed upon between the Professional Employee and the Administration. The Professional Employee may be accompanied by an NCCCPEA advisor during the discussion. These assignments shall be identified by separate supplemental contract issued by the Administration within the first 30 calendar days of the semester prior to beginning duties. Payment for services performed to be made on the next pay period following completion of the supplemental contract.
- D. Overload classes and classes scheduled outside of normal duty days shall be contracted by supplemental contract. Teaching assignments will be clearly identified in the supplemental contract. This contract will be subject to the following terms and conditions:

If an overload class contract or contract for classes scheduled outside of normal duty days is offered and accepted and the College Administration determines that the class should be cancelled, the Professional Employee will be paid in the appropriate fractional amount of the contract amount as to hours actually taught by the Professional Employee up to the date of cancellation of the class.

Professional Employees will be given the opportunity to teach overload classes and classes scheduled outside normal duty days in their teaching discipline prior to adjunct instructors if:

1. The term of the supplemental contract will not extend beyond the last day of a non-renewed or a resigning Professional Employee's primary employment contract and any extensions of the same.
2. Overload assignments are limited to one to three (3) classes, but not more than six (6) credit hours per semester. Additionally, total contract load is not to exceed twenty-one (21) credit hours per semester. The Chief Academic Officer may approve a greater overload assignment with advanced written authorization.

The decision as to whether a class goes will be made on or before the beginning of the second class meeting. If the class has a finalized enrollment of eight (8) or more students, the instructor will be issued a contract for \$450 per credit hour. If there are not 8 finalized students enrolled, the administration can approve a contract for the instructor on a pro-rated

basis. A supplemental contract will be issued following the conclusion of the second class meeting.

3. The professional employee notifies the administration no less than 28 days before the beginning of the class or as soon as it is practicable. Exceptions may be approved by the Chief Academic Officer due to extenuating circumstances.

E. When a professional employee accepts appointment to a committee that will require commitment of time during summer months not covered by the primary employment contract, the professional employee shall be entitled to compensation if:

1. The written appointment is made by the Chief Academic Officer and states that compensation shall be paid.
2. Amount of total compensation requested for professional employee committee members does not exceed the amount budgeted in advance by the Chief Academic Officer for committee member compensation.
3. The committee chairperson certifies actual attendance time expended and participation by the professional employee to the Chief Academic Officer.

Compensation to be paid shall be \$30.00 per hour.

F. Special Situations

1. On-line courses:
 - a. The Professional Employee will be credited with one (1) hour of release time for one (1) semester for each credit hour of course developed.
 - b. In addition to the normal contract, the Professional Employee will be compensated for each section of each course taught in an amount equal to 25% of the summer/overload scale of this article for the first two semesters the course is taught and 10% each subsequent semester.
 - c. The Professional Employee in conjunction with the administration may propose an alternative work schedule that includes teaching an online course from a remote site. All work schedules are subject to the approval of the chief academic officer.
2. ITV courses in addition to the normal contract:
 - a. The Professional Employee will be paid \$75.00 per credit hour for the 1st time the Professional Employee offers the course.
 - b. The Professional Employee will be compensated an amount equal to 15% for one off campus site, 30% for two and 45% for three or more off campus sites, of the summer/overload scale of this article
3. Instructors of private music lessons:
 - a. The Professional Employee will receive compensation on the basis of four (4) applied music student contracts equal one (1) credit hour of regular contract time for Professional Employees with less than fifteen (15) hours and at least twelve (12) hours of "regular classes" that do not include applied music classes.

- b. For overload, Professional Employees will receive for each applied music student contract compensation equal to the overload schedule for one student of this article plus the additional private lesson fees charged to the student.
- c. Only full-time students enrolled in at least one other NCCC music class or juniors and seniors from high schools that qualify for the concurrent enrollment program will be able to receive private lessons on any of the NCCC campuses. Normal overload limitations apply for the maximum number of private music lessons that an instructor can teach.

VIII. New Business

Agenda Item VIII-A: 2012-13 Budget Amendment

Due to meeting incentive goals, Neosho County Community College was awarded additional funds for Adult Education and Family Literacy Activities for FY2013. It is necessary to amend the 2013 budget to provide authority to spend the additional funds.

**NOTICE OF HEARING ON
AMENDING THE 2013 BUDGET**

The governing body of
Neosho County Community College _____

will meet on the 13th day of June, 2013 at 5:30 P.M., at

Student Union Oak Room _____

for the purpose of hearing and answering objections of taxpayers relating to the proposed amended use of funds.

Detailed budget information is available at

Business Office _____

and will be available at this hearing.

SUMMARY OF AMENDMENTS

Fund	Adopted Budget 2012-2013			Proposed Amendment 2012-2013 Budget
	Actual Tax Rate	Amount of Tax to be Levied	Expenditures and Transfers	Expenditures and Transfers
Adult Education	0	\$0	\$611,066	\$711,066

Board Chairman

Resolution 2013-27

RESOLVED, that the Board of Trustees of Neosho County Community College approves the FY 2012-13 Budget Amendment for publication. Further, that the public hearing on the proposed budget amendment be held on Thursday, June 13, 2013, at 5:30 p.m. in the Oak Room of the Student Union of the College.

**Upon motion by Dennis Peters and second by Lori Kiblinger the above resolution was approved.
Motion passed unanimously.**

Agenda Item VIII-B: Chanute Biology Lab Design Build Contract

This design build contract will complete the creation of the biology lab and cadaver lab portions of the Chanute science lab project renovation. A copy of the contract is attached. The Board previously approved the Title III design build contract portion of the biology lab renovation project which totaled \$45,200. Because the scope of the entire project has now been determined, an additional design build contract is necessary detailing other renovations to Stoltz Hall. This contract completing the biology lab and cadaver lab totals \$242,718. Total of the two projects comprising Phase II of the Stoltz renovation is \$287,918.

The funding for this project has no impact on the general fund of the college and draws funding from tax credits, Carl Perkins, the deferred maintenance fund, lab fees and gifts. It was the president's recommendation that the Board approve the design/build contract for the Chanute Biology Lab Design Build Contract as specified for \$242,718 with Loyd Builders of Ottawa, Kansas.

Resolution 2013-28

RESOLVED, that the Board of Trustees of Neosho County Community College approves the design/build contract for the Chanute Biology Lab Design Build Contract as specified for \$242,718 with Loyd Builders of Ottawa, Kansas.

**Upon motion by David Peter and second by Dennis Peters the above resolution was approved.
Motion passed unanimously.**

Agenda Item VIII-C: Eastern Kansas Technology Center (EKTC) Project Design Build Contract

As the Board is aware, recent developments with funding for technical education and demand for those types of courses has led to the need for a facility in the Garnett area. In February, the Board entered into an agreement with USD 365 to provide technical education courses in this area. This proposed renovation project will renovate one of the USD 365 facilities to accommodate welding program courses. Current renovation plans call for the demo of some of the current electrical systems, and installation of new electrical and exhaust systems to handle the larger capacity necessary for our welding courses. A copy of the contract is attached.

The funding for this project has minimal impact on the general fund of the college and draws funding from grant funds, donations from area businesses, and the new SB155 funding. The majority of the salary for the employees needed for the programs will be written into the Carl Perkins Grant.

It was the president's recommendation that the Board approve the design/build contract for the Eastern Kansas Technology Center Project (EKTC) as specified for \$104,500 with Loyd Builders of Ottawa, Kansas.

Resolution 2013-29

RESOLVED, that the Board of Trustees of Neosho County Community College approves the design/build contract for the Eastern Kansas Technology Center Project (EKTC) as specified for \$104,500 with Loyd Builders of Ottawa, Kansas.

Upon motion by Lori Kiblinger and second by Dennis Peters the above resolution was approved. Motion passed unanimously.

Agenda Item VIII-D: Student Learning Division Restructure

A restructuring of the Student Learning Division was proposed based on observations, analysis of survey results, evaluation of personnel and services, and monitoring best practices from other colleges and universities on methods and organizational structure to enhance student learning, recruitment, retention, and completion. Following is the proposed restructuring:

- Student Development split into two units:
 - Enrollment Management—Dean of Enrollment Management: Kerrie Coomes
 - Registrar
 - Financial Aid
 - International Students
 - Student Life—Dean of Students: Jason Kegler
 - Residential Housing/Dining Services
 - Student Activities (Student Senate, Clubs/Organizations)
 - Counseling/Behavior Threat Analysis
 - Discipline
 - Compliance
 - ADA

- Admissions transitions to Recruitment and College Relations
 - Director: Leslie Beddo

- Creating the Chapman Learning Center (CLC)
 - CAVE, Advising, and Library Services become the Learning Center
 - Director of the CLC: Randy Kettler
 - Assistant Director of the CLC: Jeff Almond
 - Susan Weisenberger as Director Library Services reporting to the CLC Director

- Reassignment of Graphic Designer supervision to Vice President for Student Learning

The Dean of Enrollment Management and Dean of Students, and the Director of Recruitment and College Relations will also report to the VPSL. A salary adjustment will be made from the current Dean of Student Development to equalize the salaries for the Dean of Enrollment Management and Dean of Students. Copies of the revised job descriptions follow.

It was the president's recommendation that the Board approve the restructuring of the Student Learning Division as set out above with changes to become effective July 1, 2013.

Resolution 2013-30

RESOLVED, that the Board of Trustees of Neosho County Community College approves the restructuring of the Student Learning Division as set out above with changes to become effective July 1, 2013.

**Upon motion by Dennis Peters and second by Lori Kiblinger the above resolution was approved.
Motion passed unanimously.**

ASSISTANT DEAN OF STUDENT DEVELOPMENT-ENROLLMENT MANAGEMENT

Reports to: ~~Dean of Student Development~~ Vice President for Student Learning

Classification: Full-time, 12-month employee

~~Organizational Unit~~ Pay Status: Administrative, 12-month

~~Benefit:~~ Vacation/Sick leave/Holidays per Board Policy

Salary Range: _____

Revision Date: ~~August 2012~~ May 2013

This position reports to the Vice President for Student Learning. ~~Dean of Student Development~~. The dean coordinator is the primary point of contact for entering students to assist them in preparing their matriculation into the college and reinforce the optimum use of student support services of the institution. The coordinator also provides leadership in coordinating support services linking of admissions, registration, and institutional research, and financial aid, and international students, and serving as the liaison to key services outside of student development, such as recruitment, advising, institutional research and reporting, and the business office. Primary functions are multi-tasking projects and interaction with students and staff to ensure quality service with enrollment management requirements of the college. Duties include, but are not limited to:

Essential Functions:

1. Provide premier quality service to all constituencies of the College.
2. Engage in continuous quality improvement and professional development.
3. Work with the Vice President for Student Learning ~~Dean of Student Development~~ to ensure formal and informal communication of projects, opportunities, and concerns related to unit performance and impact related to the college purposes linked to enrollment management student services.
4. Coordinate with the Vice President for Student Learning on articulation agreements (new and/or revised) with other institutions of postsecondary education.
- 3-5. Work with unit directors to regularly "spot-check" staff work for accuracy and timeliness, and assist in preparation for any unit reviews (i.e., audits, etc.).
- 4-6. ~~In coordination with the Dean of Student Development, provide leadership and enhanced management for the student development units of advising, registration, financial aid, and international students. This will include a~~ Assisting directors/coordinators registration, financial aid, and international students in those units with budget/resource management, personnel decisions and actions, and inter-unit coordination.
- 5-7. ~~Provide project management within the units identified above to ensure appropriate oversight to enhance effectiveness and efficiency processes which increase data accuracy, unit performance, and reinforce commitment of constituent relations.~~
- 6-8. ~~Serve as the primary liaison for~~ Enrollment Management ~~Student Development~~ with Institutional Research & Reporting, Advising, and Recruitment/College Relations.
- 7-9. ~~Serve as primary point of contact to greet students and guests to the campus welcome center areas;~~
- 8-10. ~~Ascertain student/guest needs and provide accurate referral and/or assistance to meet those needs, with an emphasis on services related to admissions, registration, financial aid, and business transactions with the college;~~
- 9-11. ~~Assist the Dean of Student Development and~~ unit directors with projects and tasks that will change based on the cycles of enrollment at the college;
- 10-12. ~~Enhance use of the college's data management system related to~~ enrollment management ~~the student development units, including coordinating of training opportunities for staff,~~ with an

emphasis on identifying and evaluating emerging trends, issues, and best practices that may enhance retention and completion through enrollment management functions; through the dean of student development;

13. Provide leadership in the development, implementation, and evaluation of a comprehensive enrollment management plan with the primary goal of strengthening the college's capacity to effectively manage enrollment growth and quality of service to students which captures and embeds the philosophy and commitment of "students first" with staff;
- ~~11.~~14. Ensure effective communication and collaboration within the units and with external units of the college and/or community stakeholders for appropriate projects;
- ~~12.~~15. Coordinate reports to the Dean of Student Development to enhance the analysis of data and information for institutional effectiveness evaluation;
- ~~13.~~16. Assist the Vice President for Student Learning dean of student development with the coordination of information related to retention and completion evaluation for the college in collaboration with the Coordinator of Institutional Research and Reporting;
- ~~14.~~17. Enter transfer coursework as evaluated by the registrar;
- ~~15.~~18. Data entry, as assigned, to support other enrollment management units, with an emphasis on degree audits, admissions, registration, and financial aid;
- ~~16.~~19. Cross-train to support efficiency of operations with offices housed in administrative unit;
- ~~17.~~20. Perform other duties as assigned by the Vice President for Student Learning Dean of Student Development, including support for enrollment management needs of the online campus.

Required Knowledge, Skills, and Abilities

1. Engaging personality and ability to work effectively with people
2. Excellent organizational skills with attention to detail and multitasking
3. Excellent computer skills
4. Demonstrated ability to work with confidential information in a professional manner.
5. Experience working within a higher education environment, community college experience preferred
6. Willingness to lead and work as a member of a variety of teams.

Education and Experience

- Bachelor's Associate degree and 1 year relevant work experience required
- Master's Bachelor's degree and 2-4 years of relevant work experience preferred

Working Conditions

1. Normal office working environment.
2. Ability to sit for long periods while operating a personal computer is required.
3. Some travel during normal working hours may be required.
4. Time commitment in excess of a forty hour week will sometimes be required.

Non Discrimination

Discrimination against any individual on the basis of race, color, national origin, sex, disability, age, or religion; in the admission, access to, treatment, or employment in the college's programs and activities is prohibited. The Chief Student Affairs officer, NCCC, 800 West 14th Street, Chanute, Kansas 66720, 431-2820 ext. 213m has been designated to coordinate compliance with nondiscrimination requirements contained in Title VI of the Civil Right Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Americans with Disabilities Act Amendments Act of 2008.

DEAN OF STUDENTS DEVELOPMENT

Reports to: Vice President for Student Learning
Classification: Full-time, 12-month employee
Pay Status: Administrative
Vacation/Sick Leave/Holidays per Board Policy
Starting Salary range \$50,000-\$65,000
Revised: May, 2013 ~~10~~

This position reports to the Chief Academic Officer and is responsible for the leadership of the College's student life programs and services ~~development team~~ in accordance with board policy. The dean shall develop and implement programs and services that support the recruitment, retention, success, safety, and personal development of all students. The Dean of Students Development works closely with administrators and faculty. Duties include, but are not limited to:

Essential Functions:

1. Provide premiere quality service to all constituencies of the College.
2. Engage in continuous quality improvement and professional development.

Duties and Responsibilities:

1. Serve as the Chief Student Affairs Officer for the institution.
- ~~2. Participate in a holistic model that supports students from first contact through graduation and beyond by being an active team member in the student learning division.~~
- ~~3. Lead, support, and supervise all departments within the student development division including academic advising, student activities, housing, registration, records, financial aid, counseling, admissions, retention and international student services for all NCCC campuses. The Dean of Students will provide leadership for residential housing, college activities which include but is not limited to clubs and organizations, and develop and implement processes and services related to counseling students and coordinating behavioral threat analyses as appropriate to support safety at NCCC.~~
4. Lead and assess the out-of-classroom learning for all students, including student/community involvement and participation.
5. Know the students, and provide information and guidance to college and community support services as appropriate.
6. Prepare and execute /monitor student development budgets in the student life area.
7. Carry out board policy in regard to student discipline and student conduct with authority delegated by the board to administer a fair and just disciplinary program.
- ~~8. Strive to remove all barriers to provide unfettered educational access to our students.~~
9. Coordinates compliance with nondiscrimination requirements contained in Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Americans with Disabilities Act Amendments Act of 2008.
10. Attend college events to show support for students as time permits.
11. Support- personnel at the Ottawa Campus, the Online Campus, and other sites as necessary the Assistant Dean of Ottawa with appropriate student development activities for Ottawa students.

12. Maintain and continue to develop a wellness focus which includes leading healthy choices programming and a campus Health Clinic.
13. Facilitate good communication between student [life development personnel and units departments and between the student development division](#) and the rest of the college.
14. [Collaborate with the Dean of Enrollment Management and other personnel \(as appropriate\) to](#) survey students and research possible new student service programs that have the potential to benefit the college's growth and mission.
- ~~15. Oversee the preparation of state and federal reports, Kansas Board of Regents reports, Kansas Higher Education reports, NJCAA and other institutional reports.~~
- [16.](#) In conjunction with institutional research, provide department, demographic, enrollment, and other general survey/report information as needed.
- [17.](#) Provide appropriate services and referral information for students with disabilities college-wide.
- ~~16-18.~~ [18.](#) Offer personal and academic counseling for students, and referral to appropriate agencies to meet student needs that are beyond the college capacity to provide.
- ~~17-19.~~ [19.](#) Maintain and update the student right-to-know crime report data to comply with the federal guidelines.
- ~~18-20.~~ [20.](#) Conduct annual in-service meetings with student [life development division](#) staff to provide uninterrupted time to develop new concepts, address on-going concerns, communicate accomplishments, and build team spirit.
- ~~19-21.~~ [21.](#) Establish strong relationships within the community through speaking engagements, personal involvement within the community, increased use of public relations, and integration of student and community activities.
- ~~20-22.~~ [22.](#) Serve on the marketing committee that oversees the development of new and current marketing and recruiting materials to assist recruitment of new students.
- ~~21-23.~~ [23.](#) Coordinate [with the Dean of Enrollment Management and other staff for](#) the publication of student handbook, resident's handbook and other related written materials.
- [24.](#) When possible, oversee the development and publication of a student newsletter in cooperation with the coordinator of student activities, marketing committee, and interested students and faculty.
- ~~22-25.~~ [25.](#) Coordinate Welcome Week and other student activities that enhance retention and completion college-wide.
- ~~X.~~ [Coordinate graduation activities.](#)
- ~~23-26.~~ [26.](#) Serve as an active member or chair of campus committees as assigned.
- ~~24-27.~~ [27.](#) Perform other duties as assigned by the vice president for student learning.

Required Knowledge and Education:

- Supervision of staff within a student development department, preferably at a community college.
- Evidence of oral and written communication skills and strong computer skills.
- Master's degree in related discipline, such as higher education, counseling, or student personnel, with 5 -7 years of student service experience, with progressive leadership roles.
- Doctoral-degree preferred.
- A minimum of 5 years of supervisory experience in an academic institution is required.

Working Conditions:

1. Normal office working environment.
2. Ability to sit in an office chair for long periods while operating a personal computer is required.
3. Some travel during normal working hours will be required.
4. Time commitment in excess of a forty hour week will sometimes be required.

Non Discrimination

Discrimination against any individual on the basis of race, color, national origin, sex, disability, age, or religion; in the admission, access to, treatment, or employment in the college's programs and activities is prohibited. The Chief Student Affairs officer, NCCC, 800 West 14th Street, Chanute, Kansas 66720, 431-2820 ext. 213, has been designated to coordinate compliance with nondiscrimination requirements contained in Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Americans with Disabilities Act Amendments Act of 2008. Information concerning the provisions of these acts, and the rights provided thereunder, are available from the compliance coordinator.

DIRECTOR OF RECRUITMENT & COLLEGE RELATIONS ADMISSIONS

Reports to: Vice President ~~for Student Learning~~ Dean of Student Development

Classification: Full-time, 12-month employee

Pay Status: Administrative

Vacation/Sick Leave/Holidays per Board Policy

Start Salary Range: \$27,000-\$31,000

Revision Date: ~~April 2010~~ May 2013

This position is a member of the Student Learning Division ~~Development~~ who reports to the Vice President ~~for Student Learning~~ Dean of Student Development. This position is responsible for managing, planning and implementing all admissions and recruiting efforts for the entire college, and coordinating/assisting with college relations with external stakeholders and guests. ~~This position will work directly with other units of the college student development areas to implement a comprehensive student development program for the college.~~

Essential Functions:

1. Provide premiere quality service to all constituencies of the College.
2. Engage in continuous quality improvement and professional development.

Duties and Responsibilities:

1. Participates in the development of student recruitment and retention plans, strategies, and written materials; assists in the development and revisions to student publications and promotional materials that meet all presentation/delivery methods appropriate to reaching prospective students.
2. Supervises admissions recruitment/college relations staff.
3. Supports admissions processes for enrollment management, with an emphasis on accuracy and timeliness of necessary information. ~~Admits students to the college.~~
4. Creates, implements, and evaluates admission and recruiting programs and processes, including updating the on-line admission form, and other web-based admission information.
5. Establishes and maintains strong relationships with area high schools.
6. Works with athletics and academic departments to support and assist in their recruiting efforts.
7. Schedules and conducts high school visits and represents NCCC at college planning conferences and other recruitment functions.
8. Plans on-campus recruiting programs for prospective students; assists with planning enrollment days for new students.
9. Oversees and manages a database of prospective students and ensures regular contact with those students through mail, phone and email correspondence.
10. Coordinates the dissemination of information to prospective traditional and non-traditional students.
11. Works with the International Student Coordinator in coordinating international student admissions.
12. Serves as an active member of the marketing committee and marketing work group.
13. Ensures that ~~Enters~~ data on prospective students is entered into the student information system.
14. Oversees the coordination of Student Ambassador program.
15. Performs other miscellaneous duties as assigned by the Dean of Student Development Vice President for Student Learning.

Required Knowledge, Skills and Abilities

1. Excellent interpersonal skills.

2. Ability to work effectively with diverse populations.
3. Organizing and coordinating skills.
4. Knowledge of student recruitment and retention issues.
5. Ability to communicate effectively, both orally and in writing.
6. Excellent computer skills.
7. Ability to develop and deliver presentations.
8. Ability to gather data, compile information and prepare reports.
9. Ability to plan and evaluate programs.
10. Ability to appropriately exercise independent initiative and judgment.
11. Willingness and ability to work as a member of a team.

Education and Experience

- Bachelor's degree required.
- 3-5 years' experience in admissions and/or sales preferred.

Working Conditions

1. Work is normally performed in a typical interior/office work environment.
2. Some travel, overnight trips, and evening hours are required.
3. No or very limited physical effort required.

Non Discrimination

Discrimination against any individual on the basis of race, color, national origin, sex, disability, age, or religion; in the admission, access to, treatment, or employment in the college's programs and activities is prohibited. The Chief Student Affairs officer, NCCC, 800 West 14th Street, Chanute, Kansas 66720, 431-2820 ext. 213m has been designated to coordinate compliance with nondiscrimination requirements contained in Title VI of the Civil Right Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Americans with Disabilities Act Amendments Act of 2008. Information concerning the provisions of these acts, and the rights provided thereunder, are available from the compliance coordinator.

DIRECTOR OF CHAPMAN LEARNING CENTER ~~CENTER FOR ACADEMIC & VOCATIONAL EXCELLENCE~~

Reports to: Vice President for Student Learning and the Dean of Outreach and Workforce Development

Classification: Full-time, 12-month employee

~~Organizational Unit~~ Pay Status: Administrative

Salary Range: _____

Revision Date: May 2013

This position reports to ~~the~~ the Vice President for Student Learning and the Dean of Outreach and Workforce Development and is responsible for developing, coordinating, and piloting basic skills programs for traditional/nontraditional learners and overseeing the development and operation of the Chapman Learning Center. The director oversees the operations of the Panther CAVE (Center for Academic and Vocational Excellence) and Library within Chapman Hall. The director also oversees the developmental education program of the College, the adult basic education program of the College, and related projects. Duties include, but are not limited to:

Essential Functions:

1. Provide premiere quality service to all constituencies of the College.
2. Engage in continuous quality improvement and professional development.

Duties and Responsibilities:

1. Develop open entry/open exit competency-based basic skills courses for under- ~~—~~prepared non-traditional students;
2. Assist with basic skills assessment and appropriate course placement;
3. Develop and pilot developmental education classes and new delivery systems and extended sites as needed;
4. Assist with academic advisement for students enrolled in basic skills courses;
5. Assist with transition activities;
6. Serve as director of NCCC's Adult Basic Education program, and be the primary point of contact for linking the program to appropriate external partners and resource options;
7. Evaluate student success in basic skills programs;
8. Participate in selection of consultants; Oversee the Partners in Change program including selection, training, and evaluation of facilitators, program evaluation for effectiveness, and funding opportunities;
9. Participate in appropriate committees;
10. Supervise Assistant Director/Instructor of Basic Skills, and Developmental Reading, Writing & Math Instructors, Assistant Director of the Chapman Learning Center, Director of the Teaching & Learning Center (Ottawa Campus), Director of Library Services, and Library/Learning Center staff, and other personnel employed by the College and assigned to the unit to carry out its services and functions;
11. Develop in-service training for faculty and staff;
12. Supervise all placement and exit testing & the interpretation of test results;
13. Supervise staff development and oversee budget;

14. Update and maintain computer labs in [Chapman Learning Center and monitor needs of the Teaching & Learning Center \(Ottawa\) CAVE](#);
15. ~~Coordinate ADA activities;~~
16. Support Title IV/TRIO programs in [Chapman Learning Center CAVE](#);
17. Perform other duties as assigned by the [Vice President for Student Learning and/or Dean of Outreach and Workforce Development](#).

Required Knowledge and Education:

- [Supervision of staff within a development education and/or adult education program, preferably at a community college.](#)
- [Evidence of oral and written communication skills and strong computer skills.](#)
- [Master's degree in related discipline preferred, bachelor's degree required.](#)
- [A minimum of three years of supervisory experience in an academic institution is required.](#)

Working Conditions:

1. [Normal office working environment.](#)
2. [Ability to sit in an office chair for long periods while operating a personal computer is required.](#)
3. [Some travel during normal working hours will be required.](#)
4. [Time commitment in excess of a forty hour week will sometimes be required.](#)

Non Discrimination

[Discrimination against any individual on the basis of race, color, national origin, sex, disability, age, or religion; in the admission, access to, treatment, or employment in the college's programs and activities is prohibited. The Chief Student Affairs officer, NCCC, 800 West 14th Street, Chanute, Kansas 66720, 431-2820 ext. 213, has been designated to coordinate compliance with nondiscrimination requirements contained in Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Americans with Disabilities Act Amendments Act of 2008. Information concerning the provisions of these acts, and the rights provided thereunder, are available from the compliance coordinator.](#)

ASSISTANT DIRECTOR OF CHAPMAN LEARNING CENTER ~~COORDINATOR OF ADVISING AND ARTICULATION~~

Reports to: Director of Chapman Learning Center ~~Dean of Student Development~~

Classification: Full-time, 12-month Employee

Pay Status: Management Support

Vacation/Sick Leave/Holidays per Board Policy

Starting Salary Range: \$25,000-\$30,000

~~Full 12-month fringe benefit~~

This position is a member of the Chapman Learning Center ~~Student Development team~~ who reports to the Director of the Chapman Learning Center ~~Dean of Student Development~~. This position is responsible for the coordination of advising, and articulation, and assists with retention and completion functions for the college. This position will work directly with other Student Learning Division ~~student development~~ areas to implement a comprehensive advising and learning center ~~student development~~ program for the college.

Essential Functions:

1. Provide premiere quality service to all constituencies of the College.
2. Engage in continuous quality improvement and professional development.

Duties and Responsibilities:

Primary duties:

1. Develop, implement, maintain and coordinate a college-wide advising program that addresses resources, needs, and capacities related to sites students access NCCC from. This will be done in collaboration with key college personnel representing instruction and enrollment management, with the Assistant Dean of the Ottawa campus and the developmental education department.
2. Advise new and current undecided students; serve as the primary advisor for new students during their initial orientation advisement period and assist them with registration.
3. Assign advisors to students; review and consult on advising assignments; serve as a resource for faculty and staff advisors.
4. Collaborate with admissions recruitment/college relations and registration offices to plan, implement, and provide training for academic advisement and registration sessions for new students.
5. Provide resources and on-going advisor training to faculty and staff; promote counseling, advising, and student support services to students, faculty, and others.
6. Develop and maintain career exploration programs and provide resources to faculty, staff and students through both print and electronic formats (ie: web pages, degree check sheets, program guides, advising newsletter).
7. Coordinates compliance with nondiscrimination requirements contained in Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Americans with Disabilities Act Amendments Act of 2008.
- 7.8. Provide support to the Director of the Chapman Learning Center with supervision of staff, assessment of center effectiveness, and engagement with students, faculty and staff related to services to be provided through the Center.

Articulation:

1. ~~Assist with articulation initiatives, primarily as a resource person, to optimize agreements at both the secondary and postsecondary levels, and Serve as the college liaison to area universities; schedule university visits to campus and inform advisors and students of changes in transfer requirements; initiate and refine articulation agreements with colleges and universities;~~ maintain a current library of transfer information and assist students with the transfer process.

Registration Support:

1. Assist the Dean of ~~Enrollment Management Student Development~~ and Registrar in performing preliminary degree checks for all sophomores; assist with the coordination of graduation activities.
2. Assist with transcript evaluation; serve as a resource to faculty and staff on evaluation of transfer work;

Retention:

1. Assist with effort to increase the number of students who achieve their personal goal in a stated amount of time;
2. Assist with Welcome Week, ~~enrollment days/activities~~, and other student retention activities on campus;
3. Manage, evaluate and improve the Early Academic Warning System.
4. Assist with curriculum development for First Year Seminar, Goalsetting, Study Skills, and other student support courses;
5. Perform other miscellaneous duties as assigned by the ~~Director of the Chapman Learning Center. Dean of Student Services.~~

Required Knowledge, Skills and Abilities

1. Demonstrated ability to learn and disseminate detailed information using a high level of interpersonal skills.
2. Sensitivity to, and awareness of, confidential materials.
3. Ability to work effectively with diverse populations.
4. High level of organizational and coordinating skills.
5. Ability to establish rapport with students and staff.
6. Ability to exercise sound judgment.
7. Willingness and ability to work as a member of a team.
8. Must possess a service mentality toward students, parents, faculty and other staff members.

Education and Experience:

- Bachelor's Degree in psychology, student personnel services, education, or related area required.
- 1-3 years of experience in student services preferred

Working Conditions:

1. Work is normally performed in a typical interior/office work environment.
2. Occasional evening hours required.
3. No or very limited physical effort required.
4. No or very limited exposure to physical risk.

Non Discrimination

Discrimination against any individual on the basis of race, color, national origin, sex, disability, age, or religion; in the admission, access to, treatment, or employment in the college's programs and activities is prohibited. The Chief Student Affairs officer, NCCC, 800 West 14th

Street, Chanute, Kansas 66720, 431-2820 ext. 213m has been designated to coordinate compliance with nondiscrimination requirements contained in Title VI of the Civil Right Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Americans with Disabilities Act Amendments Act of 2008. Information concerning the provisions of these acts, and the rights provided thereunder, are available from the compliance coordinator.

DIRECTOR OF LIBRARY SERVICES

Reports to: [Director of Chapman Learning Center Chief Academic Officer](#)

[Classification: Full-time, 12-month employee](#)

[Organizational Unit Pay Status: Administrative, 12-month](#)

[Vacation/Sick Leave/Holidays per Board Policy](#)

Salary Range: _____

Revision Date: [March 2004](#) [May 2013](#)

This position reports to the [Director of the Chapman Learning Center](#) ~~vice-president of student learning~~ and is responsible for supervision of effective and efficient operation of [library services college-wide](#). ~~Chapman Library and the Ottawa library as a learning resource center.~~ Duties include, but are not limited to:

- [1. Provide premier quality service to all constituencies of the College.](#)
- [2. Engage in continuous quality improvement and professional development.](#)
- [3. Collaborate with the Vice President for Student Learning, the Director of the CLC, and the Assistant Director of the CLC to develop a strategic plan and evaluation process concerning the learning center and its resources and services to ensure optimum effectiveness.](#)
- [4. Attend Student Learning Division meetings to ensure dissemination of library resources and services information and to become aware of new and emerging issues and opportunities related to teaching and learning.](#)
- ~~1-5. Supervise the operation of Chapman Library services and coordinate the assignment of library personnel with the Director of the CLC to accomplish the mission and purposes of those services.~~ [the Library.](#)
- ~~2-6. Coordinate efforts to ensure library services are provided appropriately to all sites of the College. Oversee the operation of the Ottawa campus resource room in consultation with the Dean of the Ottawa campus.~~
- ~~3-7. Oversee budget resources designed to support library services for the College. Supervise the use of audio-visual equipment on campus; research and order new media formats as needed.~~
- ~~4-8. Select, order, and de-select all print and non-print materials for the Library collection; review new sources of information and integrate into existing collection.~~
- ~~5-9. Use statistical data and other information sources to make changes in Library materials, policies, and services to promote student learning and instructor preparation.~~
- ~~6-10. Supervise technical processing of all holdings acquired by Chanute and Ottawa campuses.~~
- ~~7-11. Research new technology related to expansion/enhancement of digital/online information access and automation of library services.~~ [ies](#) and new information resources; train personnel in the use of new technology.
- ~~8-12. Maintain and update the Library Webpage; continually evaluate information resources and links to provide quality information resources to patrons; maintain statistics on all electronic services.~~
- ~~9-13. Work with faculty and staff to insure adequate holdings for all patron constituents.~~
- ~~10-14. Assist in identifying and developing grant proposals from public and private sector sources that can enhance library services of the college. Write grant proposals for both federal and non-federal library grants.~~
- ~~11-15. Represent NCCC in consortium and statewide library meetings and organizations.~~
- ~~12-16. Serve as a member of various campus committees; serve as liaison for Library Committee.~~
- ~~13-17. Assist students with research and search skills and serve as a reference source for faculty, community and staff.~~
- ~~14-18. In the absence of staff, administer library activities during day or evening, including all duties necessary to provide library services.~~

~~15-19.~~ Serve those using the Library as needed, providing guidance in using the learning materials in the general collection, automated catalog and electronic databases.

~~16-20.~~ Perform other duties as assigned by the [Director of the Chapman Learning Center](#). ~~vice-president of student learning.~~

Required Knowledge, Skills, and Abilities

- [1. Engaging personality and ability to work effectively with people](#)
- [2. Excellent organizational skills with attention to detail and multitasking](#)
- [3. Excellent computer skills](#)
- [4. Demonstrated ability to work with confidential information in a professional manner.](#)
- [5. Experience working within a higher education environment, community college experience preferred](#)
- [6. Willingness to lead and work as a member of a variety of teams.](#)

Education and Experience

- [• MLS degree and 1-3 years of library experience required.](#)

Working Conditions

- [1. Normal office working environment.](#)
- [2. Ability to sit for long periods while operating a personal computer is required.](#)
- [3. Some travel during normal working hours may be required.](#)
- [4. Time commitment in excess of a forty hour week will sometimes be required.](#)

Non Discrimination

[Discrimination against any individual on the basis of race, color, national origin, sex, disability, age, or religion; in the admission, access to, treatment, or employment in the college's programs and activities is prohibited. The Chief Student Affairs officer, NCCC, 800 West 14th Street, Chanute, Kansas 66720, 431-2820 ext. 213m has been designated to coordinate compliance with nondiscrimination requirements contained in Title VI of the Civil Right Act of 1964, Title IX of the Education Amendments of 1972, \[Section 504 of the Rehabilitation Act of 1973\]\(#\), the Americans with Disabilities Act of 1990, and the Americans with Disabilities Act Amendments Act of 2008. Information concerning the provisions of these acts, and the rights provided thereunder, are available from the compliance coordinator.](#)

GRAPHIC DESIGNER

Reports to: ~~Director of Development and Marketing~~ Vice President for Student Learning

~~Classification~~ Pay Status: Exempt, Management Support

Classification: Full-time, 12-month employee, ~~Fringe Benefits~~

Vacation/Sick Leave/Holidays per Board Policy

Starting Salary Range: \$24,000-\$34,000

Revision Date: March 2013

Purpose of the Position: The Graphic Designer reports to the ~~Director of Development and Marketing~~ Vice President for Student Learning. The Graphic Designer is responsible for developing and proposing professional design graphics for printed and/or digital materials, ads, layout of NCCC marketing resources and packaging that reflect the NCCC brand. Results will reflect appealing aesthetics and visual design. Duties include, but are not limited to:

Essential Functions:

1. Provide premiere quality service to all constituencies of the College.
2. Engage in continuous quality improvement and professional development.

Duties and Responsibilities:

Graphic Design

1. Formulate basic layout design or presentation approach, and specify material details, such as style and size of type, photographs, graphics, and possible animation, video and sound, based upon professional design concepts.
2. Produce and maintain high quality and effective marketing collateral including but not limited to: program books, power point presentations, class schedules, ads, sponsorship banners, and event invitations for college activities and foundation events;
- ~~2. Create designs, concepts, and sample layouts based on knowledge of layout principles and esthetic design concepts;~~
3. Develop and maintain the official Graphic Standards Manual and ensure compliance in all college publications;
4. Manage and deliver creative projects on time and on budget;
5. Design and produce direct mail projects;
6. Design and produce miscellaneous art, brochures, pamphlets, and reports as needed;
7. Respond to special design request from staff;
8. Coordinate projects with outside entities such as printers, programmers or other technicians, to complete the final product and optimize cost effectiveness fo the projects;
9. Regularly assess the effectiveness of marketing/advertising materials;
10. Confer with appropriate employees to determine objectives/purposes, available resources, target audience(s), and possible options for materials/presentations to enhance quality of publications and information concerning the college.
11. Assist employees with creative ideas/options to optimize positive influence of NCCC to internal and external stakeholders, providing requested input for researching information, analysis of information, and recommendations to meet objectives/purposes of projects requiring print/digital communications.

~~10. Digitally photograph college activities and edit appropriately; and store on common in proper location for easy access~~

12. Perform other duties as assigned

~~12. Consult with and assist NCCC staff and faculty in designing, and developing, maintaining web pages graphically and ensuring that the branding guidelines.~~

Photographer

1. Will be available to take pictures of college functions, activities, events and sports pictures as requested with appropriate prior notice. ~~Via the online picture form.~~
2. Will manage the picture files
3. Will manage the flickr account

Minimum Job Requirements

Associate's degree in graphic design, web design or closely related field. Two years work experience and/or bachelor's degree in graphic design, web design or closely related field are preferred.

1. Extensive knowledge of industry standard graphic design, web design and digital photography software is required
2. Creativity and strong organizational skills and attention to detail.
3. A strong working knowledge of printing, publishing, graphic arts procedures and related computer software and electronic communication tools is preferred
4. Proven command of editorial, grammatical, and writing skills.
5. Excellent communication skills with the ability to work cooperatively.
6. Ability to make creative/procedural decisions and judgments.
7. Knowledge of college policies, procedures and regulations.
8. Working knowledge of Windows-based operating environment.
9. Must be familiar with current web design practices.
10. Be able to manage one's time and meet project timelines and due dates.
11. The ability to juggle multiple priorities independently and proactively.

Working Conditions

1. Normal office working environment.
2. Ability to sit in an office chair for long periods while operating a personal computer is required.
3. Ability to reach and work overhead on an occasional basis is required.
4. Some travel during normal working hours may be required.
5. Occasional overtime may be required.

Non Discrimination

Discrimination against any individual on the basis of race, color, national origin, sex, disability, age, or religion; in the admission, access to, treatment, or employment in the college's programs and activities is prohibited. The Chief Student Affairs officer, NCCC, 800 West 14th Street, Chanute, Kansas 66720, 431-2820 ext. 213m has been designated to coordinate compliance with nondiscrimination requirements contained in Title VI of the Civil Right Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Americans with Disabilities Act Amendments Act of 2008. Information concerning the provisions of these acts, and the rights provided thereunder, are available from the compliance coordinator.

Agenda Item VIII-E: Allied Health Instructor for Ottawa Campus

It was the president's recommendation that the Board approve the creation of an Allied Health Instructor position on the Ottawa campus. The Allied Health Instructor position will meet the needs of health science training on the Ottawa campus as a result of Senate Bill 155. A total of 82 students from the following school districts have signed up for fall health science courses: Baldwin City, Central Heights, Garnett, Ottawa, and Wellsville. A copy of the position announcement follows.

Resolution 2013-31

RESOLVED, that the Board of Trustees of Neosho County Community College approves the creation of an Allied Health Instructor position on the Ottawa campus.

Upon motion by Dennis Peters and second by Lori Kiblinger the above resolution was approved. Motion passed unanimously.

Position Announcement

Allied Health Instructor – Ottawa (9-month faculty position)

- Responsibilities:** Provide allied health instruction in Ottawa to high school and college students resulting in nurse aide and medication certification; provide academic advising; perform outcome assessments; articulate high school, community college and university curricula into cohesive 2+2+2 opportunities for students; collaborate with the healthcare industry; serve as a link between high school and college personnel; and work with the program advisory council.
- Qualifications:** Master's degree preferred, Registered nurse credential required; experience in long-term care required; teaching experience preferred; experience working with high school and college-age populations preferred; excellent communication and supervision skills required; flexibility required; the ability to implement this career and technical program in partnership with local school districts and community college is a must.
- Salary/Benefits:** Commensurate with education and experience with excellent benefits including health insurance and KPERS.
- Application:** Please send a letter of application, resume, unofficial transcripts, employment application, and five references with phone numbers to:

Terri Dale, Director of Human Resources
Welding Instructor Search
Neosho County Community College
800 West 14th Street
Chanute, KS 66720

This position will remain open until filled. Review of applications will begin upon receipt. Visit www.neosho.edu for application.

NCCC is an EOE/AA employer

Allied Health Instructor – Ottawa (Full-time – 9-month) Neosho County Community College seeks person to provide allied health instruction in Ottawa to high school and college students resulting in nurse aide and medication certification; provide academic advising; perform outcome assessments; articulate high school, community college and university curricula into cohesive 2+2+2 opportunities for students; collaborate with the healthcare industry; serve as a link between high school and college personnel; and work with the program advisory council. Master's degree preferred, Registered Nurse credential required; experience in long-term care required; teaching experience preferred; experience working with high school and college-age populations preferred; excellent communication and supervision skills required; flexibility required; the ability to implement this career and technical program in partnership with local school districts and community college is a must. Salary and benefits commensurate with education and experience with excellent benefits including health insurance and KPERS. Send a letter of application, resume, unofficial transcripts, employment application, and five references with phone numbers to: Terri Dale, Director of Human Resources, Allied Health Instructor Search, Neosho County Community College, 800 West 14th Street, Chanute, KS 66720. Review of applications will begin upon receipt. Please send a letter of application,

resume, unofficial transcripts, employment application, and five references with phone numbers to: Terri Dale, Director of Human Resources, Welding Instructor Search, Neosho County Community College, 800 West 14th Street, Chanute, KS 66720 Visit www.neosho.edu for application. **NCCC is an EOE/AA employer**

Agenda Item VIII-F: Welding Instructor for the Eastern Kansas Rural Technology Center in Garnett

It was the president's recommendation that the Board approve the creation of a Welding Instructor position for the Eastern Kansas Rural Technology Center in Garnett. The Welding Instructor will meet the needs of welding training at the Eastern Kansas Rural Technology Center in Garnett as a result of Senate Bill 155. A total of 46 students from the following school districts have signed up for fall welding courses: Garnett, Osawatomie, Ottawa, and Wellsville. A copy of the position announcement follows.

Resolution 2013-32

RESOLVED, that the Board of Trustees of Neosho County Community College approves the creation of a Welding Instructor position for the Eastern Kansas Rural Technology Center in Garnett.

**Upon motion by Lori Kiblinger and second by David Peter the above resolution was approved.
Motion passed unanimously.**

Position Announcement

Welding Instructor - Garnett (9-month faculty position)

- Responsibilities:** Provide welding technology instruction in Garnett, Kansas to high school and college students resulting in weld certification and achievement of industry standards; provide advising; perform outcome assessments; articulate high school, community college and university curricula into cohesive 2+2+2 opportunities for students; collaborate with industry; serve as a link between high school and college personnel; and work with the program advisory council.
- Qualifications:** Master's degree preferred, Bachelor's degree in industrial technology- related field, or specialty certification required; practical welding experience required; teaching experience preferred; experience working with high school and college-age populations preferred; excellent communication and supervision skills required; flexibility required; the ability to implement this vocational program in partnership with a local school district and community college is a must.
- Salary/Benefits:** Commensurate with education and experience with excellent benefits including health insurance and KPERS.
- Application:** Please send a letter of application, resume, unofficial transcripts, employment application, and five references with phone numbers to:
- Terri Dale, Director of Human Resources
Welding Instructor Search
Neosho County Community College
800 West 14th Street
Chanute, KS 66720

This position will remain open until filled. Review of applications will begin upon receipt. Visit www.neosho.edu for application.

NCCC is an EOE/AA employer

Welding Instructor – Garnett (Full-time – 9-month) Neosho County Community College seeks person to provide welding technology instruction in Garnett, Kansas to high school and college-aged students resulting in weld certification and achievement of industry standards; provide enrollment advising; perform outcome assessment duties; articulate high school, community college and university curricula into cohesive 2+2+2 opportunities for students; collaborate with industry; serve as a link between high school and college personnel, work with program advisory council. Master's degree preferred, Bachelor's degree or specialty certification required; practical welding experience required; teaching experience preferred; experience working with high school and college-age populations preferred; excellent communication and supervision skills required; flexibility required; the ability to implement this vocational program in partnership with a local school district and community college is a must. Salary is commensurate with education and experience with excellent benefits including health insurance. Review of

applications will begin upon receipt. Please send a letter of application, resume, unofficial transcripts, employment application, and five references with phone numbers to: Terri Dale, Director of Human Resources, Welding Instructor Search, Neosho County Community College, 800 West 14th Street, Chanute, KS 66720 Visit www.neosho.edu for application. **NCCC is an EOE/AA employer**

Agenda Item VIII-G: Career and Technical Education Coordinator

It was the president's recommendation that the Board approve the creation of a Career and Technical Education Coordinator position. The Career and Technical Education Coordinator will work with Partners in Change students and ABE students as they transition into technical education or into the workforce. This position will be funded out of the AO-K grant (we just received an additional \$21,000 in supplemental funding for that project). There are more than sufficient funds in the grant to cover this position. The position description clearly states it is AO-K funded. AO-K is scheduled to continue through Sept 30, 2014. A copy of the job description follows.

Resolution 2013-33

RESOLVED, that the Board of Trustees of Neosho County Community College approves the creation of a Career and Technical Education Coordinator position.

Upon motion by Dennis Peters and second by Lori Kiblinger the above resolution was approved. Motion passed unanimously.

Career and Technical Education Coordinator

Reports to: Director Center for Academic and Vocational Excellence

Classification: Full-time, 12-month employee

Pay Status: Management Support

Vacation/Sick Leave/Holidays per Board Policy

Salary Range: \$28,000-\$30,000

This position is funded through the Accelerating Opportunities for Kansas grant and is subject to continued grant funding.

Revision Date: 03/11/13

Purpose of Position: This position reports to the Director Center for Academic and Vocational Excellence (CAVE). The Coordinator will oversee the Partners in Change (PIC) program at all Eastern Kansas Adult Education sites including the transition of PIC students into postsecondary training or employment. The Coordinator will work as a liaison between adult education, PIC, technical education, local business/industries, Kansas Works and other partners to ensure participant success. Duties include, but are not limited to:

1. Provide premiere quality service to all constituencies of the College;
2. Engage in continuous quality improvement and professional development;
3. Hire or assist in the hiring of PIC adjunct instructors;
4. Train or assist in the training of PIC adjunct instructors;
5. Evaluate or assist in evaluation of PIC adjunct instructors;
6. Schedule PIC courses on Eastern Kansas Adult Education sites;
7. Coordinate PIC adjunct instructors;
8. Become qualified to administer CASAS testing and test as needed;
9. Provide PIC participants' feedback on areas of improvements needed to enhance their employment opportunities;
10. Work with Kansas Works and other partners to secure referrals to the PIC courses;
11. Establish relationships with local business/industry to assist with PIC program and for placement of PIC graduates;
12. Work with the Mid-America Manufacturing Technology Center (MAMTC) for reporting PIC statics and success rate;
13. Coordinate and maintain student records, including data entry into PABLO database;
14. Assist with student tracking and follow-up;
15. Assist with Federal, state, and other reports as required/requested;
16. Create and deliver PIC presentations to community groups and other interested parties;
17. Attend conferences and meetings to enhance instruction and provide professional development; and
18. Perform other duties as assigned by the CAVE Director.

Required Knowledge, Skills and Abilities:

1. Ability to work effectively with all levels of employees. Ability to project a positive and professional image to students, employees, and the public.
2. Ability to appropriately exercise independent initiative and judgment; and
3. Ability to learn and implement new procedures.
4. Ability to work with, relate to, and teach diverse populations.

5. Organizing and coordinating skills.
6. Ability to communicate effectively, both orally and in writing.
7. Excellent computer skills.
8. Experience working with students who have limited knowledge of postsecondary education.
9. Ability to gather data, compile information and prepare reports.
10. Ability to plan and evaluate programs.
11. Ability to appropriately exercise independent initiative and judgment.
12. Ability to use classroom technology.
13. Willingness and ability to work as a member of a team.

Education and Experience:

1. Associates degree and 5 years of work experience required, bachelor's degree preferred.
2. Previous experience working with Business and Industry and adult learners preferred.

Working Conditions:

1. Teaching duties may be performed in various settings.
2. Work is normally performed in a typical classroom environment.
3. Regular travel is required.
4. Rare overnight trips and evening hours are required.
5. No or very limited physical effort required.

Non Discrimination

Discrimination against any individual on the basis of race, color, national origin, sex, disability, age, or religion; in the admission, access to, treatment, or employment in the college's programs and activities is prohibited. The Chief Student Affairs officer, NCCC, 800 West 14th Street, Chanute, Kansas 66720, 431-2820 ext. 213m has been designated to coordinate compliance with nondiscrimination requirements contained in Title VI of the Civil Right Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Americans with Disabilities Act Amendments Act of 2008. Information concerning the provisions of these acts, and the rights provided thereunder, are available from the compliance coordinator.

Agenda Item VIII-H: Executive Session – Non-Elected Personnel

On motion by Dennis Peters and second by Lori Kiblinger the Board recessed into executive session for 5 minutes to discuss a personnel matter of non-elected personnel which if discussed in open meeting might violate their right to privacy and to include the president, vice president for student learning, vice president for operations, chief financial officer, and the college attorney.

The Board entered executive session at 7:30 pm. The Board returned to open meeting at 7:35 pm.

Agenda Item VIII-I: Executive Session – Consultation with Attorney for the Board

On motion by Dennis Peters and second by Lori Kiblinger the Board recessed into executive session for 10 minutes for consultation with the attorney for the Board which would be deemed privileged in the attorney-client relationship and to include the president, vice president for student learning, vice president for operations, chief financial officer, and the college attorney with the dean of student development on standby.

The Board entered executive session at 7:40 pm. The Board returned to open meeting at 7:50 pm.

Resolution 2013-34

RESOLVED, that the Board of Trustees of Neosho County Community College approves notifying the attorney general's office that the college will be taking advantage of the four-year exemption to allow concealed carry weapons on campus in order to establish a security plan.

Upon motion by Dennis Peters and second by Lori Kiblinger the above resolution was approved. Motion passed unanimously.

Agenda Item VIII-J: Weapons Security Policy (first reading)

Response time from emergency responders, including law enforcement personnel can take in excess of 2½ minutes. The Board may desire that the president of the College and persons designated by the president develop recommended changes to the College security plan and corresponding Board Policy to address concerns about effective and timely response to emergency situations, including armed intruders, hostage situations, students who are armed and posing a direct threat of physical harm to themselves or others, and similar circumstances; and

A continued general ban on firearms and other weapons, may be prudent pending a complete analysis of the options available pursuant to Kansas HB 2052 (the "Act"), including impact on College liability insurance coverage if concealed handguns as defined in State law are permitted in College buildings when carried by person(s) with a valid concealed handgun license issued by the State of Kansas, as well as the comprehensive costs of adequate security measures as defined in the statute.

Weapons Security Policy

No person shall carry a firearm, a concealed weapon (except as authorized by the Act), or any other weapon as defined by K.S.A. 72-89a01(h) onto any College property, into any College building, onto any College transportation, or onto the premises of any function or activity sponsored or sanctioned by the College except for authorized law enforcement officials and others permitted pursuant to this policy.

- A. Employees of the College licensed to carry a concealed handgun under the Act shall not carry a concealed handgun onto any College property, into any College building, onto any College transportation, or onto the premises of any function or activity sponsored by the College on the premises of the College, or while engaged in the duties of the person's employment for the College, **except** that possession of a handgun as defined by the Act in the employee's private means of conveyance, even if parked on College premises is not prohibited.
- B. The president of the College, or designee, may designate specific College employees who are licensed pursuant to the Act to possess a concealed weapon onto any College Property, into any College buildings, onto any College transportation, and on the premises of any function or activity sponsored by the College as part of a College Security Plan and subject to any other certification the Board or president may require. The College Security Plan in consultation with and subject to approval of the Board shall be developed and effective on or before January 1, 2014, conditioned upon availability of liability insurance coverage compatible with the College Security Plan.
- C. Persons who are not employees of the College and who hold a valid license to carry concealed handguns pursuant to K.S.A. 75-7c01 et seq. (the "Act") are prohibited from the carrying of a concealed handgun into any College building.
- D. When for the limited purpose of facilitating or participating in a College-sanctioned firearm or weapon related event students, employees, and other persons may possess weapons on College premises, in College transportation, or the premises of any College

activity, as long as the weapons are not concealed and the weapons are not carried onto College transportation or premises of any other College or College-sponsored activity.

College buildings shall be conspicuously posted as provided in the Act. Any person who possesses a weapon in violation of this policy will be asked to leave the College premises or event. In addition, the College may report the incident to law enforcement officials, ban the person from College property or College events, take disciplinary action, or seek other legal remedies.

This policy is adopted to allow time for review and proper implementation of the Act in the best interests of the College, the students, faculty, staff, and the communities served by the College. If any provision of this policy or the application thereof to any person or circumstance is deemed by appropriate authority to conflict with or violate the Act or Kansas HB 2052, or any amendments thereto, the conflict or invalidity shall not affect other provisions of the policy which can be given effect without the conflicting or invalid provision or application, the provisions of this policy being severable for such purposes.

This policy shall be referred to or titled "Weapons Security Policy." Existing Board Policy for "weapons" under the Safety and Security Policy provisions remain in full force and effect except where it conflicts with the provisions hereof, in which case this Weapons Security Policy shall control.

Agenda Item VIII-K: Executive Session – Non-Elected Personnel

On motion by Dennis Peters and second by Lori Kiblinger the Board recessed into executive session for 5 minutes to discuss a personnel matter of non-elected personnel which if discussed in open meeting might violate their right to privacy with the president and college attorney on standby.

The Board entered executive session at 8:00 pm. The Board returned to open meeting at 8:10 pm.

On motion and second the Board returned to executive session for an additional 5 minutes at 8:10 pm. The Board returned to open meeting at 8:15 pm.

Resolution 2013-35

RESOLVED, that the Board of Trustees of Neosho County Community College approves extending Dr. Brian Inbody's contract as discussed in executive session.

Upon motion by Dennis Peters and second by Lori Kiblinger the above resolution was approved. Motion passed unanimously.

IX: Adjournment

The meeting adjourned at 8:17 pm.

Respectfully submitted,

David Peter, Board Chair

Denise L. Gilmore, Board Clerk

(Attachments follow)

Faculty Senate Board Report
Thursday, May 9, 2013

Items from Faculty Members:

1. Nancy Carpenter:
 - a. Spring Community Project – Items were donated by the students to be presented to the two Chanute Nursing Homes. Two large bags of items will be given in hopes that the nursing homes can use them as game prizes.
 - b. Celebration Tree – The Celebration Tree on the Chanute campus was decorated by the Student Nurse Association in honor of National Nurses Week May 6-12. 4X6 index cards were used as “ornaments”. Students from both levels were provided cards and asked to write something on them. Suggestions for cards were
 - Why I chose to be a nurse
 - What I’ve learned so far (NO IDENTIFIABLE PATIENT RELATED INFORMATION)
 - How nurses impact the community
 - What is my area of interest
 - Plans after graduation
 - Why others should consider nursing as a career choice
 - c. SNA sponsored an apparel sale this spring. T-shirt wording is “Save One Life, You’re a Hero. Save 100 lives, You’re a Nurse”
2. Cheryl VanHemert:
 - a. Has been named NLN Ambassador for our school from the National League of Nursing.
3. Linda Barrington:
 - a. The Nursing care of the Adult I class facilitated a senior Olympics at Garnett. 8 nursing homes including Ottawa participated in the event. There were distance throwing, wheel chair races, pig calling, and watermelon spitting along with other activities. The nursing students’ assisted the patients as well as running the games.
4. Brad Wilkinson:
 - a. The NCCC art students displayed their most recent works from the spring semester art classes on Monday May 6 – Thursday May 9 in Sanders Hall and Chapman Library with a reception in Chapman Library Thursday at 5:00 p.m. Classes represented included drawing, sculpture, painting, computer graphics, digital photography and glass art.

- b. Art instructor Brad Wilkinson also had a small art exhibit of digitally manipulated tree images in Sanders Hall from Monday April 29 – Friday May 3.
5. Richard Webber:
- a. On Friday May 3, Linda Jones and Richard Webber took a group of business and accounting students to meet with Jennifer Unruh - Marketing Coordinator, Beth Barlow - Marketing Director, and Mike Taylor - Human Resources Manager at B&W truck beds in Humboldt KS. The group was met with signs on the front door, receptionist desk and even tables in the dining hall welcoming the students. The cafeteria prepared the students a great meal including tacos and a salad bar.
 - b. Jennifer spoke about a wide range of topics around the business and marketing curriculum. She started with identifying the various target customers they deal with including the general public that pull RV's, to farmers and ranchers, and business to business wholesale customers. Jennifer discussed the challenges of communicating successfully and succinctly with each group given the vastly different information that each group needs. She spoke about their advantage of creating only high quality products that are category leaders, and what they do to maintain both that advantage and their brand image. Jennifer touched upon the lifestyle advantages and challenges of having a factory in a rural setting. She helped the students through an interactive SWOT analysis (Strengths, Weakness, Opportunity, Threats) of their business.
 - c. We mentioned that at least three of the students in the group had considered human resources as a career. Their human resources manager Mike Taylor stepped in and spoke about what his job entails on a daily and weekly basis, and some of the challenges he faces.
 - d. Jennifer finished by speaking about what it means to have an employer, which by normal business measures is small at 266 employees, but in the town the size of Humboldt has a major impact. She went through some of the reasons they believe they have a very low turnover rate, with two of the three original employees still working there, and the third recently retiring.
 - e. Jennifer, Beth, and Mike were very gracious hosts that we cannot thank enough for taking the time and energy away from their normal duties to meet with our students.
6. Will Jordan:
- a. My student Bridger Keyes won State Welding, our 5th State Champion out of 5 years of our full-time program. If that ever gets old hearing that news, think about all the other programs that never get to say they won.
7. Emily Kasprzak:

- a. The theatre department is having our final production this week! “Marcus is Walking: Scenes from the Road” opens on Thursday May 9th at 7:30, May 10th at 7:30 and May 11 at 2pm in Sanders Auditorium.
 - b. This is the largest cast we have had with 18 students being involved! For many of them this is their first show and they would love to have big crowds.
8. Linda Jones:
- a. The Business and Technology Advisory Board met on May 1 at noon. NCCC’s mission and vision were reviewed with Board members.
 - b. Charles Babb told the Board about customized training opportunities available and discussed upgrading to Office 2013.
 - c. Richard Webber reported on activities related to entrepreneurship, and told the Board about two students that are working on a business plan for a local business. Bankers in attendance were interested in possibly using NCCC students to help their clients with business plans.
 - d. Other ideas for integrating with the community were discussed, including building web sites for area businesses, doing research, and student internships. Board members expressed interest in collaborating with the college at the local business incubator.
 - e. Ideas included NCCC having a presence at the incubator and developing it into a business resource center. Linda Jones talked about new ideas and initiatives related to STEM (science, technology, engineering, and math.)
 - f. She also solicited input for the business unit’s strategic plan. Board members will be surveyed this summer to provide input into the strategic plan for the business department in preparation for the ACBSP (Accreditation Council for Business Schools and Programs) visit next spring.
 - g. The Board was reminded of the upcoming HLC visit in the fall.

A Look Inside NCCC (Enriching Lives):

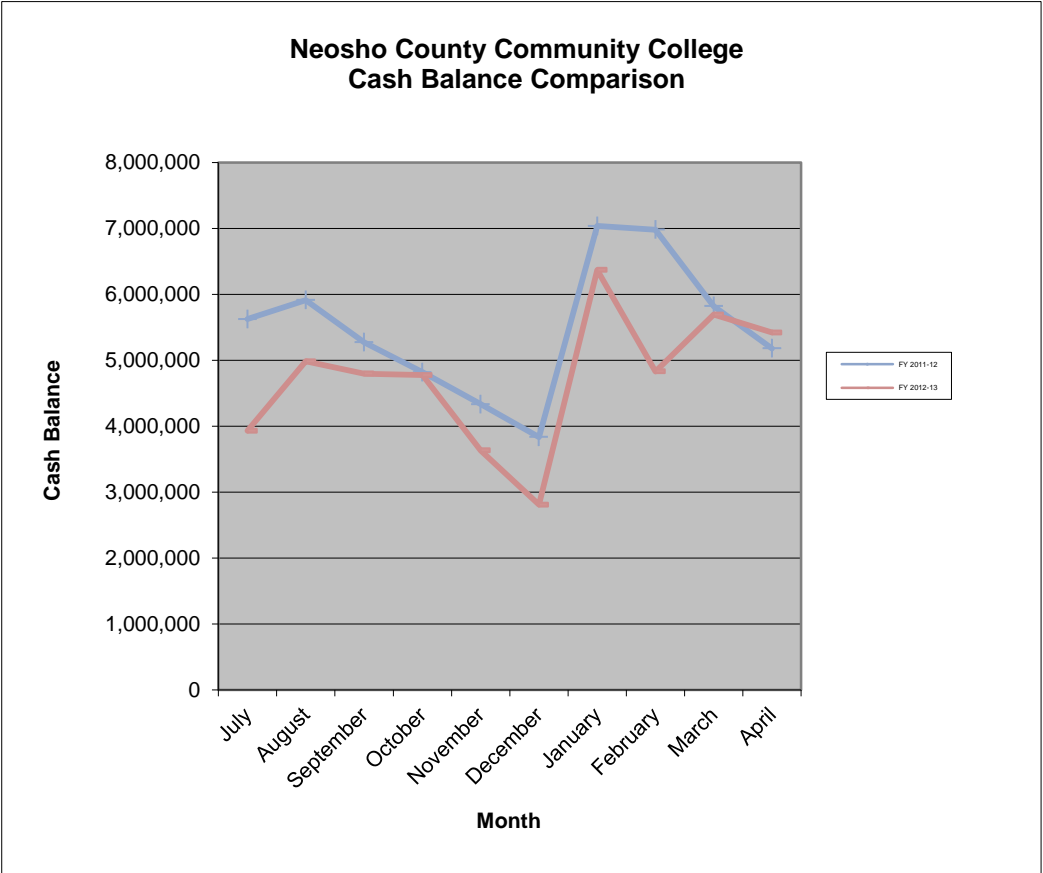
1. Beverly Roush:
 - a. Sarah Copeland (Level II Nursing Student) participated in the Nursing Leadership Project course. Because of her work, Beverly Roush (Instructor for the course) and the college received recognition for recognizing the Leadership and Management Skills acquired by students through participation in NSNA. NSNA appreciates the faculty and college support of these projects!
 - b. Sarah also participated in Science Night last Thursday at one of the local schools in order to promote nursing to a younger population. Part of Sarah’s Nursing Leadership Project was to begin mentoring Level I

students and promote nursing to a younger population. Sarah also went to speak to the career class at Royster earlier this year and invited 5th/6th graders from Royster to tour the Simulation Hospital. They were able to talk to Sim Man, check some of his vital signs and observe a “Parade of Parts” used to alter Sim Man for various simulations.

Charles Babb
President, Faculty Senate

TREASURER'S MONTHLY FINANCIAL STATEMENT
NEOSHO COUNTY COMMUNITY COLLEGE
For the Period April 1, 2013 to April 30, 2013

FUND	FUND DESCRIPTION	BEGINNING BALANCE 3/31/2013	RECEIPTS APRIL	JOURNAL ENTRIES APRIL	DISBURSEMENTS APRIL	ENDING BALANCE 4/30/2013
02	Postsecondary Technical Education Reserve	85,293.00	8,817.00		0.00	94,110.00
07	Petty Cash Fund	1,070.26	0.00	0.00	0.00	1,070.26
08	General Fund Deferred Maintenance	95,624.90	25.00	0.00	0.00	95,649.90
09	General Fund Equipment Reserve	182,856.52	0.00	0.00	0.00	182,856.52
10	General Fund UnencumberedFund Balance	1,500,000.00	0.00	0.00	0.00	1,500,000.00
11	General Fund	489,368.38	102,138.46	5,419.46	-754,726.43	-157,800.13
12	Postsecondary Technical Education Fund	1,063,479.37	150,390.06	-7,081.26	-186,147.97	1,020,640.20
13	Adult Basic Education Fund	-1,728.16	48,415.41	0.00	-47,587.75	-900.50
14	Adult Supplementary Education Fund	7,543.31	21,804.00	0.00	-4,588.15	24,759.16
16	Residence Hall/Student Union Fund	803,246.54	63,967.91	-345,489.39	-59,939.84	461,785.22
17	Bookstore Fund	192,288.61	51,630.35	-1,041.61	-13,593.09	229,284.26
21	College Workstudy Fund	0.00	3,260.70	0.00	-3,873.33	-612.63
22	SEOG Grant Fund	0.00	2,400.00	0.00	-2,400.00	0.00
23	ACG Grant Fund	0.00	0.00	0.00	0.00	0.00
24	Pell Grant Fund	402.00	295,859.00	0.00	-295,859.00	402.00
25	Student Loans Fund	0.00	351,402.00	0.00	-351,402.00	0.00
31	Title III Grant	-35,147.29	35,124.19	0.00	-19,512.13	-19,535.23
32	Grant Funds	-404,380.70	288,404.17	1,661.80	-118,937.71	-233,252.44
51	Library Bequest Fund	1,029.96	0.00	0.00	0.00	1,029.96
52	Snyder Chapel Fund	205.64	0.00	0.00	0.00	205.64
61	Capital Outlay Fund	99,997.39	0.00	0.00	0.00	99,997.39
65	Student Union Revenue Bond Reserve	631,039.84	0.00	345,389.39	0.00	976,429.23
70	Agency Funds	973,447.59	633,329.61		-463,256.62	1,143,520.58
90	Payroll Clearing Fund	0.00	0.00	0.00	0.00	0.00
	TOTALS	\$5,685,637.16	\$2,056,967.86	\$0.00	-\$2,321,824.02	\$5,419,639.39
	Checking Accounts					\$3,348,221.59
	Investments					\$2,069,817.80
	Cash on Hand					\$1,600.00
	Total					\$5,419,639.39



PRESIDENT'S REPORT

MAY 9, 2013

Good Evening Trustees,

Thank you for your time and talents. Here are a few items of interest.

ENROLLMENT

The summer looks like it might be way down for this year. Currently the enrollment is off over 12%, a significant drop. Loss of the CBJT grant and summer Pell, combined with a recovering economy, have all contributed to this decline. While there are still three weeks left and there is always a surge of enrollment during finals week, I do not expect the numbers to bring us back to flat for the summer. Fall enrollment is about flat right now, off only 0.5%. We still have months to go there.

Due to the decline in summer enrollment Sandi and I have lowered our revenue expectations by about \$70,000. Hopefully that enrollment will improve before the budget is complete and we will be able to put the funds back.

SPRING SEMESTER 2013

CAMPUS	YEAR CODE	TERM CODE	RUN DATE	STUDENT TOTAL	CREDIT HOUR TOTAL	% INCREASE OR DECREASE
TOTAL	2012	50	5-9-12	3133	19927	
TOTAL	2013	50	5-9-13	3092	19289	-3.20%
CHANUTE	2012	50	5-9-12	709	6345	
CHANUTE	2013	50	5-9-13	652	5415	-14.66%
OTTAWA	2012	50	5-9-12	852	5786	
OTTAWA	2013	50	5-9-13	741	5462	-5.60%
ONL	2012	50	5-9-12	1049	5079	
ONL	2013	50	5-9-13	1036	4776	-5.97%
ODO	2012	50	5-9-12	249	1118	
ODO	2013	50	5-9-13	386	1916	71.38%
IDO	2012	50	5-9-12	274	1599	

IDO	2013	50	5-9-13	277	1720	7.57%
-----	------	----	--------	-----	------	-------

SUMMER SEMESTER 2013

CAMPUS	YEAR CODE	TERM CODE	RUN DATE	STUDENT TOTAL	CREDIT HOUR TOTAL	% INCREASE OR DECREASE
TOTAL	2013	10	5-9-12	1047	4378.5	
TOTAL	2014	10	5-9-13	953	3830	-12.53%
CHANUTE	2013	10	5-9-12	148	499.5	
CHANUTE	2014	10	5-9-13	129	428	-14.31%
OTTAWA	2013	10	5-9-12	324	1426	
OTTAWA	2014	10	5-9-13	309	1304	-8.56%
ONL	2013	10	5-9-12	506	2119	
ONL	2014	10	5-9-13	474	1869	-11.80%
ODO	2013	10	5-9-12	44	259	
ODO	2014	10	5-9-13	22	132	-49.03%
IDO	2013	10	5-9-12	25	75	
IDO	2014	10	5-9-13	19	97	29.33%

FALL SEMESTER 2013

CAMPUS	YEAR CODE	TERM CODE	RUN DATE	STUDENT TOTAL	CREDIT HOUR TOTAL	% INCREASE OR DECREASE
TOTAL	2013	30	5-9-12	916	7128	
TOTAL	2014	30	5-9-13	905	7092	-.51%
CHANUTE	2013	30	5-9-12	267	2924	
CHANUTE	2014	30	5-9-13	301	3283	12.28%
OTTAWA	2013	30	5-9-12	289	2416	
OTTAWA	2014	30	5-9-13	236	1938	-19.78%
ONL	2013	30	5-9-12	338	1623	
ONL	2014	30	5-9-13	354	1763	8.63%
ODO	2013	30	5-9-12	9	50	
ODO	2014	30	5-9-13	2	14	-72.00%

IDO	2013	30	5-9-12	13	115	
IDO	2014	30	5-9-13	12	94	-18.26%

HOUSING

We ended the year with 240 paid residents – WOW! That is the highest number we have had in my 10 years here. Sandi tells me that there is a chance that we will MAKE A PROFIT on our housing for the first time since the new residence hall was built in 2000.

For 2013-2014 we have 173 paid deposits so far with another 17 applications without deposits in. It is looking like it will be full in 2013-2014 as well!

MEETING WITH LAWRENCE PUBLIC SCHOOLS

My meeting with Dr. Doll with Lawrence Public Schools went well. I explained that the College is very willing to help with educational programming and with grant writing to help them accomplish the new building. We even discussed started some of the programming in the fall of 2013 using our small facility in Lawrence. I also explained that NCCC is not in a position to help with a major construction project in Douglas County right now. I also suggested that such a CTE facility might be best if it is phased in over time. Dr. Doll is setting up a meeting with folks in his region to talk about the project and get all of the horses pulling in the same direction.

We are writing a TAACCT grant in hopes of securing funding for the programming and for “renovation and equipment” money for the project. Washburn Tech and JCCC will be part of the grant and we can ask for up to \$25 million.

ASSISTANT COACHES AND THE AFFORDABLE CARE ACT

The College will be making sure that part-time employees are just that, part-time, especially with the coming Affordable Care Act (ACA). Adjuncts have always been limited in the number of credit hours they can teach at any one time and so we will be mindful of this limitation. The one area that we might want to consider changing in the very near future is the contracts of assistant coaches (AC).

As you know for the past three years we have been raising assistant coach pay at a faster rate than any other position at the College in an effort to attract and retain good coaches. Currently first year ACs makes \$13,050 while second year and beyond make \$14,400 a year for nine months without benefits. However, some ACs are also adjunct instructors or work hours monitoring the Student Union. We want no appearance of impropriety in regards to the new law so assistant coaches will be restricted from taking any extra duties beginning fall 2013. This will certainly impact their ability to make ends meet.

While the budget is in flux right now, I am considering possibly moving the 13 positions to 10 month full time or perhaps only one 10 month full-timer per team in a D-I model. The cost is quite expensive. The benefit package alone runs about \$9,000 per employee. However, there are offsets that can limit the cost and we could certainly use the extra hours for help in advising, recruiting, academic coaching, tutoring, etc.

If it was determined that the assistant coaches were found to be working over 30 hours a week, an alternative is paying the IRS “sledgehammer” penalty. This is a penalty of \$2,000 per ALL employees (minus the first 30), even though we pay the insurance for our other full-timers, which would be \$252,000. Yikes! That is why it is critical that we either limit ACs work outside their normal contract or we make them fulltime.

The law begins January 1, 2014. What is the Board’s reaction at this early stage in the proposal?

Salary	Current Salary	Proposed Salary	Difference
	14,400	17,000	2,600
Benefits			9,200
Per Coach			11,800
Assistant Coaches			10
Total Cost			118,000
Offsets			
		SU Watching	9,000
		Adjunct Instruction	27,000
		Academic Coaches	4,400
		Tutoring	4,400
Total Offsets			44,800
Total Needed After Offsets			73,200

LEGISLATIVE REPORT

The Legislature was at recess for much of the last few weeks so there is not much to report for this month. The debate continues between the three funding plans for Higher Education – The Governor’s 0%, the Senate’s -2% and the House’s -4%. The sales tax issue will be the deciding factor and folks seem to be digging in their heels at this point. HB2285, the redefinition of real property, seems to be dead at this point.

GRADUATION AND AWARDS ASSEMBLIES

We have concluded our academic awards for both the Chanute and Ottawa campuses this week. I was very proud of the excellent work by our student body. The faculty and staff presenters did a great job bragging on those accomplishments.

Graduation is on Friday the 17th at 7pm with Nurses Pinning at 4:30pm. Immediately following graduation you and your spouse are invited to my house (221 E 8th) for a party celebrating the completion of another academic year.

On Tuesday the 21st, we will hold our annual service award presentation and lunch. You are certainly invited to attend. It begins at 11:30am in the auditorium and concludes with lunch in the cafeteria at noon.

PERSONAL NOTE

I have no vacation plans and should be on campus most of the month with the exception of the KBOR meeting on the 16th and a trip to Children's Mercy on the 15th. Jim will be covering for me at the Performance Agreement BAASC meeting on the 15th as our agreement will be up for discussion.

 **AIA[®] Document A141[™] – 2004**

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the Ninth day of May
in the year of Two Thousand Twelve
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name, address and other information)

Neosho County Community College
800 West 14th Street
Chanute, Kansas 66720

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification. Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

and the Design-Builder:
(Name, address and other information)

Loyd Builders, Inc.
2126 South Elm Street
Ottawa, Kansas 66067

For the following Project:
(Name, location and detailed description)

Neosho County Community College
Stoltz Hall Renovation Phase II

The Owner and Design-Builder agree as follows.

AIA Document A141[™]– 2004. Copyright © 2004 by The American Institute of Architects. All rights reserved. WARNING: This AIA[®] Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA[®] Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. Purchasers are permitted to reproduce ten (10) copies of this document when completed. To report copyright violations of AIA Contract Documents, e-mail The American Institute of Architects' legal counsel, copyright@aia.org.

TABLE OF ARTICLES

- 1 THE DESIGN-BUILD DOCUMENTS
- 2 WORK OF THIS AGREEMENT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 MISCELLANEOUS PROVISIONS
- 8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS

TABLE OF EXHIBITS

- A TERMS AND CONDITIONS
- B DETERMINATION OF THE COST OF THE WORK
- C INSURANCE AND BONDS

ARTICLE 1 THE DESIGN-BUILD DOCUMENTS

§ 1.1 The Design-Build Documents form the Design-Build Contract. The Design-Build Documents consist of this Agreement between Owner and Design-Builder (hereinafter, the "Agreement") and its attached Exhibits; Supplementary and other Conditions; Addenda issued prior to execution of the Agreement; the Project Criteria, including changes to the Project Criteria proposed by the Design-Builder and accepted by the Owner, if any; the Design-Builder's Proposal and written modifications to the Proposal accepted by the Owner, if any; other documents listed in this Agreement; and Modifications issued after execution of this Agreement. The Design-Build Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Owner, (2) between the Owner and a Contractor or Subcontractor, or (3) between any persons or entities other than the Owner and Design-Builder, including but not limited to any consultant retained by the Owner to prepare or review the Project Criteria. An enumeration of the Design-Build Documents, other than Modifications, appears in Article 8.

§ 1.2 The Design-Build Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

§ 1.3 The Design-Build Contract may be amended or modified only by a Modification. A Modification is (1) a written amendment to the Design-Build Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Owner.

ARTICLE 2 THE WORK OF THE DESIGN-BUILD CONTRACT

§ 2.1 The Design-Builder shall fully execute the Work described in the Design-Build Documents, except to the extent specifically indicated in the Design-Build Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice issued by the Owner.

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

If, prior to the commencement of Work, the Owner requires time to file mortgages, documents related to mechanic's liens and other security interests, the Owner's time requirement shall be as follows:
(Insert Owner's time requirements.)

§ 3.2 The Contract Time shall be measured from the date of commencement, subject to adjustments of this Contract Time as provided in the Design-Build Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)

§ 3.3 The Design-Builder shall achieve Substantial Completion of the Work not later than _____ days from the date of commencement, or as follows:
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Design-Build Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

Construction shall begin May 28, 2013 and Substantial Completion shall be no later than August 1, 2013.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Design-Build Contract. The Contract Sum shall be one of the following:
(Check the appropriate box.)

- Stipulated Sum in accordance with Section 4.2 below;
- Cost of the Work Plus Design-Builder's Fee in accordance with Section 4.3 below;
- Cost of the Work Plus Design-Builder's Fee with a Guaranteed Maximum Price in accordance with Section 4.4 below.

(Based on the selection above, complete either Section 4.2, 4.3 or 4.4 below.)

§ 4.2 STIPULATED SUM

§ 4.2.1 The Stipulated Sum shall be _____ Dollars (\$ 242,718.00), subject to additions and deductions as provided in the Design-Build Documents.

§ 4.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

§ 4.2.3 Unit prices, if any, are as follows:

§ 4.2.4 Allowances, if any, are as follows:

(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)

§ 4.2.5 Assumptions or qualifications, if any, on which the Stipulated Sum is based, are as follows:

§ 4.3 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE

§ 4.3.1 The Cost of the Work is as defined in Exhibit B.

§ 4.3.2 The Design-Builder's Fee is:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method of adjustment to the Fee for changes in the Work.)

§ 4.4 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE WITH A GUARANTEED MAXIMUM PRICE

§ 4.4.1 The Cost of the Work is as defined in Exhibit B, plus the Design-Builder's Fee.

§ 4.4.2 The Design-Builder's Fee is:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method of adjustment to the Fee for changes in the Work.)

§ 4.4.3 GUARANTEED MAXIMUM PRICE

§ 4.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed Dollars (\$ _____), subject to additions and deductions by changes in the Work as provided in the Design-Build Documents. Such maximum sum is referred to in the Design-Build Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

(Insert specific provisions if the Design-Builder is to participate in any savings.)

§ 4.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

§ 4.4.3.3 Unit Prices, if any, are as follows:

§ 4.4.3.4 Allowances, if any, are as follows:

(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)

§ 4.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based, are as follows:

(Identify the assumptions on which the Guaranteed Maximum Price is based.)

§ 4.5 CHANGES IN THE WORK

§ 4.5.1 Adjustments of the Contract Sum on account of changes in the Work may be determined by any of the methods listed in Article A.7 of Exhibit A, Terms and Conditions.

§ 4.5.2 Where the Contract Sum is the Cost of the Work, with or without a Guaranteed Maximum Price, and no specific provision is made in Sections 4.3.2 or 4.4.2 for adjustment of the Design-Builder's Fee in the case of Changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment will cause substantial inequity to the Owner or Design-Builder, the Design-Builder's Fee shall be equitably adjusted on the basis of the Fee established for the original Work, and the Contract Sum shall be adjusted accordingly.

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received not later than the first day of month, the Owner shall make payment to the Design-Builder not later than the fifteenth day of the same month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than thirty days after the Owner receives the Application for Payment.

§ 5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections 5.1.4 or 5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid on account of the Agreement. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ 5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 PROGRESS PAYMENTS – STIPULATED SUM

§ 5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of percent (10 %) on the Work, other than services provided by design professionals and other consultants retained directly by the Design-Builder. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of percent (10 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Owner has withheld payment from or nullified an Application for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.2.3 The progress payment amount determined in accordance with Section 5.2.2 shall be further modified under the following circumstances:

- .1 add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section A.9.8.6 of Exhibit A, Terms and Conditions requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)
- .2 add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section A.9.10.3 of Exhibit A, Terms and Conditions.

§ 5.2.4 Reduction or limitation of retainage, if any, under Section 5.2.2 shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.2.2.1 and 5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert here provisions for such reduction or limitation.)

§ 5.3 PROGRESS PAYMENTS – COST OF THE WORK PLUS A FEE

§ 5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.

§ 5.3.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take the Cost of the Work as described in Exhibit B;
- .2 Add the Design-Builder's Fee, less retainage of (%). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section 5.3.2.1 at the rate stated in Section 4.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the preceding section bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner;
- .4 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section 5.1.4 or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
- .5 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate for Payment as provided in the Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.3.3 Retainage in addition to the retainage stated at Section 5.3.2.2, if any, shall be as follows:

§ 5.3.4 Except with the Owner's prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Design-Builder, shall be subject to retainage of not less than (%). The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors.

§ 5.4 PROGRESS PAYMENTS – COST OF THE WORK PLUS A FEE WITH A GUARANTEED MAXIMUM PRICE

§ 5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Design-Builder's Fee, less retainage of (%). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the two preceding sections at the rate stated in Section 4.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding sections bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section 5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
- .6 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.4.3 Except with the Owner's prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Design-Builder, shall be subject to retainage of not less than (%). The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors.

§ 5.5 FINAL PAYMENT

§ 5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder no later than 30 days after the Design-Builder has fully performed the Design-Build Contract, including the requirements in Section A.9.10 of Exhibit A, Terms and Conditions, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 The parties appoint the following individual to serve as a Neutral pursuant to Section A.4.2 of Exhibit A, Terms and Conditions:

(Insert the name, address and other information of the individual to serve as a Neutral. If the parties do not select a Neutral, then the provisions of Section A.4.2.2 of Exhibit A, Terms and Conditions, shall apply.)

§ 6.2 If the parties do not resolve their dispute through mediation pursuant to Section A.4.3 of Exhibit A, Terms and Conditions, the method of binding dispute resolution shall be the following:

(If the parties do not select a method of binding dispute resolution, then the method of binding dispute resolution shall be by litigation in a court of competent jurisdiction.)

(Check one.)

- Arbitration pursuant to Section A.4.4 of Exhibit A, Terms and Conditions
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

§ 6.3 ARBITRATION

§ 6.3.1 If Arbitration is selected by the parties as the method of binding dispute resolution, then any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration as provided in Section A.4.4 of Exhibit A, Terms and Conditions.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 The Architect, other design professionals and consultants engaged by the Design-Builder shall be persons or entities duly licensed to practice their professions in the jurisdiction where the Project is located and are listed as follows:

(Insert name, address, license number, relationship to Design-Builder and other information.)

Bartlett & West Engineers, Inc., 544 Columbia Dr., Lawrence, KS 66049

§ 7.2 Consultants, if any, engaged directly by the Owner, their professions and responsibilities are listed below:

(Insert name, address, license number, if applicable, and responsibilities to Owner and other information.)

§ 7.3 Separate contractors, if any, engaged directly by the Owner, their trades and responsibilities are listed below:

(Insert name, address, license number, if applicable, responsibilities to Owner and other information.)

§ 7.4 The Owner's Designated Representative is:

(Insert name, address and other information.)

Ben Smith, Neosho County Community College

800 W. 14th Street, Chanute, Kansas 66720

§ 7.4.1 The Owner's Designated Representative identified above shall be authorized to act on the Owner's behalf with respect to the Project.

§ 7.5 The Design-Builder's Designated Representative is:
(Insert name, address and other information.)

Josh Walker, Loyd Builders, Inc.
2126 S. Elm, Ottawa, Kansas 66067

§ 7.5.1 The Design-Builder's Designated Representative identified above shall be authorized to act on the Design-Builder's behalf with respect to the Project.

§ 7.6 Neither the Owner's nor the Design-Builder's Designated Representative shall be changed without ten days written notice to the other party.

§ 7.7 Other provisions:

§ 7.7.1 Where reference is made in this Agreement to a provision of another Design-Build Document, the reference refers to that provision as amended or supplemented by other provisions of the Design-Build Documents.

§ 7.7.2 Payments due and unpaid under the Design-Build Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Design-Builder's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

ARTICLE 8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS

§ 8.1 The Design-Build Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 8.1.1 The Agreement is this executed edition of the Standard Form of Agreement Between Owner and Design-Builder, AIA Document A141-2004.

§ 8.1.2 The Supplementary and other Conditions of the Agreement, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

§ 8.1.3 The Project Criteria, including changes to the Project Criteria proposed by the Design-Builder, if any, and accepted by the Owner, consist of the following:
(Either list applicable documents and their dates below or refer to an exhibit attached to this Agreement.)

§ 8.1.4 The Design-Builder's Proposal, dated November 30, 2011, consists of the following:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

See Exhibit D

§ 8.1.5 Amendments to the Design-Builder's Proposal, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

§ 8.1.6 The Addenda, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

§ 8.1.7 Exhibit A, Terms and Conditions.
(If the parties agree to substitute terms and conditions other than those contained in AIA Document A141-2004, Exhibit A, Terms and Conditions, then identify such terms and conditions and attach to this Agreement as Exhibit A.)

§ 8.1.8 Exhibit B, Determination of the Cost of the Work, if applicable.
(If the parties agree to substitute a method to determine the Cost of the Work other than that contained in AIA Document A141-2004, Exhibit B, Determination of the Cost of the Work, then identify such other method to determine the Cost of the Work and attach to this Agreement as Exhibit B. If the Contract Sum is a Stipulated Sum, then Exhibit B is not applicable.)

Not applicable

§ 8.1.9 Exhibit C, Insurance and Bonds, if applicable.
(Complete AIA Document A141-2004, Exhibit C, Insurance and Bonds or indicate "not applicable.")

§ 8.1.10 Other documents, if any, forming part of the Design-Build Documents are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

The provisions found in Contractual Provisions Attachment (Form DA-146a, rev. 1-01), which is attached hereto as Exhibit E, are hereby incorporated in this contract and made a part thereof.

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Design-Builder and one to the Owner.

OWNER *(Signature)*

DESIGN-BUILDER *(Signature)*

(Printed name and title)

(Printed name and title)

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

AIA Document A141™- 2004. Copyright © 2004 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. Purchasers are permitted to reproduce ten (10) copies of this document when completed. To report copyright violations of AIA Contract Documents, e-mail The American Institute of Architects' legal counsel, copyright@aia.org.



AIA Document A141™ – 2004 Exhibit A

Terms and Conditions

for the following PROJECT:

(Name and location or address)

Neosho County Community College
Stoltz Hall Renovation Phase II

THE OWNER:

(Name and address)

Neosho County Community College
800 West 14th Street, Chanute, Kansas 66720

THE DESIGN-BUILDER:

(Name and address)

Loyd Builders, Inc.
2126 S. Elm Street, Ottawa, Kansas 66067

TABLE OF ARTICLES

- A.1 GENERAL PROVISIONS**
- A.2 OWNER**
- A.3 DESIGN-BUILDER**
- A.4 DISPUTE RESOLUTION**
- A.5 AWARD OF CONTRACTS**
- A.6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**
- A.7 CHANGES IN THE WORK**
- A.8 TIME**
- A.9 PAYMENTS AND COMPLETION**
- A.10 PROTECTION OF PERSONS AND PROPERTY**
- A.11 INSURANCE AND BONDS**
- A.12 UNCOVERING AND CORRECTION OF WORK**
- A.13 MISCELLANEOUS PROVISIONS**
- A.14 TERMINATION OR SUSPENSION OF THE DESIGN-BUILD CONTRACT**

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification. Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

ARTICLE A.1 GENERAL PROVISIONS

§ A.1.1 BASIC DEFINITIONS

§ A.1.1.1 THE DESIGN-BUILD DOCUMENTS

The Design-Build Documents are identified in Section 1.1 of the Agreement.

§ A.1.1.2 PROJECT CRITERIA

The Project Criteria are identified in Section 8.1.3 of the Agreement and may describe the character, scope, relationships, forms, size and appearance of the Project, materials and systems and, in general, their quality levels, performance standards, requirements or criteria, and major equipment layouts.

§ A.1.1.3 ARCHITECT

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and having a direct contract with the Design-Builder to perform design services for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

§ A.1.1.4 CONTRACTOR

A Contractor is a person or entity, other than the Architect, that has a direct contract with the Design-Builder to perform all or a portion of the construction required in connection with the Work. The term "Contractor" is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor. The term "Contractor" does not include a separate contractor, as defined in Section A.6.1.2, or subcontractors of a separate contractor.

§ A.1.1.5 SUBCONTRACTOR

A Subcontractor is a person or entity who has a direct contract with a Contractor to perform a portion of the construction required in connection with the Work at the site. The term "Subcontractor" is referred to throughout the Design-Build Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.

§ A.1.1.6 THE WORK

The term "Work" means the design, construction and services required by the Design-Build Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Design-Builder to fulfill the Design-Builder's obligations. The Work may constitute the whole or a part of the Project.

§ A.1.1.7 THE PROJECT

The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and which may include design and construction by the Owner or by separate contractors.

§ A.1.1.8 NEUTRAL

The Neutral is the individual appointed by the parties to decide Claims and disputes pursuant to Section A.4.2.1.

§ A.1.2 COMPLIANCE WITH APPLICABLE LAWS

§ A.1.2.1 If the Design-Builder believes that implementation of any instruction received from the Owner would cause a violation of any applicable law, statute, ordinance, building code, rule or regulation, the Design-Builder shall notify the Owner in writing. Neither the Design-Builder nor any Contractor or Architect shall be obligated to perform any act which they believe will violate any applicable law, ordinance, rule or regulation.

§ A.1.2.2 The Design-Builder shall be entitled to rely on the completeness and accuracy of the information contained in the Project Criteria, but not that such information complies with applicable laws, regulations and codes, which shall be the obligation of the Design-Builder to determine. In the event that a specific requirement of the Project Criteria conflicts with applicable laws, regulations and codes, the Design-Builder shall furnish Work which complies with such laws, regulations and codes. In such case, the Owner shall issue a Change Order to the Design-Builder unless the Design-Builder recognized such non-compliance prior to execution of this Agreement and failed to notify the Owner.

§ A.1.3 CAPITALIZATION

§ A.1.3.1 Terms capitalized in these Terms and Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to sections in the document, or (3) the titles of other documents published by the American Institute of Architects.

§ A.1.4 INTERPRETATION

§ A.1.4.1 In the interest of brevity, the Design-Build Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ A.1.4.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

§ A.1.5 EXECUTION OF THE DESIGN-BUILD DOCUMENTS

§ A.1.5.1 The Design-Build Documents shall be signed by the Owner and Design-Builder.

§ A.1.5.2 Execution of the Design-Build Contract by the Design-Builder is a representation that the Design-Builder has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Design-Build Documents.

§ A.1.6 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA

§ A.1.6.1 Drawings, specifications, and other documents including those in electronic form, prepared by the Architect and furnished by the Design-Builder are Instruments of Service. The Design-Builder, Design-Builder’s Architect and other providers of professional services individually shall retain all common law, statutory and other reserved rights, including copyright in those Instruments of Services furnished by them. Drawings, specifications, and other documents and materials and electronic data are furnished for use solely with respect to this Project.

§ A.1.6.2 Upon execution of the Design-Build Contract, the Design-Builder grants to the Owner a non-exclusive license to reproduce and use the Instruments of Service solely in connection with the Project, including the Project’s further development by the Owner and others retained by the Owner for such purposes, provided that the Owner shall comply with all obligations, including prompt payment of sums when due, under the Design-Build Documents. Subject to the Owner’s compliance with such obligations, such license shall extend to those parties retained by the Owner for such purposes, including other design professionals. The Design-Builder shall obtain similar non-exclusive licenses from its design professionals, including the Architect. The Owner shall not otherwise assign or transfer any license herein to another party without prior written agreement of the Design-Builder. Any unauthorized reproduction or use of the Instruments of Service by the Owner or others shall be at the Owner’s sole risk and expense without liability to the Design-Builder and its design professionals. Except as provided in Section A.1.6.4, termination of this Agreement prior to completion of the Design-Builder’s services to be performed under this Agreement shall terminate this license.

§ A.1.6.3 Prior to any electronic exchange by the parties of the Instruments of Service or any other documents or materials to be provided by one party to the other, the Owner and the Design-Builder shall agree in writing on the specific conditions governing the format thereof, including any special limitations or licenses not otherwise provided in the Design-Build Documents.

§ A.1.6.4 If this Agreement is terminated for any reason other than the default of the Owner, each of the Design-Builder’s design professionals, including the Architect, shall be contractually required to convey to the Owner a non-exclusive license to use that design professional’s Instruments of Service for the completion, use and maintenance of the Project, conditioned upon the Owner’s written notice to that design professional of the Owner’s assumption of the Design-Builder’s contractual duties and obligations to that design professional and payment to that design professional of all amounts due to that design professional and its consultants. If the Owner does not assume the remaining duties and obligations of the Design-Builder to that design professional under this Agreement, then the Owner shall indemnify and hold harmless that design professional from all claims and any expense, including legal fees, which that design professional shall thereafter incur by reason of the Owner’s use of such Instruments of Service. The Design-Builder shall incorporate the requirements of this Section A.1.6.4 in all agreements with its design professionals.

§ A.1.6.5 Submission or distribution of the Design-Builder's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section A.1.6.1.

ARTICLE A.2 OWNER

§ A.2.1 GENERAL

§ A.2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization. The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule submitted to the Owner.

§ A.2.1.2 The Owner shall furnish to the Design-Builder within 15 days after receipt of a written request information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ A.2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ A.2.2.1 Information or services required of the Owner by the Design-Build Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Design-Builder's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Design-Builder of a written request for such information or services.

§ A.2.2.2 The Owner shall be responsible to provide surveys, if not required by the Design-Build Documents to be provided by the Design-Builder, describing physical characteristics, legal limitations, and utility locations for the site of this Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restriction, boundaries, and contours of the site; locations, dimensions, and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ A.2.2.3 The Owner shall provide, to the extent available to the Owner and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems, chemical, air and water pollution, hazardous materials or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site.

§ A.2.2.4 The Owner may obtain independent review of the Design-Builder's design, construction and other documents by a separate architect, engineer, and contractor or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work.

§ A.2.2.5 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections. The Owner shall not be required to pay the fees for such permits, licenses and inspections unless the cost of such fees is excluded from the responsibility of the Design-Builder under the Design-Build Documents.

§ A.2.2.6 The services, information, surveys and reports required to be provided by the Owner under Section A.2.2, shall be furnished at the Owner's expense, and the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof, except as otherwise specifically provided in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing.

§ A.2.2.7 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ A.2.2.8 The Owner shall, at the request of the Design-Builder, prior to execution of the Design-Build Contract and promptly upon request thereafter, furnish to the Design-Builder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Design-Build Documents.

§ A.2.2.9 The Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder, unless otherwise directed by the Design-Builder.

§ A.2.2.10 The Owner shall furnish the services of geotechnical engineers or other consultants, if not required by the Design-Build Documents to be provided by the Design-Builder, for subsoil, air and water conditions when such services are deemed reasonably necessary by the Design-Builder to properly carry out the design services provided by the Design-Builder and the Design-Builder's Architect. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ A.2.2.11 The Owner shall promptly obtain easements, zoning variances, and legal authorizations regarding site utilization where essential to the execution of the Owner's program.

§ A.2.3 OWNER REVIEW AND INSPECTION

§ A.2.3.1 The Owner shall review and approve or take other appropriate action upon the Design-Builder's submittals, including but not limited to design and construction documents, required by the Design-Build Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Design-Build Documents. The Owner's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Design-Builder or separate contractors. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents.

§ A.2.3.2 Upon review of the design documents, construction documents, or other submittals required by the Design-Build Documents, the Owner shall take one of the following actions:

- 1 Determine that the documents or submittals are in conformance with the Design-Build Documents and approve them.
- 2 Determine that the documents or submittals are in conformance with the Design-Build Documents but request changes in the documents or submittals which shall be implemented by a Change in the Work.
- 3 Determine that the documents or submittals are not in conformity with the Design-Build Documents and reject them.
- 4 Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them by implementing a Change in the Work.
- 5 Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them and request changes in the documents or submittals which shall be implemented by a Change in the Work.

§ A.2.3.3 The Design-Builder shall submit to the Owner for the Owner's approval, pursuant to Section A.2.3.1, any proposed change or deviation to previously approved documents or submittals. The Owner shall review each proposed change or deviation to previously approved documents or submittals which the Design-Builder submits to the Owner for the Owner's approval with reasonable promptness in accordance with Section A.2.3.1 and shall make one of the determinations described in Section A.2.3.2.

§ A.2.3.4 Notwithstanding the Owner's responsibility under Section A.2.3.2, the Owner's review and approval of the Design-Builder's documents or submittals shall not relieve the Design-Builder of responsibility for compliance with the Design-Build Documents unless a) the Design-Builder has notified the Owner in writing of the deviation prior to approval by the Owner or, b) the Owner has approved a Change in the Work reflecting any deviations from the requirements of the Design-Build Documents.

§ A.2.3.5 The Owner may visit the site to keep informed about the progress and quality of the portion of the Work completed. However, the Owner shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Visits by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quantity or quality of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents, except as provided in Section A.3.3.7.

§ A.2.3.6 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of and will not be responsible for acts or omissions of the Design-Builder, Architect, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ A.2.3.7 The Owner may reject Work that does not conform to the Design-Build Documents. Whenever the Owner considers it necessary or advisable, the Owner shall have authority to require inspection or testing of the Work in accordance with Section A.13.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ A.2.3.8 The Owner may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Owner and the Design-Builder agree to in writing.

§ A.2.3.9 The Owner shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion.

§ A.2.4 OWNER'S RIGHT TO STOP WORK

§ A.2.4.1 If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section A.12.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section A.6.1.3.

§ A.2.5 OWNER'S RIGHT TO CARRY OUT THE WORK

§ A.2.5.1 If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Design-Builder a second written notice to correct such deficiencies within a three-day period. If the Design-Builder within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE A.3 DESIGN-BUILDER

§ A.3.1 GENERAL

§ A.3.1.1 The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The Design-Builder may be an architect or other design professional, a construction contractor, a real estate developer or any other person or entity legally permitted to do business as a design-builder in the location where the Project is located. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative. The Design-Builder's representative is authorized to act on the Design-Builder's behalf with respect to the Project.

§ A.3.1.2 The Design-Builder shall perform the Work in accordance with the Design-Build Documents.

§ A.3.2 DESIGN SERVICES AND RESPONSIBILITIES

§ A.3.2.1 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions. The Owner understands and agrees that the services performed by the Design-Builder's Architect and the Design-Builder's other design professionals and consultants are undertaken and performed in the sole interest of and for the exclusive benefit of the Design-Builder.

§ A.3.2.2 The agreements between the Design-Builder and Architect or other design professionals identified in the Agreement, and in any subsequent Modifications, shall be in writing. These agreements, including services and

financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon the Owner's written request.

§ A.3.2.3 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Contractors, Subcontractors and their agents and employees, and other persons or entities,

including the Architect and other design professionals, performing any portion of the Design-Builder's obligations under the Design-Build Documents.

§ A.3.2.4 The Design-Builder shall carefully study and compare the Design-Build Documents, materials and other information provided by the Owner pursuant to Section A.2.2, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the Owner any errors, inconsistencies or omissions discovered.

§ A.3.2.5 The Design-Builder shall provide to the Owner for Owner's written approval design documents sufficient to establish the size, quality and character of the Project; its architectural, structural, mechanical and electrical systems; and the materials and such other elements of the Project to the extent required by the Design-Build Documents. Deviations, if any, from the Design-Build Documents shall be disclosed in writing.

§ A.3.2.6 Upon the Owner's written approval of the design documents submitted by the Design-Builder, the Design-Builder shall provide construction documents for review and written approval by the Owner. The construction documents shall set forth in detail the requirements for construction of the Project. The construction documents shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the Design-Build Documents shall be disclosed in writing. Construction documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

- .1 be consistent with the approved design documents;
- .2 provide information for the use of those in the building trades; and
- .3 include documents customarily required for regulatory agency approvals.

§ A.3.2.7 The Design-Builder shall meet with the Owner periodically to review progress of the design and construction documents.

§ A.3.2.8 Upon the Owner's written approval of construction documents, the Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ A.3.2.9 The Design-Builder shall obtain from each of the Design-Builder'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 Project Criteria set forth in the Design-Build Documents, except to the extent specifically identified in such certificate, (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.

§ A.3.2.10 If the Owner requests the Design-Builder, the Architect or the Design-Builder's other design professionals to execute certificates other than those required by Section A.3.2.9, the proposed language of such certificates shall be submitted to the Design-Builder, or the Architect and such design professionals through the Design-Builder, for review and negotiation at least 14 days prior to the requested dates of execution. Neither the Design-Builder, the Architect nor such other design professionals shall be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of their respective agreements with the Owner or Design-Builder.

§ A.3.3 CONSTRUCTION

§ A.3.3.1 The Design-Builder shall perform no construction Work prior to the Owner's review and approval of the construction documents. The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require the Owner's review of submittals, such as Shop Drawings, Product Data and Samples, until the Owner has approved each submittal.

§ A.3.3.2 The construction Work shall be in accordance with approved submittals, except that the Design-Builder shall not be relieved of responsibility for deviations from requirements of the Design-Build Documents by the Owner's approval of design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals unless the Design-Builder has specifically informed the Owner in writing of such deviation at the time of submittal and (1) the Owner has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals by the Owner's approval thereof.

§ A.3.3.3 The Design-Builder shall direct specific attention, in writing or on resubmitted design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Owner on previous submittals. In the absence of such written notice, the Owner's approval of a resubmission shall not apply to such revisions.

§ A.3.3.4 When the Design-Build Documents require that a Contractor provide professional design services or certifications related to systems, materials or equipment, or when the Design-Builder in its discretion provides such design services or certifications through a Contractor, the Design-Builder shall cause professional design services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professionals, if prepared by others, shall bear such design professional's written approval. The Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ A.3.3.5 The Design-Builder shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Design-Build Documents.

§ A.3.3.6 The Design-Builder shall keep the Owner informed of the progress and quality of the Work.

§ A.3.3.7 The Design-Builder shall be responsible for the supervision and direction of the Work, using the Design-Builder's best skill and attention. If the Design-Build Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design-Builder shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Design-Builder determines that such means, methods, techniques, sequences or procedures may not be safe, the Design-Builder shall give timely written notice to the Owner and shall not proceed with that portion of the Work without further written instructions from the Owner. If the Design-Builder is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Design-Builder, the Owner shall be solely responsible for any resulting loss or damage.

§ A.3.3.8 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ A.3.4 LABOR AND MATERIALS

§ A.3.4.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ A.3.4.2 When a material is specified in the Design-Build Documents, the Design-Builder may make substitutions only with the consent of the Owner and, if appropriate, in accordance with a Change Order.

§ A.3.4.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Design-Build Contract. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ A.3.5 WARRANTY

§ A.3.5.1 The Design-Builder warrants to the Owner that materials and equipment furnished under the Design-Build Documents will be of good quality and new unless otherwise required or permitted by the Design-Build Documents, that the Work will be free from defects not inherent in the quality required or permitted by law or otherwise, and that the Work will conform to the requirements of the Design-Build Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ A.3.6 TAXES

§ A.3.6.1 The Design-Builder shall pay all sales, consumer, use and similar taxes for the Work provided by the Design-Builder which had been legally enacted on the date of the Agreement, whether or not yet effective or merely scheduled to go into effect.

§ A.3.7 PERMITS, FEES AND NOTICES

§ A.3.7.1 The Design-Builder shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Design-Build Contract and which were legally required on the date the Owner accepted the Design-Builder's proposal.

§ A.3.7.2 The Design-Builder shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

§ A.3.7.3 It is the Design-Builder's responsibility to ascertain that the Work is in accordance with applicable laws, ordinances, codes, rules and regulations.

§ A.3.7.4 If the Design-Builder performs Work contrary to applicable laws, ordinances, codes, rules and regulations, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ A.3.8 ALLOWANCES

§ A.3.8.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to which the Design-Builder has reasonable objection.

§ A.3.8.2 Unless otherwise provided in the Design-Build Documents:

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section A.3.8.2.1 and (2) changes in Design-Builder's costs under Section A.3.8.2.2.

§ A.3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

§ A.3.9 DESIGN-BUILDER'S SCHEDULE

§ A.3.9.1 The Design-Builder, promptly after execution of the Design-Build Contract, shall prepare and submit for the Owner's information the Design-Builder's schedule for the Work. The schedule shall not exceed time limits and shall be in such detail as required under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-

Build Documents, shall provide for expeditious and practicable execution of the Work and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ A.3.9.2 The Design-Builder shall prepare and keep current a schedule of submittals required by the Design-Build Documents.

§ A.3.9.3 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ A.3.10 DOCUMENTS AND SAMPLES AT THE SITE

§ A.3.10.1 The Design-Builder shall maintain at the site for the Owner one record copy of the drawings, specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be delivered to the Owner upon completion of the Work.

§ A.3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ A.3.11.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Design-Builder or a Contractor, Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ A.3.11.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the Work.

§ A.3.11.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ A.3.11.4 Shop Drawings, Product Data, Samples and similar submittals are not Design-Build Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Design-Build Documents the way by which the Design-Builder proposes to conform to the Design-Build Documents.

§ A.3.11.5 The Design-Builder shall review for compliance with the Design-Build Documents and approve and submit to the Owner only those Shop Drawings, Product Data, Samples and similar submittals required by the Design-Build Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ A.3.11.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Design-Build Documents.

§ A.3.12 USE OF SITE

§ A.3.12.1 The Design-Builder shall confine operations at the site to areas permitted by law, ordinances, permits and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ A.3.13 CUTTING AND PATCHING

§ A.3.13.1 The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ A.3.13.2 The Design-Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction or by excavation. The Design-Builder shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ A.3.14 CLEANING UP

§ A.3.14.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Design-Build Contract. At completion of the Work, the Design-Builder shall remove from and about the Project waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials.

§ A.3.14.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and the cost thereof shall be charged to the Design-Builder.

§ A.3.15 ACCESS TO WORK

§ A.3.15.1 The Design-Builder shall provide the Owner access to the Work in preparation and progress wherever located.

§ A.3.16 ROYALTIES, PATENTS AND COPYRIGHTS

§ A.3.16.1 The Design-Builder shall pay all royalties and license fees. The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required or where the copyright violations are contained in drawings, specifications or other documents prepared by or furnished to the Design-Builder by the Owner. However, if the Design-Builder has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner.

§ A.3.17 INDEMNIFICATION

§ A.3.17.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, Owner's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property other than the Work itself, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section A.3.17.

§ A.3.17.2 In claims against any person or entity indemnified under this Section A.3.17 by an employee of the Design-Builder, the Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section A.3.17.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design-Builder, the Architect or a Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE A.4 DISPUTE RESOLUTION

§ A.4.1 CLAIMS AND DISPUTES

§ A.4.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Design-Build Contract terms, payment of money, extension of time or other relief with respect to the terms of the Design-Build Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Design-Build Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ A.4.1.2 Time Limits on Claims. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the other party.

§ A.4.1.3 Continuing Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section A.9.7.1 and Article A.14, the Design-Builder shall proceed diligently with performance of the Design-Build Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ A.4.1.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, then the observing party shall give notice to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall negotiate with the Design-Builder an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Design-Build Contract is justified, the Owner shall so notify the Design-Builder in writing, stating the reasons. Claims by the Design-Builder in opposition to such determination must be made within 21 days after the Owner has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Design-Builder cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall proceed pursuant to Section A.4.2.

§ A.4.1.5 Claims for Additional Cost. If the Design-Builder wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section A.10.6.

§ A.4.1.6 If the Design-Builder believes additional cost is involved for reasons including but not limited to (1) an order by the Owner to stop the Work where the Design-Builder was not at fault, (2) a written order for the Work issued by the Owner, (3) failure of payment by the Owner, (4) termination of the Design-Build Contract by the Owner, (5) Owner's suspension or (6) other reasonable grounds, Claim shall be filed in accordance with this Section A.4.1.

§ A.4.1.7 Claims for Additional Time

§ A.4.1.7.1 If the Design-Builder wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of the time and its effect on the progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ A.4.1.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ A.4.1.8 Injury or Damage to Person or Property. If either party to the Design-Build Contract suffers injury or damage to person or property because of an act or omission of the other party or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ A.4.1.9 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ A.4.1.10 Claims for Consequential Damages. Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to the Design-Build Contract. This mutual waiver includes:

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article A.14. Nothing contained in this Section A.4.1.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ A.4.1.11 If the enactment or revision of codes, laws or regulations or official interpretations which govern the Project cause an increase or decrease of the Design-Builder's cost of, or time required for, performance of the Work, the Design-Builder shall be entitled to an equitable adjustment in Contract Sum or Contract Time. If the Owner and Design-Builder cannot agree upon an adjustment in the Contract Sum or Contract Time, the Design-Builder shall submit a Claim pursuant to Section A.4.1.

§ A.4.2 RESOLUTION OF CLAIMS AND DISPUTES

§ A.4.2.1 Decision by Neutral. If the parties have identified a Neutral in Section 6.1 of the Agreement or elsewhere in the Design-Build Documents, then Claims, excluding those arising under Sections A.10.3 through A.10.5, shall be referred initially to the Neutral for decision. An initial decision by the Neutral shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Neutral with no decision having been rendered by the Neutral. Unless the Neutral and all affected parties agree, the Neutral will not decide disputes between the Design-Builder and persons or entities other than the Owner.

§ A.4.2.2 Decision by Owner. If the parties have not identified a Neutral in Section 6.1 of the Agreement or elsewhere in the Design-Build Documents then, except for those claims arising under Sections A.10.3 and A.10.5, the Owner shall provide an initial decision. An initial decision by the Owner shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Owner with no decision having been rendered by the Owner.

§ A.4.2.3 The initial decision pursuant to Sections A.4.2.1 and A.4.2.2 shall be in writing, shall state the reasons therefore and shall notify the parties of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject first to mediation under Section A.4.3 and thereafter to such other dispute resolution methods as provided in Section 6.2 of the Agreement or elsewhere in the Design-Build Documents.

§ A.4.2.4 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ A.4.2.5 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to initial resolution of the Claim.

§ A.4.3 MEDIATION

§ A.4.3.1 Any Claim arising out of or related to the Design-Build Contract, except those waived as provided for in Sections A.4.1.10, A.9.10.4 and A.9.10.5, shall, after initial decision of the Claim or 30 days after submission of the Claim for initial decision, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable or other binding dispute resolution proceedings by either party.

§ A.4.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect at the time of the mediation. Request for mediation shall be filed in writing with the other party to the Design-Build Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration or other binding dispute resolution proceedings but, in such event, mediation shall proceed in advance thereof or of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ A.4.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ A.4.4 ARBITRATION

§ A.4.4.1 Claims, except those waived as provided for in Sections A.4.1.10, A.9.10.4 and A.9.10.5, for which initial decisions have not become final and binding, and which have not been resolved by mediation but which are subject to arbitration pursuant to Sections 6.2 and 6.3 of the Agreement or elsewhere in the Design-Build Documents, shall be

decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect at the time of the arbitration. The demand for arbitration shall be filed in writing with the other party to the Design-Build Contract and with the American Arbitration Association.

§ A.4.4.2 A demand for arbitration may be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Section A.13.6.

§ A.4.4.3 An arbitration pursuant to this Section A.4.4 may be joined with an arbitration involving common issues of law or fact between the Owner or Design-Builder and any person or entity with whom the Owner or Design-Builder has a contractual obligation to arbitrate disputes which does not prohibit consolidation or joinder. No other arbitration arising out of or relating to the Design-Build Contract shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to the Design-Build Contract or not a party to an agreement with the Owner or Design-Builder, except by written consent containing a specific reference to the Design-Build Contract signed by the Owner and Design-Builder and any other person or entities sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to the Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ A.4.4.4 Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ A.4.4.5 Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE A.5 AWARD OF CONTRACTS

§ A.5.1 Unless otherwise stated in the Design-Build Documents or the bidding or proposal requirements, the Design-Builder, as soon as practicable after award of the Design-Build Contract, shall furnish in writing to the Owner the names of additional persons or entities not originally included in the Design-Builder's proposal or in substitution of a person or entity (including those who are to furnish design services or materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner will promptly reply to the Design-Builder in writing stating whether or not the Owner has reasonable objection to any such proposed additional person or entity. Failure of the Owner to reply promptly shall constitute notice of no reasonable objection.

§ A.5.2 The Design-Builder shall not contract with a proposed person or entity to whom which the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable objection.

§ A.5.3 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected additional person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person's or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ A.5.4 The Design-Builder shall not change a person or entity previously selected if the Owner makes reasonable objection to such substitute.

§ A.5.5 CONTINGENT ASSIGNMENT OF CONTRACTS

§ A.5.5.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner provided that:

- .1 assignment is effective only after termination of the Design-Build Contract by the Owner for cause pursuant to Section A.14.2 and only for those agreements which the Owner accepts by notifying the contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Design-Build Contract.

§ A.5.5.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Contractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

ARTICLE A.6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ A.6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ A.6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. The Design-Builder shall cooperate with the Owner and separate contractors whose work might interfere with the Design-Builder's Work. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make such Claim as provided in Section A.4.1.

§ A.6.1.2 The term "separate contractor" shall mean any contractor retained by the Owner pursuant to Section A.6.1.1.

§ A.6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ A.6.2 MUTUAL RESPONSIBILITY

§ A.6.2.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ A.6.2.2 If part of the Design-Builder's Work depends for proper execution or results upon design, construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, promptly report to the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Design-Builder so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ A.6.2.3 The Owner shall be reimbursed by the Design-Builder for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Design-Builder. The Owner shall be responsible to the Design-Builder for costs incurred by the Design-Builder because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

§ A.6.2.4 The Design-Builder shall promptly remedy damage wrongfully caused by the Design-Builder to completed or partially completed construction or to property of the Owner or separate contractors.

§ A.6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described in Section A.3.13.

§ A.6.3 OWNER'S RIGHT TO CLEAN UP

§ A.6.3.1 If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Owner shall allocate the cost among those responsible.

ARTICLE A.7 CHANGES IN THE WORK

§ A.7.1 GENERAL

§ A.7.1.1 Changes in the Work may be accomplished after execution of the Design-Build Contract, and without invalidating the Design-Build Contract, by Change Order or Construction Change Directive, subject to the limitations stated in this Article A.7 and elsewhere in the Design-Build Documents.

§ A.7.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. A Construction Change Directive may be issued by the Owner with or without agreement by the Design-Builder.

§ A.7.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.

§ A.7.2 CHANGE ORDERS

§ A.7.2.1 A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 a change in the Work;
- .2 the amount of the adjustment, if any, in the Contract Sum; and
- .3 the extent of the adjustment, if any, in the Contract Time.

§ A.7.2.2 If the Owner requests a proposal for a change in the Work from the Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Design-Builder for any costs incurred for estimating services, design services or preparation of proposed revisions to the Design-Build Documents.

§ A.7.2.3 Methods used in determining adjustments to the Contract Sum may include those listed in Section A.7.3.3.

§ A.7.3 CONSTRUCTION CHANGE DIRECTIVES

§ A.7.3.1 A Construction Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Design-Build Contract, order changes in the Work within the general scope of the Design-Build Documents consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ A.7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ A.7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Design-Build Documents or subsequently agreed upon, or equitably adjusted as provided in Section A.4.1.9;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Section A.7.3.6.

§ A.7.3.4 Upon receipt of a Construction Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ A.7.3.5 A Construction Change Directive signed by the Design-Builder indicates the agreement of the Design-Builder therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ A.7.3.6 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Section A.7.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section A.7.3.6 shall be limited to the following:

- .1 additional costs of professional services;
- .2 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

- .4 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 additional costs of supervision and field office personnel directly attributable to the change.

§ A.7.3.7 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ A.7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Owner shall make an interim determination for purposes of monthly payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of the Design-Builder to disagree and assert a Claim in accordance with Article A.4.

§ A.7.3.9 When the Owner and Design-Builder reach agreement concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

§ A.7.4 MINOR CHANGES IN THE WORK

§ A.7.4.1 The Owner shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Design-Build Documents. Such changes shall be effected by written order and shall be binding on the Design-Builder. The Design-Builder shall carry out such written orders promptly.

ARTICLE A.8 TIME

§ A.8.1 DEFINITIONS

§ A.8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Design-Build Documents for Substantial Completion of the Work.

§ A.8.1.2 The date of commencement of the Work shall be the date stated in the Agreement unless provision is made for the date to be fixed in a notice to proceed issued by the Owner.

§ A.8.1.3 The date of Substantial Completion is the date determined by the Owner in accordance with Section A.9.8.

§ A.8.1.4 The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ A.8.2 PROGRESS AND COMPLETION

§ A.8.2.1 Time limits stated in the Design-Build Documents are of the essence of the Design-Build Contract. By executing the Design-Build Contract, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ A.8.2.2 The Design-Builder shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence construction operations on the site or elsewhere prior to the effective date of insurance required by Article A.11 to be furnished by the Design-Builder and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Design-Build Documents or a notice to proceed given by the Owner, the Design-Builder shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ A.8.2.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ A.8.3 DELAYS AND EXTENSIONS OF TIME

§ A.8.3.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control, or by delay authorized by the Owner pending resolution of disputes pursuant to the Design-Build Documents, or by other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ A.8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section A.4.1.7.

§ A.8.3.3 This Section A.8.3 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

ARTICLE A.9 PAYMENTS AND COMPLETION

§ A.9.1 CONTRACT SUM

§ A.9.1.1 The Contract Sum is stated in the Design-Build Documents and, including authorized adjustments, is the total amount payable by the Owner to the Design-Builder for performance of the Work under the Design-Build Documents.

§ A.9.2 SCHEDULE OF VALUES

§ A.9.2.1 Before the first Application for Payment, where the Contract Sum is based upon a Stipulated Sum or the Cost of the Work plus Contractor's Fee with a Guaranteed Maximum Price, the Design-Builder shall submit to the Owner an initial schedule of values allocated to various portions of the Work prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. The schedule of values may be updated periodically to reflect changes in the allocation of the Contract Sum.

§ A.9.3 APPLICATIONS FOR PAYMENT

§ A.9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the current schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from Contractors and material suppliers, and reflecting retainage if provided for in the Design-Build Documents:

§ A.9.3.1.1 As provided in Section A.7.3.8, such applications may include requests for payment on account of Changes in the Work which have been properly authorized by Construction Change Directives but are not yet included in Change Orders.

§ A.9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay to a Contractor or material supplier or other parties providing services for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ A.9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ A.9.3.3 The Design-Builder warrants that title to all Work other than Instruments of Service covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, Claims, security interests or encumbrances in favor of the Design-Builder, Contractors, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ A.9.4 ACKNOWLEDGEMENT OF APPLICATION FOR PAYMENT

§ A.9.4.1 The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a written acknowledgement of receipt of the Design-Builder's Application for Payment indicating the amount the Owner has determined to be properly due and, if applicable, the reasons for withholding payment in whole or in part.

§ A.9.5 DECISIONS TO WITHHOLD PAYMENT

§ A.9.5.1 The Owner may withhold a payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Application for Payment or that the quality of Work is not in accordance with the Design-Build Documents. The Owner may also withhold a payment or, because of subsequently discovered evidence, may nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible, including loss resulting from acts and omissions, because of the following:

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to Contractors or for design services labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 persistent failure to carry out the Work in accordance with the Design-Build Documents.

§ A.9.5.2 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld.

§ A.9.6 PROGRESS PAYMENTS

§ A.9.6.1 After the Owner has issued a written acknowledgement of receipt of the Design-Builder's Application for Payment, the Owner shall make payment of the amount, in the manner and within the time provided in the Design-Build Documents.

§ A.9.6.2 The Design-Builder shall promptly pay the Architect, each design professional and other consultants retained directly by the Design-Builder, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of each such party's respective portion of the Work, the amount to which each such party is entitled.

§ A.9.6.3 The Design-Builder shall promptly pay each Contractor, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of such Contractor's portion of the Work, the amount to which said Contractor is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the Contractor's portion of the Work. The Design-Builder shall, by appropriate agreement with each Contractor, require each Contractor to make payments to Subcontractors in a similar manner.

§ A.9.6.4 The Owner shall have no obligation to pay or to see to the payment of money to a Contractor except as may otherwise be required by law.

§ A.9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections A.9.6.3 and A.9.6.4.

§ A.9.6.6 A progress payment, or partial or entire use or occupancy of the Project by the Owner, shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ A.9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by Contractors and suppliers shall be held by the Design-Builder for those Contractors or suppliers who performed Work or furnished materials, or both, under contract with the Design-Builder for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not be commingled with money of the Design-Builder, shall

create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ A.9.7 FAILURE OF PAYMENT

§ A.9.7.1 If for reasons other than those enumerated in Section A.9.5.1, the Owner does not issue a payment within the time period required by Section 5.1.3 of the Agreement, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ A.9.8 SUBSTANTIAL COMPLETION

§ A.9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or use the Work or a portion thereof for its intended use.

§ A.9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ A.9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not substantially complete, the Design-Builder shall complete or correct such item. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine whether the Design-Builder's Work is substantially complete.

§ A.9.8.4 In the event of a dispute regarding whether the Design-Builder's Work is substantially complete, the dispute shall be resolved pursuant to Article A.4.

§ A.9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder shall prepare for the Owner's signature an Acknowledgement of Substantial Completion which, when signed by the Owner, shall establish (1) the date of Substantial Completion of the Work, (2) responsibilities between the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and (3) the time within which the Design-Builder shall finish all items on the list accompanying the Acknowledgement. When the Owner's inspection discloses that the Work or a designated portion thereof is substantially complete, the Owner shall sign the Acknowledgement of Substantial Completion. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Acknowledgement of Substantial Completion.

§ A.9.8.6 Upon execution of the Acknowledgement of Substantial Completion and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ A.9.9 PARTIAL OCCUPANCY OR USE

§ A.9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to by the insurer, if so required by the insurer, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for completion or correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section A.9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ A.9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

§ A.9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ A.9.10 FINAL COMPLETION AND FINAL PAYMENT

§ A.9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner shall promptly make such inspection and, when the Owner finds the Work acceptable under the Design-Build Documents and fully performed, the Owner shall, subject to Section A.9.10.2, promptly make final payment to the Design-Builder.

§ A.9.10.2 Neither final payment nor any remaining retained percentage will become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, and (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Design-Build Contract, to the extent and in such form as may be designated by the Owner. If a Contractor refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be liable to pay in connection with the discharge of such lien, including all costs and reasonable attorneys' fees.

§ A.9.10.3 If, after the Owner determines that the Design-Builder's Work or designated portion thereof is substantially completed, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of a Change Order or a Construction Change Directive affecting final completion, the Owner shall, upon application by the Design-Builder, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ A.9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1 liens, Claims, security interests or encumbrances arising out of the Design-Build Documents and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents; or
- .3 terms of special warranties required by the Design-Build Documents.

§ A.9.10.5 Acceptance of final payment by the Design-Builder, a Contractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE A.10 PROTECTION OF PERSONS AND PROPERTY

§ A.10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ A.10.1.1 The Design-Builder shall be responsible for initiating and maintaining all safety precautions and programs in connection with the performance of the Design-Build Contract.

§ A.10.2 SAFETY OF PERSONS AND PROPERTY

§ A.10.2.1 The Design-Builder shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site or under the care, custody or control of the Design-Builder or the Design-Builder's Contractors or Subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ A.10.2.2 The Design-Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ A.10.2.3 The Design-Builder shall erect and maintain, as required by existing conditions and performance of the Design-Build Documents, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ A.10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Design-Builder shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ A.10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections A.10.2.1.2 and A.10.2.1.3 caused in whole or in part by the Design-Builder, the Architect, a Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections A.10.2.1.2 and A.10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section A.3.17.

§ A.10.2.6 The Design-Builder shall designate in writing to the Owner a responsible individual whose duty shall be the prevention of accidents.

§ A.10.2.7 The Design-Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

§ A.10.3 HAZARDOUS MATERIALS

§ A.10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner.

§ A.10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder shall promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, work in the affected area shall resume upon written agreement of the Owner and Design-Builder. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shutdown, delay and start-up, which adjustments shall be accomplished as provided in Article A.7.

§ A.10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them from and against Claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance exists on site as of the date of the Agreement, is not disclosed in the Design-Build Documents and presents the risk of bodily injury or death as described in Section A.10.3.1 and has not been rendered harmless, provided that such Claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (other than the Work itself) to the extent that such damage, loss or expense is not due to the negligence of the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them.

§ A.10.4 The Owner shall not be responsible under Section A.10.3 for materials and substances brought to the site by the Design-Builder unless such materials or substances were required by the Design-Build Documents.

§ A.10.5 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ A.10.6 EMERGENCIES

§ A.10.6.1 In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Design-Builder on account of an emergency shall be determined as provided in Section A.4.1.7 and Article A.7.

ARTICLE A.11 INSURANCE AND BONDS

§ A.11.1 Except as may otherwise be set forth in the Agreement or elsewhere in the Design-Build Documents, the Owner and Design-Builder shall purchase and maintain the following types of insurance with limits of liability and deductible amounts and subject to such terms and conditions, as set forth in this Article A.11.

§ A.11.2 DESIGN-BUILDER'S LIABILITY INSURANCE

§ A.11.2.1 The Design-Builder shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Design-Builder from claims set forth below that may arise out of or result from the Design-Builder's operations under the Design-Build Contract and for which the Design-Builder may be legally liable, whether such operations be by the Design-Builder, by a Contractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Design-Builder's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Design-Builder's employees;
- .4 claims for damages insured by usual personal injury liability coverage;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 claims for bodily injury or property damage arising out of completed operations; and
- .8 claims involving contractual liability insurance applicable to the Design-Builder's obligations under Section A.3.17.

§ A.11.2.2 The insurance required by Section A.11.2.1 shall be written for not less than limits of liability specified in the Design-Build Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

§ A.11.2.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section A.11.2 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section A.9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Design-Builder with reasonable promptness in accordance with the Design-Builder's information and belief.

§ A.11.3 OWNER'S LIABILITY INSURANCE

§ A.11.3.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ A.11.4 PROPERTY INSURANCE

§ A.11.4.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk, "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Design-Build Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section A.9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section A.11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, Design-Builder, Contractors and Subcontractors in the Project.

§ A.11.4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Design-Builder's services and expenses required as a result of such insured loss.

§ A.11.4.1.2 If the Owner does not intend to purchase such property insurance required by the Design-Build Contract and with all of the coverages in the amount described above, the Owner shall so inform the Design-Builder in writing prior to commencement of the Work. The Design-Builder may then effect insurance that will protect the interests of the Design-Builder, Contractors and Subcontractors in the Work, and, by appropriate Change Order, the cost thereof shall be charged to the Owner. If the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above without so notifying the Design-Builder in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ A.11.4.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ A.11.4.1.4 This property insurance shall cover portions of the Work stored off the site and also portions of the Work in transit.

§ A.11.4.1.5 Partial occupancy or use in accordance with Section A.9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use, by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ A.11.4.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Design-Build Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Design-Builder, Contractors and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.

§ A.11.4.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder, Architect, the Design-Builder's other design professionals, if any, Contractors and Subcontractors for loss of use of the Owner's property, including consequential losses due to fire or other hazards, however caused.

§ A.11.4.4 If the Design-Builder requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Design-Builder by appropriate Change Order.

§ A.11.4.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section A.11.4.7 for

damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ A.11.4.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section A.11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire and that its limits will not be reduced until at least 30 days' prior written notice has been given to the Design-Builder.

§ A.11.4.7 Waivers of Subrogation. The Owner and Design-Builder waive all rights against each other and any of their consultants, separate contractors described in Section A.6.1, if any, Contractors, Subcontractors, agents and employees, each of the other, and any of their contractors, subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section A.11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section A.6.1, if any, and the Contractors, Subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, even though the person or entity did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ A.11.4.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section A.11.4.10. The Design-Builder shall pay Contractors their just shares of insurance proceeds received by the Design-Builder, and, by appropriate agreements, written where legally required for validity, shall require Contractors to make payments to their Subcontractors in similar manner.

§ A.11.4.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Design-Build Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article A.7.

§ A.11.4.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power.; The Owner as fiduciary shall, in the case of a decision or award, make settlement with insurers in accordance with directions of a decision or award. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

A.11.5 PERFORMANCE BOND AND PAYMENT BOND

§ A.11.5.1 The Owner shall have the right to require the Design-Builder to furnish bonds covering faithful performance of the Design-Build Contract and payment of obligations arising thereunder, including payment to design professionals engaged by or on behalf of the Design-Builder, as stipulated in bidding requirements or specifically required in the Agreement or elsewhere in the Design-Build Documents on the date of execution of the Design-Build Contract.

ARTICLE A.12 UNCOVERING AND CORRECTION OF WORK

§ A.12.1 UNCOVERING OF WORK

§ A.12.1.1 If a portion of the Work is covered contrary to requirements specifically expressed in the Design-Build Documents, it must be uncovered for the Owner's examination and be replaced at the Design-Builder's expense without change in the Contract Time.

§ A.12.1.2 If a portion of the Work has been covered which the Owner has not specifically requested to examine prior to its being covered, the Owner may request to see such Work and it shall be uncovered by the Design-Builder. If such Work is in accordance with the Design-Build Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Design-Build Documents,

correction shall be at the Design-Builder's expense unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs.

§ A.12.2 CORRECTION OF WORK

§ A.12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

§ A.12.2.1.1 The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing, shall be at the Design-Builder's expense.

§ A.12.2.2 AFTER SUBSTANTIAL COMPLETION

§ A.12.2.2.1 In addition to the Design-Builder's obligations under Section A.3.5, if, within one year after the date of Substantial Completion or after the date for commencement of warranties established under Section A.9.8.5 or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found to be not in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct non-conforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section A.2.5.

§ A.12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

§ A.12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section A.12.2.

§ A.12.2.3 The Design-Builder shall remove from the site portions of the Work which are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ A.12.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Design-Build Documents.

§ A.12.2.5 Nothing contained in this Section A.12.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder might have under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section A.12.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ A.12.3 ACCEPTANCE OF NONCONFORMING WORK

§ A.12.3.1 If the Owner prefers to accept Work not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be equitably adjusted by Change Order. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE A.13 MISCELLANEOUS PROVISIONS

§ A.13.1 GOVERNING LAW

§ A.13.1.1 The Design-Build Contract shall be governed by the law of the place where the Project is located.

§ A.13.2 SUCCESSORS AND ASSIGNS

§ A.13.2.1 The Owner and Design-Builder respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other

party in respect to covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section A.13.2.2, neither party to the Design-Build Contract shall assign the Design-Build Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Design-Build Contract.

§ A.13.2.2 The Owner may, without consent of the Design-Builder, assign the Design-Build Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ A.13.3 WRITTEN NOTICE

§ A.13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if sent by registered or certified mail to the last business address known to the party giving notice.

§ A.13.4 RIGHTS AND REMEDIES

§ A.13.4.1 Duties and obligations imposed by the Design-Build Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ A.13.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Design-Build Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ A.13.5 TESTS AND INSPECTIONS

§ A.13.5.1 Tests, inspections and approvals of portions of the Work required by the Design-Build Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

§ A.13.5.2 If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section A.13.5.1, the Owner shall in writing instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section A.13.5.3, shall be at the Owner's expense.

§ A.13.5.3 If such procedures for testing, inspection or approval under Sections A.13.5.1 and A.13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure, including those of repeated procedures, shall be at the Design-Builder's expense.

§ A.13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ A.13.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ A.13.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ A.13.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

§ A.13.6.1 As between the Owner and Design-Builder:

- .1 Before Substantial Completion.** As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;

- .2 **Between Substantial Completion and Final Application for Payment.** As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Application for Payment; and
- .3 **After Final Application for Payment.** As to acts or failures to act occurring after the relevant date of issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Design-Builder pursuant to any Warranty provided under Section A.3.5, the date of any correction of the Work or failure to correct the Work by the Design-Builder under Section A.12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design-Builder or Owner, whichever occurs last.

ARTICLE A.14 TERMINATION OR SUSPENSION OF THE DESIGN-BUILD CONTRACT

§ A.14.1 TERMINATION BY THE DESIGN-BUILDER

§ A.14.1.1 The Design-Builder may terminate the Design-Build Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- .2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;
- .3 the Owner has failed to make payment to the Design-Builder in accordance with the Design-Build Documents; or
- .4 the Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section A.2.2.8.

§ A.14.1.2 The Design-Builder may terminate the Design-Build Contract if, through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner, as described in Section A.14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ A.14.1.3 If one of the reasons described in Sections A.14.1.1 or A.14.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ A.14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or a Contractor or their agents or employees or any other persons performing portions of the Work under a direct or indirect contract with the Design-Builder because the Owner has persistently failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner as provided in Section A.14.1.3.

§ A.14.2 TERMINATION BY THE OWNER FOR CAUSE

§ A.14.2.1 The Owner may terminate the Design-Build Contract if the Design-Builder:

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Contractors for services, materials or labor in accordance with the respective agreements between the Design-Builder and the Architect and Contractors;
- .3 persistently disregards laws, ordinances or rules, regulations or orders of a public authority having jurisdiction; or
- .4 otherwise is guilty of substantial breach of a provision of the Design-Build Documents.

§ A.14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 accept assignment of contracts pursuant to Section A.5.5.1; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ A.14.2.3 When the Owner terminates the Design-Build Contract for one of the reasons stated in Section A.14.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ A.14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner.

§ A.14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ A.14.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ A.14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section A.14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Design-Build Contract.

§ A.14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ A.14.4.1 The Owner may, at any time, terminate the Design-Build Contract for the Owner's convenience and without cause.

§ A.14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall:

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing contracts and purchase orders and enter into no further contracts and purchase orders.

§ A.14.4.3 In the event of termination for the Owner's convenience prior to commencement of construction, the Design-Builder shall be entitled to receive payment for design services performed, costs incurred by reason of such termination and reasonable overhead and profit on design services not completed. In case of termination for the Owner's convenience after commencement of construction, the Design-Builder shall be entitled to receive payment for Work executed and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.



AIA Document A141™ – 2004 Exhibit C

Insurance and Bonds

for the following PROJECT:

(Name and location or address)

Neosho County Community College
Stoltz Hall Renovation Phase II

THE OWNER:

(Name and address)

Neosho County Community College
800 West 14th Street, Chanute, Kansas 66720

THE DESIGN-BUILDER:

(Name and address)

Loyd Builders, Inc.
2126 South Elm Street
Ottawa, Kansas 66067

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification. Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

ARTICLE C.1

The Owner and Design-Builder shall provide policies of liability insurance as required by the Design-Build Documents, or as follows:

(Specify changes, if any, to the requirements of the Design-Build Documents, and for each type of insurance identify applicable limits and deductible amounts.)

Commercial Liability - \$1,000,000 Occurrence / \$2,000,000 Aggregate

Worker's Compensation - Statutory Limit

Commercial Auto Liability - \$1,000,000 Each Accident

ARTICLE C.2

The Design-Builder shall provide surety bonds as follows:

(Specify type and penal sum of bonds.)

§ C.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.



May 8, 2013

Mr. Ben Smith
Vice President for Operations
Neosho County Community College
800 W. 14th St.
Chanute, KS 66720

Dear Ben:

We are pleased to offer the following proposal for the Stoltz Hall improvements for the Biology and Cadaver Labs. This pricing is based on the drawings prepared by Devore + Associates Architects dated April 22, 2013. Our cost for this project is **\$242,718**. A cost breakdown has been included in this proposal.

We appreciate the opportunity to work with you and would happy to answer any questions you may have.

Sincerely,

A handwritten signature in black ink that reads "Josh Walker".

Josh Walker
President
Loyd Builders, Inc.

Enclosure (1)

Cc: File

Stoltz Hall Cadaver Lab Renovations
Canton, KS 67428
May 9, 2013



Total Project Summary

1,818 SF

Description	Cost	Cost/ SF
Construction Costs		
Building	\$ 268,376	\$ 147.62
Site	\$ -	\$ -
Total Construction Costs	\$ 268,376	\$ 147.62
Design & Preconstruction Services		
Site Survey	\$ -	\$ -
Soil Borings, Testing, & Report	\$ -	\$ -
Water Runoff Study	\$ -	\$ -
Design Fees	\$ 19,543	\$ 10.75
Contractor Preconstruction Services	\$ -	\$ -
Total Design & Preconstruction Costs	\$ 19,543	\$ 10.75
Ownership Costs		
Site Acquisition	\$ -	\$ -
Utility Relocation	\$ -	\$ -
Traffic Impact Fees	\$ -	\$ -
Street Developments	\$ -	\$ -
Furnishings	\$ -	\$ -
Financing Costs	\$ -	\$ -
Testing & Inspections	\$ -	\$ -
Moving Expenses	\$ -	\$ -
Operating Cost (3yrs. 60/40/20 @ \$100,000/yr.)	\$ -	\$ -
Owner Contingency 0%	\$ -	\$ -
Total Ownership Costs	\$ -	\$ -
Total Project Cost	\$ 287,918	\$ 158.37
Title 3 Contract	\$ (45,200)	
Phase 2 Contract Amount	\$ 242,718	

Stoltz Hall Cadaver Lab Renovations
Canton, KS 67428
May 9, 2013



Construction Summary

1,818 SF

Description	Cost	Cost/ SF	%
1 General Conditions	\$ 19,746	\$ 10.86	7.36%
2 Demolition	\$ 18,655	\$ 10.26	6.95%
3 Concrete	\$ 2,836	\$ 1.56	1.06%
4 Rough Carpentry	\$ 425	\$ 0.23	0.16%
5 Finish Carpentry	\$ 10,326	\$ 5.68	3.85%
6 Doors, Frames, Hardware	\$ 3,564	\$ 1.96	1.33%
7 Glass & Glazing Systems	\$ 250	\$ 0.14	0.09%
8 Drywall Assemblies	\$ 10,425	\$ 5.73	3.88%
9 Acoustical Ceilings	\$ 7,455	\$ 4.10	2.78%
10 Flooring	\$ 4,947	\$ 2.72	1.84%
11 Painting	\$ 2,212	\$ 1.22	0.82%
12 Specialties	\$ 500	\$ 0.28	0.19%
13 Equipment	\$ 48,938	\$ 26.92	18.23%
14 Furnishings	\$ 600	\$ 0.33	0.22%
15 HVAC Systems	\$ 33,800	\$ 18.59	12.59%
16 Plumbing	\$ 54,600	\$ 30.03	20.34%
17 Electrical	\$ 24,500	\$ 13.48	9.13%
18 Contingency 1%	\$ 2,438	\$ 1.34	0.91%
Subtotal	\$ 246,216	\$ 135.43	91.74%
Permits, Fees, & Insurance	\$ -	\$ -	0.00%
Subtotal	\$ 246,216	\$ 135.43	91.74%
Fee	\$ 22,159	\$ 12.19	8.26%
Total	\$ 268,376	\$ 147.62	100.00%
P&P Bond no	\$ -		0.00%
Total w/ Bond	\$ 268,376	\$ 147.62	

Exhibit E

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the Ninth day of May, 2013.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
 7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
 8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
 9. **Responsibility For Taxes:** The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
 10. **Insurance:** The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.
 11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
 12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
- The community college and board of trustees shall be responsible solely for their own actions or failure to act. (71-201a(a))
-- The community college and board of trustees shall not indemnify or hold harmless resulting from actions or failure to act by any party other than the board of trustees or the community college. (71-201a(b))
-- The community college and board of trustees cannot submit to the jurisdiction of any court other than the courts of the State of Kansas. (71-201b(c))

 **AIA**[®] Document A141[™] – 2004

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the Ninth day of May
in the year of Two Thousand Twelve
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name, address and other information)

Neosho County Community College
800 West 14th Street
Chanute, Kansas 66720

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification. Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

and the Design-Builder:
(Name, address and other information)

Loyd Builders, Inc.
2126 South Elm Street
Ottawa, Kansas 66067

For the following Project:
(Name, location and detailed description)

Neosho County Community College
Eastern Kansas Technology Center Renovation

The Owner and Design-Builder agree as follows.

AIA Document A141[™]– 2004. Copyright © 2004 by The American Institute of Architects. All rights reserved. WARNING: This AIA[®] Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA[®] Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. Purchasers are permitted to reproduce ten (10) copies of this document when completed. To report copyright violations of AIA Contract Documents, e-mail The American Institute of Architects' legal counsel, copyright@aia.org.

TABLE OF ARTICLES

1	THE DESIGN-BUILD DOCUMENTS
2	WORK OF THIS AGREEMENT
3	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
4	CONTRACT SUM
5	PAYMENTS
6	DISPUTE RESOLUTION
7	MISCELLANEOUS PROVISIONS
8	ENUMERATION OF THE DESIGN-BUILD DOCUMENTS

TABLE OF EXHIBITS

A	TERMS AND CONDITIONS
B	DETERMINATION OF THE COST OF THE WORK
C	INSURANCE AND BONDS

ARTICLE 1 THE DESIGN-BUILD DOCUMENTS

§ 1.1 The Design-Build Documents form the Design-Build Contract. The Design-Build Documents consist of this Agreement between Owner and Design-Builder (hereinafter, the "Agreement") and its attached Exhibits; Supplementary and other Conditions; Addenda issued prior to execution of the Agreement; the Project Criteria, including changes to the Project Criteria proposed by the Design-Builder and accepted by the Owner, if any; the Design-Builder's Proposal and written modifications to the Proposal accepted by the Owner, if any; other documents listed in this Agreement; and Modifications issued after execution of this Agreement. The Design-Build Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Owner, (2) between the Owner and a Contractor or Subcontractor, or (3) between any persons or entities other than the Owner and Design-Builder, including but not limited to any consultant retained by the Owner to prepare or review the Project Criteria. An enumeration of the Design-Build Documents, other than Modifications, appears in Article 8.

§ 1.2 The Design-Build Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

§ 1.3 The Design-Build Contract may be amended or modified only by a Modification. A Modification is (1) a written amendment to the Design-Build Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Owner.

ARTICLE 2 THE WORK OF THE DESIGN-BUILD CONTRACT

§ 2.1 The Design-Builder shall fully execute the Work described in the Design-Build Documents, except to the extent specifically indicated in the Design-Build Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice issued by the Owner.

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

If, prior to the commencement of Work, the Owner requires time to file mortgages, documents related to mechanic's liens and other security interests, the Owner's time requirement shall be as follows:
(Insert Owner's time requirements.)

§ 3.2 The Contract Time shall be measured from the date of commencement, subject to adjustments of this Contract Time as provided in the Design-Build Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)

§ 3.3 The Design-Builder shall achieve Substantial Completion of the Work not later than _____ days from the date of commencement, or as follows:
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Design-Build Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

Construction shall begin May 28, 2013 and Substantial Completion shall be no later than August 1, 2013.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Design-Build Contract. The Contract Sum shall be one of the following:
(Check the appropriate box.)

- Stipulated Sum in accordance with Section 4.2 below;
- Cost of the Work Plus Design-Builder's Fee in accordance with Section 4.3 below;
- Cost of the Work Plus Design-Builder's Fee with a Guaranteed Maximum Price in accordance with Section 4.4 below.

(Based on the selection above, complete either Section 4.2, 4.3 or 4.4 below.)

§ 4.2 STIPULATED SUM

§ 4.2.1 The Stipulated Sum shall be _____ Dollars (\$ 104,500.00), subject to additions and deductions as provided in the Design-Build Documents.

§ 4.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

§ 4.2.3 Unit prices, if any, are as follows:

§ 4.2.4 Allowances, if any, are as follows:

(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)

§ 4.2.5 Assumptions or qualifications, if any, on which the Stipulated Sum is based, are as follows:

§ 4.3 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE

§ 4.3.1 The Cost of the Work is as defined in Exhibit B.

§ 4.3.2 The Design-Builder's Fee is:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method of adjustment to the Fee for changes in the Work.)

§ 4.4 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE WITH A GUARANTEED MAXIMUM PRICE

§ 4.4.1 The Cost of the Work is as defined in Exhibit B, plus the Design-Builder's Fee.

§ 4.4.2 The Design-Builder's Fee is:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method of adjustment to the Fee for changes in the Work.)

§ 4.4.3 GUARANTEED MAXIMUM PRICE

§ 4.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed Dollars (\$ _____), subject to additions and deductions by changes in the Work as provided in the Design-Build Documents. Such maximum sum is referred to in the Design-Build Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

(Insert specific provisions if the Design-Builder is to participate in any savings.)

§ 4.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

§ 4.4.3.3 Unit Prices, if any, are as follows:

§ 4.4.3.4 Allowances, if any, are as follows:

(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)

§ 4.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based, are as follows:

(Identify the assumptions on which the Guaranteed Maximum Price is based.)

§ 4.5 CHANGES IN THE WORK

§ 4.5.1 Adjustments of the Contract Sum on account of changes in the Work may be determined by any of the methods listed in Article A.7 of Exhibit A, Terms and Conditions.

§ 4.5.2 Where the Contract Sum is the Cost of the Work, with or without a Guaranteed Maximum Price, and no specific provision is made in Sections 4.3.2 or 4.4.2 for adjustment of the Design-Builder's Fee in the case of Changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment will cause substantial inequity to the Owner or Design-Builder, the Design-Builder's Fee shall be equitably adjusted on the basis of the Fee established for the original Work, and the Contract Sum shall be adjusted accordingly.

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received not later than the first day of month, the Owner shall make payment to the Design-Builder not later than the fifteenth day of the same month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than thirty days after the Owner receives the Application for Payment.

§ 5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections 5.1.4 or 5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid on account of the Agreement. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ 5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 PROGRESS PAYMENTS – STIPULATED SUM

§ 5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of percent (10 %) on the Work, other than services provided by design professionals and other consultants retained directly by the Design-Builder. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of percent (10 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Owner has withheld payment from or nullified an Application for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.2.3 The progress payment amount determined in accordance with Section 5.2.2 shall be further modified under the following circumstances:

- .1 add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section A.9.8.6 of Exhibit A, Terms and Conditions requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)
- .2 add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section A.9.10.3 of Exhibit A, Terms and Conditions.

§ 5.2.4 Reduction or limitation of retainage, if any, under Section 5.2.2 shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.2.2.1 and 5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert here provisions for such reduction or limitation.)

§ 5.3 PROGRESS PAYMENTS – COST OF THE WORK PLUS A FEE

§ 5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.

§ 5.3.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take the Cost of the Work as described in Exhibit B;
- .2 Add the Design-Builder's Fee, less retainage of (%). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section 5.3.2.1 at the rate stated in Section 4.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the preceding section bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner;
- .4 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section 5.1.4 or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
- .5 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate for Payment as provided in the Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.3.3 Retainage in addition to the retainage stated at Section 5.3.2.2, if any, shall be as follows:

§ 5.3.4 Except with the Owner's prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Design-Builder, shall be subject to retainage of not less than (%). The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors.

§ 5.4 PROGRESS PAYMENTS – COST OF THE WORK PLUS A FEE WITH A GUARANTEED MAXIMUM PRICE

§ 5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Design-Builder's Fee, less retainage of (%). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the two preceding sections at the rate stated in Section 4.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding sections bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section 5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
- .6 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.4.3 Except with the Owner's prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Design-Builder, shall be subject to retainage of not less than (%). The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors.

§ 5.5 FINAL PAYMENT

§ 5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder no later than 30 days after the Design-Builder has fully performed the Design-Build Contract, including the requirements in Section A.9.10 of Exhibit A, Terms and Conditions, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 The parties appoint the following individual to serve as a Neutral pursuant to Section A.4.2 of Exhibit A, Terms and Conditions:

(Insert the name, address and other information of the individual to serve as a Neutral. If the parties do not select a Neutral, then the provisions of Section A.4.2.2 of Exhibit A, Terms and Conditions, shall apply.)

§ 6.2 If the parties do not resolve their dispute through mediation pursuant to Section A.4.3 of Exhibit A, Terms and Conditions, the method of binding dispute resolution shall be the following:

(If the parties do not select a method of binding dispute resolution, then the method of binding dispute resolution shall be by litigation in a court of competent jurisdiction.)

(Check one.)

- Arbitration pursuant to Section A.4.4 of Exhibit A, Terms and Conditions
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

§ 6.3 ARBITRATION

§ 6.3.1 If Arbitration is selected by the parties as the method of binding dispute resolution, then any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration as provided in Section A.4.4 of Exhibit A, Terms and Conditions.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 The Architect, other design professionals and consultants engaged by the Design-Builder shall be persons or entities duly licensed to practice their professions in the jurisdiction where the Project is located and are listed as follows:

(Insert name, address, license number, relationship to Design-Builder and other information.)

Bartlett & West Engineers, Inc., 544 Columbia Dr., Lawrence, KS 66049

§ 7.2 Consultants, if any, engaged directly by the Owner, their professions and responsibilities are listed below:

(Insert name, address, license number, if applicable, and responsibilities to Owner and other information.)

§ 7.3 Separate contractors, if any, engaged directly by the Owner, their trades and responsibilities are listed below:

(Insert name, address, license number, if applicable, responsibilities to Owner and other information.)

§ 7.4 The Owner's Designated Representative is:

(Insert name, address and other information.)

Ben Smith, Neosho County Community College

800 W. 14th Street, Chanute, Kansas 66720

§ 7.4.1 The Owner's Designated Representative identified above shall be authorized to act on the Owner's behalf with respect to the Project.

§ 7.5 The Design-Builder's Designated Representative is:
(Insert name, address and other information.)

Josh Walker, Loyd Builders, Inc.
2126 S. Elm, Ottawa, Kansas 66067

§ 7.5.1 The Design-Builder's Designated Representative identified above shall be authorized to act on the Design-Builder's behalf with respect to the Project.

§ 7.6 Neither the Owner's nor the Design-Builder's Designated Representative shall be changed without ten days written notice to the other party.

§ 7.7 Other provisions:

§ 7.7.1 Where reference is made in this Agreement to a provision of another Design-Build Document, the reference refers to that provision as amended or supplemented by other provisions of the Design-Build Documents.

§ 7.7.2 Payments due and unpaid under the Design-Build Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Design-Builder's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

ARTICLE 8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS

§ 8.1 The Design-Build Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 8.1.1 The Agreement is this executed edition of the Standard Form of Agreement Between Owner and Design-Builder, AIA Document A141-2004.

§ 8.1.2 The Supplementary and other Conditions of the Agreement, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

§ 8.1.3 The Project Criteria, including changes to the Project Criteria proposed by the Design-Builder, if any, and accepted by the Owner, consist of the following:
(Either list applicable documents and their dates below or refer to an exhibit attached to this Agreement.)

§ 8.1.4 The Design-Builder's Proposal, dated November 30, 2011, consists of the following:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

See Exhibit D

§ 8.1.5 Amendments to the Design-Builder's Proposal, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

§ 8.1.6 The Addenda, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

§ 8.1.7 Exhibit A, Terms and Conditions.
(If the parties agree to substitute terms and conditions other than those contained in AIA Document A141-2004, Exhibit A, Terms and Conditions, then identify such terms and conditions and attach to this Agreement as Exhibit A.)

§ 8.1.8 Exhibit B, Determination of the Cost of the Work, if applicable.
(If the parties agree to substitute a method to determine the Cost of the Work other than that contained in AIA Document A141-2004, Exhibit B, Determination of the Cost of the Work, then identify such other method to determine the Cost of the Work and attach to this Agreement as Exhibit B. If the Contract Sum is a Stipulated Sum, then Exhibit B is not applicable.)

Not applicable

§ 8.1.9 Exhibit C, Insurance and Bonds, if applicable.
(Complete AIA Document A141-2004, Exhibit C, Insurance and Bonds or indicate "not applicable.")

§ 8.1.10 Other documents, if any, forming part of the Design-Build Documents are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

The provisions found in Contractual Provisions Attachment (Form DA-146a, rev. 1-01), which is attached hereto as Exhibit E, are hereby incorporated in this contract and made a part thereof.

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Design-Builder and one to the Owner.

OWNER *(Signature)*

DESIGN-BUILDER *(Signature)*

(Printed name and title)

(Printed name and title)

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

AIA Document A141™- 2004. Copyright © 2004 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. Purchasers are permitted to reproduce ten (10) copies of this document when completed. To report copyright violations of AIA Contract Documents, e-mail The American Institute of Architects' legal counsel, copyright@aia.org.

AIA Document A141™ – 2004 Exhibit A

Terms and Conditions

for the following PROJECT:

(Name and location or address)

Neosho County Community College
Eastern Kansas Technology Center Renovation

THE OWNER:

(Name and address)

Neosho County Community College
800 West 14th Street, Chanute, Kansas 66720

THE DESIGN-BUILDER:

(Name and address)

Loyd Builders, Inc.
2126 S. Elm Street, Ottawa, Kansas 66067

TABLE OF ARTICLES

- A.1 GENERAL PROVISIONS**
- A.2 OWNER**
- A.3 DESIGN-BUILDER**
- A.4 DISPUTE RESOLUTION**
- A.5 AWARD OF CONTRACTS**
- A.6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**
- A.7 CHANGES IN THE WORK**
- A.8 TIME**
- A.9 PAYMENTS AND COMPLETION**
- A.10 PROTECTION OF PERSONS AND PROPERTY**
- A.11 INSURANCE AND BONDS**
- A.12 UNCOVERING AND CORRECTION OF WORK**
- A.13 MISCELLANEOUS PROVISIONS**
- A.14 TERMINATION OR SUSPENSION OF THE DESIGN-BUILD CONTRACT**

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification. Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

ARTICLE A.1 GENERAL PROVISIONS

§ A.1.1 BASIC DEFINITIONS

§ A.1.1.1 THE DESIGN-BUILD DOCUMENTS

The Design-Build Documents are identified in Section 1.1 of the Agreement.

§ A.1.1.2 PROJECT CRITERIA

The Project Criteria are identified in Section 8.1.3 of the Agreement and may describe the character, scope, relationships, forms, size and appearance of the Project, materials and systems and, in general, their quality levels, performance standards, requirements or criteria, and major equipment layouts.

§ A.1.1.3 ARCHITECT

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and having a direct contract with the Design-Builder to perform design services for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

§ A.1.1.4 CONTRACTOR

A Contractor is a person or entity, other than the Architect, that has a direct contract with the Design-Builder to perform all or a portion of the construction required in connection with the Work. The term "Contractor" is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor. The term "Contractor" does not include a separate contractor, as defined in Section A.6.1.2, or subcontractors of a separate contractor.

§ A.1.1.5 SUBCONTRACTOR

A Subcontractor is a person or entity who has a direct contract with a Contractor to perform a portion of the construction required in connection with the Work at the site. The term "Subcontractor" is referred to throughout the Design-Build Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.

§ A.1.1.6 THE WORK

The term "Work" means the design, construction and services required by the Design-Build Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Design-Builder to fulfill the Design-Builder's obligations. The Work may constitute the whole or a part of the Project.

§ A.1.1.7 THE PROJECT

The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and which may include design and construction by the Owner or by separate contractors.

§ A.1.1.8 NEUTRAL

The Neutral is the individual appointed by the parties to decide Claims and disputes pursuant to Section A.4.2.1.

§ A.1.2 COMPLIANCE WITH APPLICABLE LAWS

§ A.1.2.1 If the Design-Builder believes that implementation of any instruction received from the Owner would cause a violation of any applicable law, statute, ordinance, building code, rule or regulation, the Design-Builder shall notify the Owner in writing. Neither the Design-Builder nor any Contractor or Architect shall be obligated to perform any act which they believe will violate any applicable law, ordinance, rule or regulation.

§ A.1.2.2 The Design-Builder shall be entitled to rely on the completeness and accuracy of the information contained in the Project Criteria, but not that such information complies with applicable laws, regulations and codes, which shall be the obligation of the Design-Builder to determine. In the event that a specific requirement of the Project Criteria conflicts with applicable laws, regulations and codes, the Design-Builder shall furnish Work which complies with such laws, regulations and codes. In such case, the Owner shall issue a Change Order to the Design-Builder unless the Design-Builder recognized such non-compliance prior to execution of this Agreement and failed to notify the Owner.

§ A.1.3 CAPITALIZATION

§ A.1.3.1 Terms capitalized in these Terms and Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to sections in the document, or (3) the titles of other documents published by the American Institute of Architects.

§ A.1.4 INTERPRETATION

§ A.1.4.1 In the interest of brevity, the Design-Build Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ A.1.4.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

§ A.1.5 EXECUTION OF THE DESIGN-BUILD DOCUMENTS

§ A.1.5.1 The Design-Build Documents shall be signed by the Owner and Design-Builder.

§ A.1.5.2 Execution of the Design-Build Contract by the Design-Builder is a representation that the Design-Builder has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Design-Build Documents.

§ A.1.6 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA

§ A.1.6.1 Drawings, specifications, and other documents including those in electronic form, prepared by the Architect and furnished by the Design-Builder are Instruments of Service. The Design-Builder, Design-Builder’s Architect and other providers of professional services individually shall retain all common law, statutory and other reserved rights, including copyright in those Instruments of Services furnished by them. Drawings, specifications, and other documents and materials and electronic data are furnished for use solely with respect to this Project.

§ A.1.6.2 Upon execution of the Design-Build Contract, the Design-Builder grants to the Owner a non-exclusive license to reproduce and use the Instruments of Service solely in connection with the Project, including the Project’s further development by the Owner and others retained by the Owner for such purposes, provided that the Owner shall comply with all obligations, including prompt payment of sums when due, under the Design-Build Documents. Subject to the Owner’s compliance with such obligations, such license shall extend to those parties retained by the Owner for such purposes, including other design professionals. The Design-Builder shall obtain similar non-exclusive licenses from its design professionals, including the Architect. The Owner shall not otherwise assign or transfer any license herein to another party without prior written agreement of the Design-Builder. Any unauthorized reproduction or use of the Instruments of Service by the Owner or others shall be at the Owner’s sole risk and expense without liability to the Design-Builder and its design professionals. Except as provided in Section A.1.6.4, termination of this Agreement prior to completion of the Design-Builder’s services to be performed under this Agreement shall terminate this license.

§ A.1.6.3 Prior to any electronic exchange by the parties of the Instruments of Service or any other documents or materials to be provided by one party to the other, the Owner and the Design-Builder shall agree in writing on the specific conditions governing the format thereof, including any special limitations or licenses not otherwise provided in the Design-Build Documents.

§ A.1.6.4 If this Agreement is terminated for any reason other than the default of the Owner, each of the Design-Builder’s design professionals, including the Architect, shall be contractually required to convey to the Owner a non-exclusive license to use that design professional’s Instruments of Service for the completion, use and maintenance of the Project, conditioned upon the Owner’s written notice to that design professional of the Owner’s assumption of the Design-Builder’s contractual duties and obligations to that design professional and payment to that design professional of all amounts due to that design professional and its consultants. If the Owner does not assume the remaining duties and obligations of the Design-Builder to that design professional under this Agreement, then the Owner shall indemnify and hold harmless that design professional from all claims and any expense, including legal fees, which that design professional shall thereafter incur by reason of the Owner’s use of such Instruments of Service. The Design-Builder shall incorporate the requirements of this Section A.1.6.4 in all agreements with its design professionals.

§ A.1.6.5 Submission or distribution of the Design-Builder's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section A.1.6.1.

ARTICLE A.2 OWNER

§ A.2.1 GENERAL

§ A.2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization. The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule submitted to the Owner.

§ A.2.1.2 The Owner shall furnish to the Design-Builder within 15 days after receipt of a written request information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ A.2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ A.2.2.1 Information or services required of the Owner by the Design-Build Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Design-Builder's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Design-Builder of a written request for such information or services.

§ A.2.2.2 The Owner shall be responsible to provide surveys, if not required by the Design-Build Documents to be provided by the Design-Builder, describing physical characteristics, legal limitations, and utility locations for the site of this Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restriction, boundaries, and contours of the site; locations, dimensions, and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ A.2.2.3 The Owner shall provide, to the extent available to the Owner and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems, chemical, air and water pollution, hazardous materials or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site.

§ A.2.2.4 The Owner may obtain independent review of the Design-Builder's design, construction and other documents by a separate architect, engineer, and contractor or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work.

§ A.2.2.5 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections. The Owner shall not be required to pay the fees for such permits, licenses and inspections unless the cost of such fees is excluded from the responsibility of the Design-Builder under the Design-Build Documents.

§ A.2.2.6 The services, information, surveys and reports required to be provided by the Owner under Section A.2.2, shall be furnished at the Owner's expense, and the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof, except as otherwise specifically provided in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing.

§ A.2.2.7 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ A.2.2.8 The Owner shall, at the request of the Design-Builder, prior to execution of the Design-Build Contract and promptly upon request thereafter, furnish to the Design-Builder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Design-Build Documents.

§ A.2.2.9 The Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder, unless otherwise directed by the Design-Builder.

§ A.2.2.10 The Owner shall furnish the services of geotechnical engineers or other consultants, if not required by the Design-Build Documents to be provided by the Design-Builder, for subsoil, air and water conditions when such services are deemed reasonably necessary by the Design-Builder to properly carry out the design services provided by the Design-Builder and the Design-Builder's Architect. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ A.2.2.11 The Owner shall promptly obtain easements, zoning variances, and legal authorizations regarding site utilization where essential to the execution of the Owner's program.

§ A.2.3 OWNER REVIEW AND INSPECTION

§ A.2.3.1 The Owner shall review and approve or take other appropriate action upon the Design-Builder's submittals, including but not limited to design and construction documents, required by the Design-Build Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Design-Build Documents. The Owner's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Design-Builder or separate contractors. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents.

§ A.2.3.2 Upon review of the design documents, construction documents, or other submittals required by the Design-Build Documents, the Owner shall take one of the following actions:

- 1 Determine that the documents or submittals are in conformance with the Design-Build Documents and approve them.
- 2 Determine that the documents or submittals are in conformance with the Design-Build Documents but request changes in the documents or submittals which shall be implemented by a Change in the Work.
- 3 Determine that the documents or submittals are not in conformity with the Design-Build Documents and reject them.
- 4 Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them by implementing a Change in the Work.
- 5 Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them and request changes in the documents or submittals which shall be implemented by a Change in the Work.

§ A.2.3.3 The Design-Builder shall submit to the Owner for the Owner's approval, pursuant to Section A.2.3.1, any proposed change or deviation to previously approved documents or submittals. The Owner shall review each proposed change or deviation to previously approved documents or submittals which the Design-Builder submits to the Owner for the Owner's approval with reasonable promptness in accordance with Section A.2.3.1 and shall make one of the determinations described in Section A.2.3.2.

§ A.2.3.4 Notwithstanding the Owner's responsibility under Section A.2.3.2, the Owner's review and approval of the Design-Builder's documents or submittals shall not relieve the Design-Builder of responsibility for compliance with the Design-Build Documents unless a) the Design-Builder has notified the Owner in writing of the deviation prior to approval by the Owner or, b) the Owner has approved a Change in the Work reflecting any deviations from the requirements of the Design-Build Documents.

§ A.2.3.5 The Owner may visit the site to keep informed about the progress and quality of the portion of the Work completed. However, the Owner shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Visits by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quantity or quality of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents, except as provided in Section A.3.3.7.

§ A.2.3.6 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of and will not be responsible for acts or omissions of the Design-Builder, Architect, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ A.2.3.7 The Owner may reject Work that does not conform to the Design-Build Documents. Whenever the Owner considers it necessary or advisable, the Owner shall have authority to require inspection or testing of the Work in accordance with Section A.13.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ A.2.3.8 The Owner may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Owner and the Design-Builder agree to in writing.

§ A.2.3.9 The Owner shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion.

§ A.2.4 OWNER'S RIGHT TO STOP WORK

§ A.2.4.1 If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section A.12.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section A.6.1.3.

§ A.2.5 OWNER'S RIGHT TO CARRY OUT THE WORK

§ A.2.5.1 If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Design-Builder a second written notice to correct such deficiencies within a three-day period. If the Design-Builder within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE A.3 DESIGN-BUILDER

§ A.3.1 GENERAL

§ A.3.1.1 The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The Design-Builder may be an architect or other design professional, a construction contractor, a real estate developer or any other person or entity legally permitted to do business as a design-builder in the location where the Project is located. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative. The Design-Builder's representative is authorized to act on the Design-Builder's behalf with respect to the Project.

§ A.3.1.2 The Design-Builder shall perform the Work in accordance with the Design-Build Documents.

§ A.3.2 DESIGN SERVICES AND RESPONSIBILITIES

§ A.3.2.1 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions. The Owner understands and agrees that the services performed by the Design-Builder's Architect and the Design-Builder's other design professionals and consultants are undertaken and performed in the sole interest of and for the exclusive benefit of the Design-Builder.

§ A.3.2.2 The agreements between the Design-Builder and Architect or other design professionals identified in the Agreement, and in any subsequent Modifications, shall be in writing. These agreements, including services and

financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon the Owner's written request.

§ A.3.2.3 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Contractors, Subcontractors and their agents and employees, and other persons or entities,

including the Architect and other design professionals, performing any portion of the Design-Builder's obligations under the Design-Build Documents.

§ A.3.2.4 The Design-Builder shall carefully study and compare the Design-Build Documents, materials and other information provided by the Owner pursuant to Section A.2.2, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the Owner any errors, inconsistencies or omissions discovered.

§ A.3.2.5 The Design-Builder shall provide to the Owner for Owner's written approval design documents sufficient to establish the size, quality and character of the Project; its architectural, structural, mechanical and electrical systems; and the materials and such other elements of the Project to the extent required by the Design-Build Documents. Deviations, if any, from the Design-Build Documents shall be disclosed in writing.

§ A.3.2.6 Upon the Owner's written approval of the design documents submitted by the Design-Builder, the Design-Builder shall provide construction documents for review and written approval by the Owner. The construction documents shall set forth in detail the requirements for construction of the Project. The construction documents shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the Design-Build Documents shall be disclosed in writing. Construction documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

- .1 be consistent with the approved design documents;
- .2 provide information for the use of those in the building trades; and
- .3 include documents customarily required for regulatory agency approvals.

§ A.3.2.7 The Design-Builder shall meet with the Owner periodically to review progress of the design and construction documents.

§ A.3.2.8 Upon the Owner's written approval of construction documents, the Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ A.3.2.9 The Design-Builder shall obtain from each of the Design-Builder'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 Project Criteria set forth in the Design-Build Documents, except to the extent specifically identified in such certificate, (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.

§ A.3.2.10 If the Owner requests the Design-Builder, the Architect or the Design-Builder's other design professionals to execute certificates other than those required by Section A.3.2.9, the proposed language of such certificates shall be submitted to the Design-Builder, or the Architect and such design professionals through the Design-Builder, for review and negotiation at least 14 days prior to the requested dates of execution. Neither the Design-Builder, the Architect nor such other design professionals shall be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of their respective agreements with the Owner or Design-Builder.

§ A.3.3 CONSTRUCTION

§ A.3.3.1 The Design-Builder shall perform no construction Work prior to the Owner's review and approval of the construction documents. The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require the Owner's review of submittals, such as Shop Drawings, Product Data and Samples, until the Owner has approved each submittal.

§ A.3.3.2 The construction Work shall be in accordance with approved submittals, except that the Design-Builder shall not be relieved of responsibility for deviations from requirements of the Design-Build Documents by the Owner's approval of design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals unless the Design-Builder has specifically informed the Owner in writing of such deviation at the time of submittal and (1) the Owner has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals by the Owner's approval thereof.

§ A.3.3.3 The Design-Builder shall direct specific attention, in writing or on resubmitted design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Owner on previous submittals. In the absence of such written notice, the Owner's approval of a resubmission shall not apply to such revisions.

§ A.3.3.4 When the Design-Build Documents require that a Contractor provide professional design services or certifications related to systems, materials or equipment, or when the Design-Builder in its discretion provides such design services or certifications through a Contractor, the Design-Builder shall cause professional design services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professionals, if prepared by others, shall bear such design professional's written approval. The Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ A.3.3.5 The Design-Builder shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Design-Build Documents.

§ A.3.3.6 The Design-Builder shall keep the Owner informed of the progress and quality of the Work.

§ A.3.3.7 The Design-Builder shall be responsible for the supervision and direction of the Work, using the Design-Builder's best skill and attention. If the Design-Build Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design-Builder shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Design-Builder determines that such means, methods, techniques, sequences or procedures may not be safe, the Design-Builder shall give timely written notice to the Owner and shall not proceed with that portion of the Work without further written instructions from the Owner. If the Design-Builder is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Design-Builder, the Owner shall be solely responsible for any resulting loss or damage.

§ A.3.3.8 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ A.3.4 LABOR AND MATERIALS

§ A.3.4.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ A.3.4.2 When a material is specified in the Design-Build Documents, the Design-Builder may make substitutions only with the consent of the Owner and, if appropriate, in accordance with a Change Order.

§ A.3.4.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Design-Build Contract. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ A.3.5 WARRANTY

§ A.3.5.1 The Design-Builder warrants to the Owner that materials and equipment furnished under the Design-Build Documents will be of good quality and new unless otherwise required or permitted by the Design-Build Documents, that the Work will be free from defects not inherent in the quality required or permitted by law or otherwise, and that the Work will conform to the requirements of the Design-Build Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ A.3.6 TAXES

§ A.3.6.1 The Design-Builder shall pay all sales, consumer, use and similar taxes for the Work provided by the Design-Builder which had been legally enacted on the date of the Agreement, whether or not yet effective or merely scheduled to go into effect.

§ A.3.7 PERMITS, FEES AND NOTICES

§ A.3.7.1 The Design-Builder shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Design-Build Contract and which were legally required on the date the Owner accepted the Design-Builder's proposal.

§ A.3.7.2 The Design-Builder shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

§ A.3.7.3 It is the Design-Builder's responsibility to ascertain that the Work is in accordance with applicable laws, ordinances, codes, rules and regulations.

§ A.3.7.4 If the Design-Builder performs Work contrary to applicable laws, ordinances, codes, rules and regulations, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ A.3.8 ALLOWANCES

§ A.3.8.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to which the Design-Builder has reasonable objection.

§ A.3.8.2 Unless otherwise provided in the Design-Build Documents:

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section A.3.8.2.1 and (2) changes in Design-Builder's costs under Section A.3.8.2.2.

§ A.3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

§ A.3.9 DESIGN-BUILDER'S SCHEDULE

§ A.3.9.1 The Design-Builder, promptly after execution of the Design-Build Contract, shall prepare and submit for the Owner's information the Design-Builder's schedule for the Work. The schedule shall not exceed time limits and shall be in such detail as required under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-

Build Documents, shall provide for expeditious and practicable execution of the Work and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ A.3.9.2 The Design-Builder shall prepare and keep current a schedule of submittals required by the Design-Build Documents.

§ A.3.9.3 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ A.3.10 DOCUMENTS AND SAMPLES AT THE SITE

§ A.3.10.1 The Design-Builder shall maintain at the site for the Owner one record copy of the drawings, specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be delivered to the Owner upon completion of the Work.

§ A.3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ A.3.11.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Design-Builder or a Contractor, Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ A.3.11.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the Work.

§ A.3.11.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ A.3.11.4 Shop Drawings, Product Data, Samples and similar submittals are not Design-Build Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Design-Build Documents the way by which the Design-Builder proposes to conform to the Design-Build Documents.

§ A.3.11.5 The Design-Builder shall review for compliance with the Design-Build Documents and approve and submit to the Owner only those Shop Drawings, Product Data, Samples and similar submittals required by the Design-Build Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ A.3.11.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Design-Build Documents.

§ A.3.12 USE OF SITE

§ A.3.12.1 The Design-Builder shall confine operations at the site to areas permitted by law, ordinances, permits and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ A.3.13 CUTTING AND PATCHING

§ A.3.13.1 The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ A.3.13.2 The Design-Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction or by excavation. The Design-Builder shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ A.3.14 CLEANING UP

§ A.3.14.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Design-Build Contract. At completion of the Work, the Design-Builder shall remove from and about the Project waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials.

§ A.3.14.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and the cost thereof shall be charged to the Design-Builder.

§ A.3.15 ACCESS TO WORK

§ A.3.15.1 The Design-Builder shall provide the Owner access to the Work in preparation and progress wherever located.

§ A.3.16 ROYALTIES, PATENTS AND COPYRIGHTS

§ A.3.16.1 The Design-Builder shall pay all royalties and license fees. The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required or where the copyright violations are contained in drawings, specifications or other documents prepared by or furnished to the Design-Builder by the Owner. However, if the Design-Builder has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner.

§ A.3.17 INDEMNIFICATION

§ A.3.17.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, Owner's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property other than the Work itself, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section A.3.17.

§ A.3.17.2 In claims against any person or entity indemnified under this Section A.3.17 by an employee of the Design-Builder, the Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section A.3.17.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design-Builder, the Architect or a Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE A.4 DISPUTE RESOLUTION

§ A.4.1 CLAIMS AND DISPUTES

§ A.4.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Design-Build Contract terms, payment of money, extension of time or other relief with respect to the terms of the Design-Build Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Design-Build Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ A.4.1.2 Time Limits on Claims. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the other party.

§ A.4.1.3 Continuing Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section A.9.7.1 and Article A.14, the Design-Builder shall proceed diligently with performance of the Design-Build Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ A.4.1.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, then the observing party shall give notice to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall negotiate with the Design-Builder an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Design-Build Contract is justified, the Owner shall so notify the Design-Builder in writing, stating the reasons. Claims by the Design-Builder in opposition to such determination must be made within 21 days after the Owner has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Design-Builder cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall proceed pursuant to Section A.4.2.

§ A.4.1.5 Claims for Additional Cost. If the Design-Builder wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section A.10.6.

§ A.4.1.6 If the Design-Builder believes additional cost is involved for reasons including but not limited to (1) an order by the Owner to stop the Work where the Design-Builder was not at fault, (2) a written order for the Work issued by the Owner, (3) failure of payment by the Owner, (4) termination of the Design-Build Contract by the Owner, (5) Owner's suspension or (6) other reasonable grounds, Claim shall be filed in accordance with this Section A.4.1.

§ A.4.1.7 Claims for Additional Time

§ A.4.1.7.1 If the Design-Builder wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of the time and its effect on the progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ A.4.1.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ A.4.1.8 Injury or Damage to Person or Property. If either party to the Design-Build Contract suffers injury or damage to person or property because of an act or omission of the other party or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ A.4.1.9 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ A.4.1.10 Claims for Consequential Damages. Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to the Design-Build Contract. This mutual waiver includes:

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article A.14. Nothing contained in this Section A.4.1.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ A.4.1.11 If the enactment or revision of codes, laws or regulations or official interpretations which govern the Project cause an increase or decrease of the Design-Builder's cost of, or time required for, performance of the Work, the Design-Builder shall be entitled to an equitable adjustment in Contract Sum or Contract Time. If the Owner and Design-Builder cannot agree upon an adjustment in the Contract Sum or Contract Time, the Design-Builder shall submit a Claim pursuant to Section A.4.1.

§ A.4.2 RESOLUTION OF CLAIMS AND DISPUTES

§ A.4.2.1 Decision by Neutral. If the parties have identified a Neutral in Section 6.1 of the Agreement or elsewhere in the Design-Build Documents, then Claims, excluding those arising under Sections A.10.3 through A.10.5, shall be referred initially to the Neutral for decision. An initial decision by the Neutral shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Neutral with no decision having been rendered by the Neutral. Unless the Neutral and all affected parties agree, the Neutral will not decide disputes between the Design-Builder and persons or entities other than the Owner.

§ A.4.2.2 Decision by Owner. If the parties have not identified a Neutral in Section 6.1 of the Agreement or elsewhere in the Design-Build Documents then, except for those claims arising under Sections A.10.3 and A.10.5, the Owner shall provide an initial decision. An initial decision by the Owner shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Owner with no decision having been rendered by the Owner.

§ A.4.2.3 The initial decision pursuant to Sections A.4.2.1 and A.4.2.2 shall be in writing, shall state the reasons therefore and shall notify the parties of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject first to mediation under Section A.4.3 and thereafter to such other dispute resolution methods as provided in Section 6.2 of the Agreement or elsewhere in the Design-Build Documents.

§ A.4.2.4 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ A.4.2.5 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to initial resolution of the Claim.

§ A.4.3 MEDIATION

§ A.4.3.1 Any Claim arising out of or related to the Design-Build Contract, except those waived as provided for in Sections A.4.1.10, A.9.10.4 and A.9.10.5, shall, after initial decision of the Claim or 30 days after submission of the Claim for initial decision, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable or other binding dispute resolution proceedings by either party.

§ A.4.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect at the time of the mediation. Request for mediation shall be filed in writing with the other party to the Design-Build Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration or other binding dispute resolution proceedings but, in such event, mediation shall proceed in advance thereof or of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ A.4.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ A.4.4 ARBITRATION

§ A.4.4.1 Claims, except those waived as provided for in Sections A.4.1.10, A.9.10.4 and A.9.10.5, for which initial decisions have not become final and binding, and which have not been resolved by mediation but which are subject to arbitration pursuant to Sections 6.2 and 6.3 of the Agreement or elsewhere in the Design-Build Documents, shall be

decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect at the time of the arbitration. The demand for arbitration shall be filed in writing with the other party to the Design-Build Contract and with the American Arbitration Association.

§ A.4.4.2 A demand for arbitration may be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Section A.13.6.

§ A.4.4.3 An arbitration pursuant to this Section A.4.4 may be joined with an arbitration involving common issues of law or fact between the Owner or Design-Builder and any person or entity with whom the Owner or Design-Builder has a contractual obligation to arbitrate disputes which does not prohibit consolidation or joinder. No other arbitration arising out of or relating to the Design-Build Contract shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to the Design-Build Contract or not a party to an agreement with the Owner or Design-Builder, except by written consent containing a specific reference to the Design-Build Contract signed by the Owner and Design-Builder and any other person or entities sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to the Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ A.4.4.4 Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ A.4.4.5 Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE A.5 AWARD OF CONTRACTS

§ A.5.1 Unless otherwise stated in the Design-Build Documents or the bidding or proposal requirements, the Design-Builder, as soon as practicable after award of the Design-Build Contract, shall furnish in writing to the Owner the names of additional persons or entities not originally included in the Design-Builder's proposal or in substitution of a person or entity (including those who are to furnish design services or materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner will promptly reply to the Design-Builder in writing stating whether or not the Owner has reasonable objection to any such proposed additional person or entity. Failure of the Owner to reply promptly shall constitute notice of no reasonable objection.

§ A.5.2 The Design-Builder shall not contract with a proposed person or entity to whom which the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable objection.

§ A.5.3 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected additional person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person's or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ A.5.4 The Design-Builder shall not change a person or entity previously selected if the Owner makes reasonable objection to such substitute.

§ A.5.5 CONTINGENT ASSIGNMENT OF CONTRACTS

§ A.5.5.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner provided that:

- .1 assignment is effective only after termination of the Design-Build Contract by the Owner for cause pursuant to Section A.14.2 and only for those agreements which the Owner accepts by notifying the contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Design-Build Contract.

§ A.5.5.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Contractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

ARTICLE A.6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ A.6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ A.6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. The Design-Builder shall cooperate with the Owner and separate contractors whose work might interfere with the Design-Builder's Work. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make such Claim as provided in Section A.4.1.

§ A.6.1.2 The term "separate contractor" shall mean any contractor retained by the Owner pursuant to Section A.6.1.1.

§ A.6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ A.6.2 MUTUAL RESPONSIBILITY

§ A.6.2.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ A.6.2.2 If part of the Design-Builder's Work depends for proper execution or results upon design, construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, promptly report to the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Design-Builder so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ A.6.2.3 The Owner shall be reimbursed by the Design-Builder for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Design-Builder. The Owner shall be responsible to the Design-Builder for costs incurred by the Design-Builder because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

§ A.6.2.4 The Design-Builder shall promptly remedy damage wrongfully caused by the Design-Builder to completed or partially completed construction or to property of the Owner or separate contractors.

§ A.6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described in Section A.3.13.

§ A.6.3 OWNER'S RIGHT TO CLEAN UP

§ A.6.3.1 If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Owner shall allocate the cost among those responsible.

ARTICLE A.7 CHANGES IN THE WORK

§ A.7.1 GENERAL

§ A.7.1.1 Changes in the Work may be accomplished after execution of the Design-Build Contract, and without invalidating the Design-Build Contract, by Change Order or Construction Change Directive, subject to the limitations stated in this Article A.7 and elsewhere in the Design-Build Documents.

§ A.7.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. A Construction Change Directive may be issued by the Owner with or without agreement by the Design-Builder.

§ A.7.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.

§ A.7.2 CHANGE ORDERS

§ A.7.2.1 A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 a change in the Work;
- .2 the amount of the adjustment, if any, in the Contract Sum; and
- .3 the extent of the adjustment, if any, in the Contract Time.

§ A.7.2.2 If the Owner requests a proposal for a change in the Work from the Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Design-Builder for any costs incurred for estimating services, design services or preparation of proposed revisions to the Design-Build Documents.

§ A.7.2.3 Methods used in determining adjustments to the Contract Sum may include those listed in Section A.7.3.3.

§ A.7.3 CONSTRUCTION CHANGE DIRECTIVES

§ A.7.3.1 A Construction Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Design-Build Contract, order changes in the Work within the general scope of the Design-Build Documents consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ A.7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ A.7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Design-Build Documents or subsequently agreed upon, or equitably adjusted as provided in Section A.4.1.9;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Section A.7.3.6.

§ A.7.3.4 Upon receipt of a Construction Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ A.7.3.5 A Construction Change Directive signed by the Design-Builder indicates the agreement of the Design-Builder therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ A.7.3.6 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Section A.7.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section A.7.3.6 shall be limited to the following:

- .1 additional costs of professional services;
- .2 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

- .4 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 additional costs of supervision and field office personnel directly attributable to the change.

§ A.7.3.7 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ A.7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Owner shall make an interim determination for purposes of monthly payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of the Design-Builder to disagree and assert a Claim in accordance with Article A.4.

§ A.7.3.9 When the Owner and Design-Builder reach agreement concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

§ A.7.4 MINOR CHANGES IN THE WORK

§ A.7.4.1 The Owner shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Design-Build Documents. Such changes shall be effected by written order and shall be binding on the Design-Builder. The Design-Builder shall carry out such written orders promptly.

ARTICLE A.8 TIME

§ A.8.1 DEFINITIONS

§ A.8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Design-Build Documents for Substantial Completion of the Work.

§ A.8.1.2 The date of commencement of the Work shall be the date stated in the Agreement unless provision is made for the date to be fixed in a notice to proceed issued by the Owner.

§ A.8.1.3 The date of Substantial Completion is the date determined by the Owner in accordance with Section A.9.8.

§ A.8.1.4 The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ A.8.2 PROGRESS AND COMPLETION

§ A.8.2.1 Time limits stated in the Design-Build Documents are of the essence of the Design-Build Contract. By executing the Design-Build Contract, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ A.8.2.2 The Design-Builder shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence construction operations on the site or elsewhere prior to the effective date of insurance required by Article A.11 to be furnished by the Design-Builder and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Design-Build Documents or a notice to proceed given by the Owner, the Design-Builder shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ A.8.2.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ A.8.3 DELAYS AND EXTENSIONS OF TIME

§ A.8.3.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control, or by delay authorized by the Owner pending resolution of disputes pursuant to the Design-Build Documents, or by other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ A.8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section A.4.1.7.

§ A.8.3.3 This Section A.8.3 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

ARTICLE A.9 PAYMENTS AND COMPLETION

§ A.9.1 CONTRACT SUM

§ A.9.1.1 The Contract Sum is stated in the Design-Build Documents and, including authorized adjustments, is the total amount payable by the Owner to the Design-Builder for performance of the Work under the Design-Build Documents.

§ A.9.2 SCHEDULE OF VALUES

§ A.9.2.1 Before the first Application for Payment, where the Contract Sum is based upon a Stipulated Sum or the Cost of the Work plus Contractor's Fee with a Guaranteed Maximum Price, the Design-Builder shall submit to the Owner an initial schedule of values allocated to various portions of the Work prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. The schedule of values may be updated periodically to reflect changes in the allocation of the Contract Sum.

§ A.9.3 APPLICATIONS FOR PAYMENT

§ A.9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the current schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from Contractors and material suppliers, and reflecting retainage if provided for in the Design-Build Documents:

§ A.9.3.1.1 As provided in Section A.7.3.8, such applications may include requests for payment on account of Changes in the Work which have been properly authorized by Construction Change Directives but are not yet included in Change Orders.

§ A.9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay to a Contractor or material supplier or other parties providing services for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ A.9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ A.9.3.3 The Design-Builder warrants that title to all Work other than Instruments of Service covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, Claims, security interests or encumbrances in favor of the Design-Builder, Contractors, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ A.9.4 ACKNOWLEDGEMENT OF APPLICATION FOR PAYMENT

§ A.9.4.1 The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a written acknowledgement of receipt of the Design-Builder's Application for Payment indicating the amount the Owner has determined to be properly due and, if applicable, the reasons for withholding payment in whole or in part.

§ A.9.5 DECISIONS TO WITHHOLD PAYMENT

§ A.9.5.1 The Owner may withhold a payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Application for Payment or that the quality of Work is not in accordance with the Design-Build Documents. The Owner may also withhold a payment or, because of subsequently discovered evidence, may nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible, including loss resulting from acts and omissions, because of the following:

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to Contractors or for design services labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 persistent failure to carry out the Work in accordance with the Design-Build Documents.

§ A.9.5.2 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld.

§ A.9.6 PROGRESS PAYMENTS

§ A.9.6.1 After the Owner has issued a written acknowledgement of receipt of the Design-Builder's Application for Payment, the Owner shall make payment of the amount, in the manner and within the time provided in the Design-Build Documents.

§ A.9.6.2 The Design-Builder shall promptly pay the Architect, each design professional and other consultants retained directly by the Design-Builder, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of each such party's respective portion of the Work, the amount to which each such party is entitled.

§ A.9.6.3 The Design-Builder shall promptly pay each Contractor, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of such Contractor's portion of the Work, the amount to which said Contractor is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the Contractor's portion of the Work. The Design-Builder shall, by appropriate agreement with each Contractor, require each Contractor to make payments to Subcontractors in a similar manner.

§ A.9.6.4 The Owner shall have no obligation to pay or to see to the payment of money to a Contractor except as may otherwise be required by law.

§ A.9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections A.9.6.3 and A.9.6.4.

§ A.9.6.6 A progress payment, or partial or entire use or occupancy of the Project by the Owner, shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ A.9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by Contractors and suppliers shall be held by the Design-Builder for those Contractors or suppliers who performed Work or furnished materials, or both, under contract with the Design-Builder for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not be commingled with money of the Design-Builder, shall

create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ A.9.7 FAILURE OF PAYMENT

§ A.9.7.1 If for reasons other than those enumerated in Section A.9.5.1, the Owner does not issue a payment within the time period required by Section 5.1.3 of the Agreement, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ A.9.8 SUBSTANTIAL COMPLETION

§ A.9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or use the Work or a portion thereof for its intended use.

§ A.9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ A.9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not substantially complete, the Design-Builder shall complete or correct such item. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine whether the Design-Builder's Work is substantially complete.

§ A.9.8.4 In the event of a dispute regarding whether the Design-Builder's Work is substantially complete, the dispute shall be resolved pursuant to Article A.4.

§ A.9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder shall prepare for the Owner's signature an Acknowledgement of Substantial Completion which, when signed by the Owner, shall establish (1) the date of Substantial Completion of the Work, (2) responsibilities between the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and (3) the time within which the Design-Builder shall finish all items on the list accompanying the Acknowledgement. When the Owner's inspection discloses that the Work or a designated portion thereof is substantially complete, the Owner shall sign the Acknowledgement of Substantial Completion. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Acknowledgement of Substantial Completion.

§ A.9.8.6 Upon execution of the Acknowledgement of Substantial Completion and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ A.9.9 PARTIAL OCCUPANCY OR USE

§ A.9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to by the insurer, if so required by the insurer, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for completion or correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section A.9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ A.9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

§ A.9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ A.9.10 FINAL COMPLETION AND FINAL PAYMENT

§ A.9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner shall promptly make such inspection and, when the Owner finds the Work acceptable under the Design-Build Documents and fully performed, the Owner shall, subject to Section A.9.10.2, promptly make final payment to the Design-Builder.

§ A.9.10.2 Neither final payment nor any remaining retained percentage will become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, and (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Design-Build Contract, to the extent and in such form as may be designated by the Owner. If a Contractor refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be liable to pay in connection with the discharge of such lien, including all costs and reasonable attorneys' fees.

§ A.9.10.3 If, after the Owner determines that the Design-Builder's Work or designated portion thereof is substantially completed, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of a Change Order or a Construction Change Directive affecting final completion, the Owner shall, upon application by the Design-Builder, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ A.9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1 liens, Claims, security interests or encumbrances arising out of the Design-Build Documents and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents; or
- .3 terms of special warranties required by the Design-Build Documents.

§ A.9.10.5 Acceptance of final payment by the Design-Builder, a Contractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE A.10 PROTECTION OF PERSONS AND PROPERTY

§ A.10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ A.10.1.1 The Design-Builder shall be responsible for initiating and maintaining all safety precautions and programs in connection with the performance of the Design-Build Contract.

§ A.10.2 SAFETY OF PERSONS AND PROPERTY

§ A.10.2.1 The Design-Builder shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site or under the care, custody or control of the Design-Builder or the Design-Builder's Contractors or Subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ A.10.2.2 The Design-Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ A.10.2.3 The Design-Builder shall erect and maintain, as required by existing conditions and performance of the Design-Build Documents, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ A.10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Design-Builder shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ A.10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections A.10.2.1.2 and A.10.2.1.3 caused in whole or in part by the Design-Builder, the Architect, a Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections A.10.2.1.2 and A.10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section A.3.17.

§ A.10.2.6 The Design-Builder shall designate in writing to the Owner a responsible individual whose duty shall be the prevention of accidents.

§ A.10.2.7 The Design-Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

§ A.10.3 HAZARDOUS MATERIALS

§ A.10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner.

§ A.10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder shall promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, work in the affected area shall resume upon written agreement of the Owner and Design-Builder. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shutdown, delay and start-up, which adjustments shall be accomplished as provided in Article A.7.

§ A.10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them from and against Claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance exists on site as of the date of the Agreement, is not disclosed in the Design-Build Documents and presents the risk of bodily injury or death as described in Section A.10.3.1 and has not been rendered harmless, provided that such Claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (other than the Work itself) to the extent that such damage, loss or expense is not due to the negligence of the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them.

§ A.10.4 The Owner shall not be responsible under Section A.10.3 for materials and substances brought to the site by the Design-Builder unless such materials or substances were required by the Design-Build Documents.

§ A.10.5 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ A.10.6 EMERGENCIES

§ A.10.6.1 In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Design-Builder on account of an emergency shall be determined as provided in Section A.4.1.7 and Article A.7.

ARTICLE A.11 INSURANCE AND BONDS

§ A.11.1 Except as may otherwise be set forth in the Agreement or elsewhere in the Design-Build Documents, the Owner and Design-Builder shall purchase and maintain the following types of insurance with limits of liability and deductible amounts and subject to such terms and conditions, as set forth in this Article A.11.

§ A.11.2 DESIGN-BUILDER'S LIABILITY INSURANCE

§ A.11.2.1 The Design-Builder shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Design-Builder from claims set forth below that may arise out of or result from the Design-Builder's operations under the Design-Build Contract and for which the Design-Builder may be legally liable, whether such operations be by the Design-Builder, by a Contractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Design-Builder's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Design-Builder's employees;
- .4 claims for damages insured by usual personal injury liability coverage;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 claims for bodily injury or property damage arising out of completed operations; and
- .8 claims involving contractual liability insurance applicable to the Design-Builder's obligations under Section A.3.17.

§ A.11.2.2 The insurance required by Section A.11.2.1 shall be written for not less than limits of liability specified in the Design-Build Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

§ A.11.2.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section A.11.2 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section A.9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Design-Builder with reasonable promptness in accordance with the Design-Builder's information and belief.

§ A.11.3 OWNER'S LIABILITY INSURANCE

§ A.11.3.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ A.11.4 PROPERTY INSURANCE

§ A.11.4.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk, "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Design-Build Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section A.9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section A.11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, Design-Builder, Contractors and Subcontractors in the Project.

§ A.11.4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Design-Builder's services and expenses required as a result of such insured loss.

§ A.11.4.1.2 If the Owner does not intend to purchase such property insurance required by the Design-Build Contract and with all of the coverages in the amount described above, the Owner shall so inform the Design-Builder in writing prior to commencement of the Work. The Design-Builder may then effect insurance that will protect the interests of the Design-Builder, Contractors and Subcontractors in the Work, and, by appropriate Change Order, the cost thereof shall be charged to the Owner. If the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above without so notifying the Design-Builder in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ A.11.4.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ A.11.4.1.4 This property insurance shall cover portions of the Work stored off the site and also portions of the Work in transit.

§ A.11.4.1.5 Partial occupancy or use in accordance with Section A.9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use, by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ A.11.4.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Design-Build Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Design-Builder, Contractors and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.

§ A.11.4.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder, Architect, the Design-Builder's other design professionals, if any, Contractors and Subcontractors for loss of use of the Owner's property, including consequential losses due to fire or other hazards, however caused.

§ A.11.4.4 If the Design-Builder requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Design-Builder by appropriate Change Order.

§ A.11.4.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section A.11.4.7 for

damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ A.11.4.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section A.11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire and that its limits will not be reduced until at least 30 days' prior written notice has been given to the Design-Builder.

§ A.11.4.7 Waivers of Subrogation. The Owner and Design-Builder waive all rights against each other and any of their consultants, separate contractors described in Section A.6.1, if any, Contractors, Subcontractors, agents and employees, each of the other, and any of their contractors, subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section A.11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section A.6.1, if any, and the Contractors, Subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, even though the person or entity did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ A.11.4.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section A.11.4.10. The Design-Builder shall pay Contractors their just shares of insurance proceeds received by the Design-Builder, and, by appropriate agreements, written where legally required for validity, shall require Contractors to make payments to their Subcontractors in similar manner.

§ A.11.4.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Design-Build Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article A.7.

§ A.11.4.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power.; The Owner as fiduciary shall, in the case of a decision or award, make settlement with insurers in accordance with directions of a decision or award. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

A.11.5 PERFORMANCE BOND AND PAYMENT BOND

§ A.11.5.1 The Owner shall have the right to require the Design-Builder to furnish bonds covering faithful performance of the Design-Build Contract and payment of obligations arising thereunder, including payment to design professionals engaged by or on behalf of the Design-Builder, as stipulated in bidding requirements or specifically required in the Agreement or elsewhere in the Design-Build Documents on the date of execution of the Design-Build Contract.

ARTICLE A.12 UNCOVERING AND CORRECTION OF WORK

§ A.12.1 UNCOVERING OF WORK

§ A.12.1.1 If a portion of the Work is covered contrary to requirements specifically expressed in the Design-Build Documents, it must be uncovered for the Owner's examination and be replaced at the Design-Builder's expense without change in the Contract Time.

§ A.12.1.2 If a portion of the Work has been covered which the Owner has not specifically requested to examine prior to its being covered, the Owner may request to see such Work and it shall be uncovered by the Design-Builder. If such Work is in accordance with the Design-Build Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Design-Build Documents,

correction shall be at the Design-Builder's expense unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs.

§ A.12.2 CORRECTION OF WORK

§ A.12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

§ A.12.2.1.1 The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing, shall be at the Design-Builder's expense.

§ A.12.2.2 AFTER SUBSTANTIAL COMPLETION

§ A.12.2.2.1 In addition to the Design-Builder's obligations under Section A.3.5, if, within one year after the date of Substantial Completion or after the date for commencement of warranties established under Section A.9.8.5 or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found to be not in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct non-conforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section A.2.5.

§ A.12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

§ A.12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section A.12.2.

§ A.12.2.3 The Design-Builder shall remove from the site portions of the Work which are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ A.12.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Design-Build Documents.

§ A.12.2.5 Nothing contained in this Section A.12.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder might have under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section A.12.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ A.12.3 ACCEPTANCE OF NONCONFORMING WORK

§ A.12.3.1 If the Owner prefers to accept Work not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be equitably adjusted by Change Order. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE A.13 MISCELLANEOUS PROVISIONS

§ A.13.1 GOVERNING LAW

§ A.13.1.1 The Design-Build Contract shall be governed by the law of the place where the Project is located.

§ A.13.2 SUCCESSORS AND ASSIGNS

§ A.13.2.1 The Owner and Design-Builder respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other

party in respect to covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section A.13.2.2, neither party to the Design-Build Contract shall assign the Design-Build Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Design-Build Contract.

§ A.13.2.2 The Owner may, without consent of the Design-Builder, assign the Design-Build Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ A.13.3 WRITTEN NOTICE

§ A.13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if sent by registered or certified mail to the last business address known to the party giving notice.

§ A.13.4 RIGHTS AND REMEDIES

§ A.13.4.1 Duties and obligations imposed by the Design-Build Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ A.13.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Design-Build Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ A.13.5 TESTS AND INSPECTIONS

§ A.13.5.1 Tests, inspections and approvals of portions of the Work required by the Design-Build Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

§ A.13.5.2 If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section A.13.5.1, the Owner shall in writing instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section A.13.5.3, shall be at the Owner's expense.

§ A.13.5.3 If such procedures for testing, inspection or approval under Sections A.13.5.1 and A.13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure, including those of repeated procedures, shall be at the Design-Builder's expense.

§ A.13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ A.13.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ A.13.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ A.13.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

§ A.13.6.1 As between the Owner and Design-Builder:

- .1 Before Substantial Completion.** As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;

- .2 **Between Substantial Completion and Final Application for Payment.** As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Application for Payment; and
- .3 **After Final Application for Payment.** As to acts or failures to act occurring after the relevant date of issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Design-Builder pursuant to any Warranty provided under Section A.3.5, the date of any correction of the Work or failure to correct the Work by the Design-Builder under Section A.12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design-Builder or Owner, whichever occurs last.

ARTICLE A.14 TERMINATION OR SUSPENSION OF THE DESIGN-BUILD CONTRACT

§ A.14.1 TERMINATION BY THE DESIGN-BUILDER

§ A.14.1.1 The Design-Builder may terminate the Design-Build Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- .2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;
- .3 the Owner has failed to make payment to the Design-Builder in accordance with the Design-Build Documents; or
- .4 the Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section A.2.2.8.

§ A.14.1.2 The Design-Builder may terminate the Design-Build Contract if, through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner, as described in Section A.14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ A.14.1.3 If one of the reasons described in Sections A.14.1.1 or A.14.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ A.14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or a Contractor or their agents or employees or any other persons performing portions of the Work under a direct or indirect contract with the Design-Builder because the Owner has persistently failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner as provided in Section A.14.1.3.

§ A.14.2 TERMINATION BY THE OWNER FOR CAUSE

§ A.14.2.1 The Owner may terminate the Design-Build Contract if the Design-Builder:

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Contractors for services, materials or labor in accordance with the respective agreements between the Design-Builder and the Architect and Contractors;
- .3 persistently disregards laws, ordinances or rules, regulations or orders of a public authority having jurisdiction; or
- .4 otherwise is guilty of substantial breach of a provision of the Design-Build Documents.

§ A.14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 accept assignment of contracts pursuant to Section A.5.5.1; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ A.14.2.3 When the Owner terminates the Design-Build Contract for one of the reasons stated in Section A.14.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ A.14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner.

§ A.14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ A.14.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ A.14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section A.14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Design-Build Contract.

§ A.14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ A.14.4.1 The Owner may, at any time, terminate the Design-Build Contract for the Owner's convenience and without cause.

§ A.14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall:

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing contracts and purchase orders and enter into no further contracts and purchase orders.

§ A.14.4.3 In the event of termination for the Owner's convenience prior to commencement of construction, the Design-Builder shall be entitled to receive payment for design services performed, costs incurred by reason of such termination and reasonable overhead and profit on design services not completed. In case of termination for the Owner's convenience after commencement of construction, the Design-Builder shall be entitled to receive payment for Work executed and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.



AIA[®] Document A141[™] – 2004 Exhibit C

Insurance and Bonds

for the following PROJECT:

(Name and location or address)

Neosho County Community College
Eastern Kansas Technology Center Renovation

THE OWNER:

(Name and address)

Neosho County Community College
800 West 14th Street, Chanute, Kansas 66720

THE DESIGN-BUILDER:

(Name and address)

Loyd Builders, Inc.
2126 South Elm Street
Ottawa, Kansas 66067

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification. Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

ARTICLE C.1

The Owner and Design-Builder shall provide policies of liability insurance as required by the Design-Build Documents, or as follows:

(Specify changes, if any, to the requirements of the Design-Build Documents, and for each type of insurance identify applicable limits and deductible amounts.)

Commercial Liability - \$1,000,000 Occurrence / \$2,000,000 Aggregate

Worker's Compensation - Statutory Limit

Commercial Auto Liability - \$1,000,000 Each Accident

ARTICLE C.2

The Design-Builder shall provide surety bonds as follows:

(Specify type and penal sum of bonds.)

§ C.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.



May 8, 2013

Mr. Ben Smith
Vice President for Operations
Neosho County Community College
800 W. 14th St.
Chanute, KS 66720

Dear Ben:

We are pleased to offer the following proposal for the Electrical and HVAC improvements to the Garnett technical building. This pricing is based on the drawings prepared by Bartlett & West dated April 24, 2013. Our cost for this project is **\$104,500**. Alternate pricing for the lighting improvements shown on sheets E020 and E200 can be completed for an additional \$11,890.

We appreciate the opportunity to work with you and would happy to answer any questions you may have.

Sincerely,

A handwritten signature in black ink that reads "Josh Walker". The signature is written in a cursive, flowing style.

Josh Walker
President
Loyd Builders, Inc.

Cc: File

Exhibit E

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the Ninth day of May, 2013.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
 7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
 8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
 9. **Responsibility For Taxes:** The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
 10. **Insurance:** The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.
 11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
 12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
- The community college and board of trustees shall be responsible solely for their own actions or failure to act. (71-201a(a))
-- The community college and board of trustees shall not indemnify or hold harmless resulting from actions or failure to act by any party other than the board of trustees or the community college. (71-201a(b))
-- The community college and board of trustees cannot submit to the jurisdiction of any court other than the courts of the State of Kansas. (71-201b(c))