Statement of Qualifications/Request for Proposal

MHK Fixed Base Operations Facility Project – Design-Build Services

CIP# AP1501

The City of Manhattan is issuing a request for Statement of Qualifications (SOQs)/Request for Proposal (RFP) for design-build services for a new Fixed Base Operations (FBO) Facility on MHK Airport. A Preliminary Design Concept and Site Plan have been developed and will serve as the starting point for the project scope development. The project includes the design and construction of a new FBO facility approximately 5,000 square feet in size. Six (6) copies of the Design-Builder's proposal must be submitted to arrive no later than **Friday, May 8, 2015 by 5:00 p.m.** Proposals should be mailed or delivered to the following address: City of Manhattan, City Clerk's Office, 1101 Poyntz Avenue, Manhattan, Kansas, 66502, and clearly marked **"Statement of Qualifications/Proposal for MHK Fixed Base Operations Facility Project".**

A ***mandatory pre-proposal meeting*** will be conducted at **1:00 pm on Friday, April 24, 2015**, in the Airport Administrative Building, located at 1725 S Airport Road, in Manhattan, Kansas. A representative of each Design-Builder ***must attend*** the pre-proposal meeting and provide an e-mail address for the receipt of meeting minutes, project addenda, or other clarifying information.

Copies of the detailed SOQs/RFP and all associated documents can be downloaded from the City's website at www.cityofmhk.com or www.flymhk.com. For questions or issues with downloading, contact Kim Boice, Airport Finance & Administrative Assistant, at **785-587-4597** or by email at boice@cityofmhk.com. Copies of the SOQs/RFP are on file and are available for public inspection at the Airport Administrative Office, 1725 S Airport Rd, Manhattan, Kansas, 66502.

Contact Peter VanKuren, Airport Director, by email at vankuren@cityofmhk.com or by telephone at 785- 587-4597 regarding questions concerning the project.

All persons entering into a contract with the City of Manhattan shall be subject to and required to comply with all applicable City, State, and Federal provisions pertaining to nondiscrimination, equal employment opportunity, and affirmative action.

Statement of Qualification/Request for Proposal

MHK Airport Fixed Base Operations (FBO) Facility
AP1501

City of
Manhattan
Kansas

CITY OF MANHATTAN, KANSAS
Request for Qualifications/Proposals

I. TITLE:

Fixed Base Operator (FBO) Terminal Building

II. PROJECT DESCRIPTION:

The City of Manhattan (City) requests proposals from qualified Design-Build Contractors or team of qualified firms (Contractor) for design-build services for a new Fixed Base Operator (FBO) Terminal Building. A Site Concept Plan, Exhibit A attached, has been developed and will serve as the starting point for project scope development. In general, the project includes the design and construction of a new Airport Fixed Base Operator (FBO) Terminal Building, approximately 5,000 square feet in size. This project is not federally funded and is not subject to federal wage requirements.

In association with this project, the City is designing and preparing for construction; stormwater and utility improvements along Airport Road, the access road to the new FBO Facility site, the utility corridor for the FBO Facility site, and site parking lot design. The City will assist the selected Contractor with any necessary coordination items between those improvements and this project. While not part of this solicitation the selected Contractor will have the option to bid on construction of associated site work mentioned above currently under design by others.

The project focus involves the following Owner's Criteria:

- Design and construction of the approximant 5,000 square foot FBO Terminal Building
- Coordinate with Engineering teams currently completing site and utility work designs (Access road, stormwater improvements to site and airport road, utility corridor for site, parking lot design)

It is expected the selected Contractor will gather information from the current FBO tenant and City staff, provide facility programming, schematic design, and pre-construction services to develop, in coordination with the City, a detailed technical scope, a guaranteed maximum price (GMP), and a project schedule proposal. Preliminary Engineering Report of the site is completed and will be available for use. If the technical scope, price, and schedule meet the City's objectives, and are approved, the Contractor will proceed to complete the final design, construction, testing, and commissioning of the project. The City's goal is a completion and open for operation date no later than early June 2016.

The budget for this project has not been finalized; however, the work under this solicitation has a general maximum budget of $1,000,000 for design and construction of the facility. A warranty of twelve (12) months will be included as part of a Warranty Guaranteed Maximum Price (WGMP), and with the project GMP shall not exceed the planned budget for the facility to be developed by the Contractor.

III. PROBABLE TIMETABLE:

The project shall proceed according to the following timeline:

• April 7, 2015	Approval of City Commission for Design-Build Process
• April 17, 2015	RFQ/RFP Issuance
• April 24, 2015	Mandatory pre-proposal meeting and site tour at Airport Administration Building
• May 8, 2015	Proposals due by 5:00 pm at City Hall
• Week of May 11, 2015	Selection Committee opens and reviews Statements of Qualifications and selects proposers for formal Interviewing. Selection Committee opens Price Proposals of selected proposers and develops short list of firms to interview.
• Week of May 18, 2015	Selection Committee interviews and ranks selected Contractors
• June 2, 2015	Selection Committee provides their recommendation to the City Commission for approval of Phase I Services
• Week of June 8, 2015	Staff input and project scope finalized
• July 21, 2015	Phase I Services Completed and GMP Proposal Submitted
• August 4, 2015	City Commission considers agreement for Phase 2 services, if executed then final design begins
• Late May-Early June 2016	FBO Terminal Facility completed and opened for operations

IV. METHOD OF SOLICITATION:

Notice will be published in *The Manhattan Mercury* and released on the City of Manhattan website (www.cityofmhk.com) and Manhattan Regional Airport's website (www.flymhk.com/). Additionally, notification of the SOQ/RFP solicitation will be given to five (5) known area Contractors. Those Contractors are:

1. BHS Construction, Inc., of Manhattan, KS
2. DJ Carpenter Building Systems, Inc., of Manhattan, KS
3. R.M. Baril, General Contractor, Inc., of Manhattan, KS
4. Ron Fowles Construction, inc., of Manhattan, KS
5. Schultz Construction, Inc., of Manhattan, KS

V. SELECTION PROCESS:

A **mandatory** pre-proposal meeting will be conducted at **1:00 pm, on April 24, 2015**, in the Airport Administration Building located at 1725 S Airport Road, in Manhattan, Kansas. Contractors intending to submit a proposal must have a representative attend the pre-proposal meeting and provide an e-mail address for the receipt of meeting minutes, project addenda or other clarifying information. Potential proposers may submit written questions prior to the meeting to Peter VanKuren, Airport Director, at VanKuren@cityofmhk.com. Additional questions may be posed orally or in writing during the meeting. All questions and answers will be addressed in the meeting minutes or project addenda, and will be distributed using the e-mail address each proposer provides.

A Selection Committee will be composed of one City Commissioner , City staff members from the City Manager's Office, Airport, Public Works Department, and an Airport Advisory Board member. The Selection Committee will open and review the Statement of Qualifications (SOQ) to determine which proposers to formally interview. (Based upon the quantity and quality of the SOQs, the City reserves the right to short-list the proposers for formal interviewing). After the Selection Committee has selected which proposers to interview, the Selection Committee will open the Initial Price Proposals. The City will return, unopened, the Initial Price Proposals submitted by proposers who are not selected for an interview. The Selection Committee will then conduct formal interviews, rank the proposers, and recommend the highest-ranked Contractor to the City Commission for approval.

Upon receiving a Notice of Award to the successful proposer, the Contractor shall execute the Agreement for Phase 1 Services (lump-sum) within seven days (7) thereafter and deliver the required bonding and insurance documentation to the City.

If the Phase 1 Services are completed, and a Guaranteed Maximum Price (GMP) is established to the City's satisfaction, the Agreement for Phase 2 Services (Cost-Plus with a GMP) will be executed within seven days of the date of the Notice to Proceed.

Throughout the process, the City reserves the right to initiate the process with the next highest-ranked firm, or to change or terminate the entire selection process at any time.

VI. DIRECTIONS FOR SUBMISSION:

Proposers shall submit six original, Statements of Qualifications (SOQs) in one sealed envelope and one original, Initial Price Proposal form in one separate sealed envelope. **All documents must be received by the City no later than 5:00 pm, on Friday, May 8, 2015**, at the City of Manhattan, City Clerk's Office, 1101 Poyntz Ave., Manhattan, KS 66502. Any proposals received after the specified due date and time will be rejected and returned unopened. All expenses for preparing and delivering project proposals, including subsequent interviews, will be borne by the Contractor.

The City will e-mail any addenda issued to the e-mail addresses provided at the mandatory pre-proposal meeting. However, it is the responsibility of each proposer to determine whether any

addenda have been issued by contacting Peter Van Kuren, Airport Director, by phone at (785) 587-4597, or by e-mail at VanKuren@cityofmhk.com.

VII. SUBMITTAL REQUIREMENTS:

The following information must be provided in the following sequence. Sections and subsections should correspond with the sections and subsections identified below.

STATEMENT OF QUALIFICATIONS

Submit six (6) originals in a sealed envelope marked "Statement of Qualifications for MHK Fixed Base Operations Facility Project". PRICE INFORMATION SHALL **NOT** BE INCLUDED IN THE SOQ's.

A. Cover Letter – on the proposer's letterhead, the proposer must list all Design-Builders members and the legal relationships between the proposer and team members. The cover letter must include a single contact person of the proposer for the project, and must be signed by an officer of the proposer who has the authority to bind the proposer. The cover letter should contain a commitment to perform the design-build services within the time period identified.
B. Table of Contents – identify materials by section, subsections and corresponding page number.
C. Legal/Financial Information
   1. Bonding Capacity: Provide letter from surety or surety agent to indicate that the prime proposer can secure bonding for the Project amount, at the time the GMP Proposal is submitted, subject to the terms of the Agreement for Phase 2 Services.
   2. Insurance Coverage: Provide letter from insurance agent that the proposer has, or can obtain, insurance coverage in the types and amounts specified in the Agreements for both Phase 1 and Phase 2 Services.
   3. Provide in the Appendix a copy of the latest audited financial statement for the proposer firm who will be providing the bonding for the Project.
D. Project Team Organization
   1. Organization and staffing plan, including the functional roles and responsibilities of team management and staff.
   2. Organizational chart showing all construction and design firms and clearly identifying the lead design and construction firms.
   3. Brief profile of each team member company, including company background, years in business, ownership, parent company, headquarters location, size of staff, and number of registered professionals.
   4. Provide in the Appendix, as applicable, the proposer's design consultant and design-build or trade subcontractor agreements, not covered by the Competitive Pricing Agreement requirements in the Agreement for Phase 2 Services. Agreements must be executed and shall apply should the proposer be selected.
   5. Identify the names and provide one-page resumés, including specific references to experience with design or construction for similar projects and with design-build contracts, for the following key team members:

a. Design-build project manager
b. Quality control manager
c. Construction manager
d. Construction site superintendent
e. MEP design-build subcontractor (optional)
f. Architect (architect-of-record and prime consultant)
g. Design architect (optional)
h. Civil, structural, mechanical and electrical engineers

E. Design-Builders Qualifications and Experience
1. Provide experience on similar type and size projects in the last seven (7) years for the listed team leads. Design-build projects are preferred but not required. Describe each project by name, type, location, size of facility, construction cost, year completed, and owner's contact information.
    a. Lead construction contractor: describe a maximum of three (3) projects
    b. Lead architect or design architect: describe a maximum of three (3) projects
    c. MEP design-build subcontractor (if applicable): describe a maximum of two (2) projects
2. Provide construction safety record of the lead construction contractor and any proposed construction team subcontractors, including documentation of Experience Modification Rate (EMR) for the last three years.

F. Project Approach and Innovation
1. Provide quality control organizational approach and summary of a program for both design and construction, indicating roles and responsibilities, and including authority for quality compliance decisions.
2. Indicate organizational approach to safety and a summary of a safety program. Indicate the individual responsible for implementing the program at the site and his/her qualifications.
3. Provide approach to regularly facilitate communication with the City on scope, cost, schedule, quality and safety to provide progress and address critical issues.
4. Provide approach to controlling overall project costs and schedule for all phases of work.
5. Indicate your potential innovations/alternative design concepts.

G. Appendices
1. Appendix A – Agreements between team members and subcontractors
2. Appendix B – Copies of engineering, architectural, contractor and subcontractor licenses for each team member, as applicable
3. Appendix C – Debarment Form executed by lead engineer or architect

INITIAL PRICE PROPOSAL

Submit one original in a sealed envelope marked "Initial Price Proposal, MHK Fixed Base Operations Facility Project" with the proposer's name clearly indicated

A. Submit one copy of the Price Proposal Form completed and signed By Design-Builder's Proposer.

VIII. SELECTION CRITERIA:

The successful design-builder will be the one who provides the best value to the City. In general, the Selection Committee will evaluate the following criteria:

Qualifications Weighted Selection Criteria

1. Organization and capabilities of Design-Builders and individuals assigned to this project. – 30 Points
2. Experience of Design-Builders members in design, construction and commission of projects similar in type and size to the City's project. – 15 Points
3. Expertise of Design-Builders members in planning and constructing similar type facilities. – 15 Points
4. Safety record and safety and quality management programs. – 5 Points
5. Overall project approach, including schedule, facilitation of communication, and design concepts. – 20 Points
6. Obligations and schedules of lead construction contractor and construction consultant with respect to other current projects. – 15 Points
7. Bonding capacity and insurance coverage as section 7 of this RFP/RFQ - Pass/Fail
8. Insurance coverage as required in the Phase 1 and Phase 2 Agreements. - Pass/Fail

Price Weighted Criteria

A. Price weighted Criteria: Owner will evaluate price proposals only for the short-listed and interviewed proposers. Price proposals from other proposers will be returned unopened to them. Price proposals will be scored in reverse proportion to their total proposal price over that of the lowest proposer's price. Example: a proposal price of 10% over the lowest price will be awarded 90% of the available points. Proposal prices of all proposers will be kept sealed and confidential until the Owner's Evaluation Team has completed the scoring of the Qualifications Statement documentation.

Total Maximum Price Proposal score: 100 points

B. Total Weighted Score: Calculation of the Total Weighted Score for both Qualifications and Price Proposal: The total maximum scores for qualifications and for the price proposal will be weighted as follows:

1. Qualifications Statement score times eighty percent (80%)
2. Price Proposal score times twentypercent (20%)
3. Total Maximum Weighted Score: 100 points
4. Proposer with the highest Total Weighted Score is the apparent successful proposer

IX. OTHER TERMS:

A. Each proposer has the responsibility to do the following:

1. Thoroughly examine the RFQ/RFP documents and all addenda;
2. Visit the Project site to become familiar with and to satisfy the proposer as to the general, local, and site conditions that may affect cost, progress, and performance of work;
3. Consider federal, state, and local laws and regulations that may affect cost, progress, or performance of work;
4. Study and carefully correlate the proposer's knowledge and observations with the RFQ/RFP documents and related data;
5. Promptly notify the City of all conflicts, errors, ambiguities, and discrepancies, which the proposer has discovered in the RFQ/RFP documents.

B. Sales and Use Taxes: the City is exempt from state sales and use taxes on materials and equipment to be incorporated into the work.
   1. Sales and use taxes shall not be included in the Price Proposal items.
   2. Tax Exemption Certificate will be provided by the City.

C. All materials submitted shall become the property of the City, and shall be subject to the laws and regulations pertaining to public information. No guarantee of privacy or confidentiality is offered or implied by the City.

D. Proposals may not be modified or withdrawn after submission. However, proposers may withdraw themselves from the selection process at any time prior to the deadline for the receipt of proposals.

E. The City reserves the right to reject any and all proposals and to waive any irregularities therein.

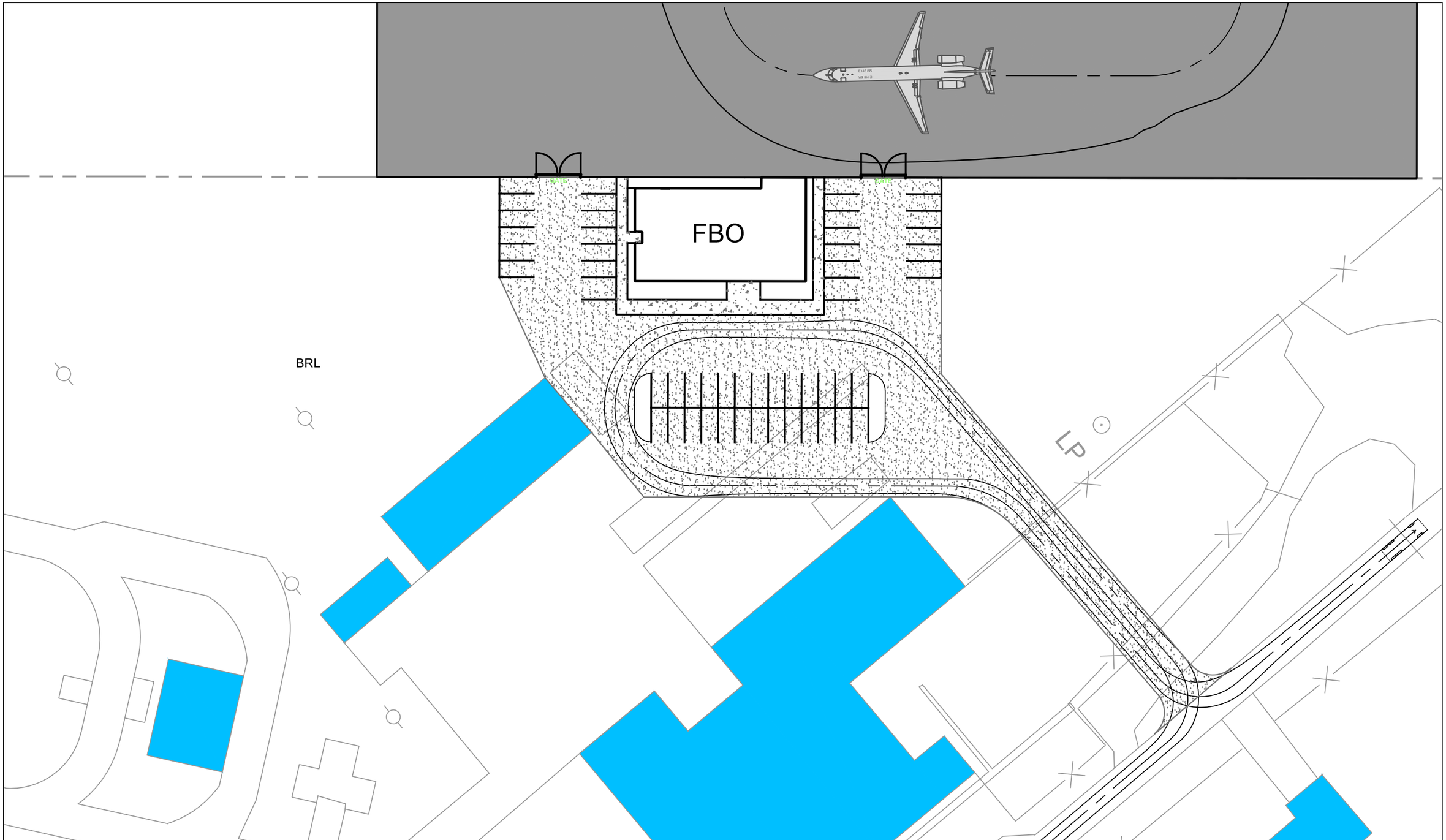
F. All persons awarded and or entering into contracts with the City of Manhattan shall be subject to and are required to comply with all applicable City, State and Federal provisions pertaining to nondiscrimination, equal employment opportunity and affirmative action on public contracts.

G. Familiarity with Laws: The proposer is required to be familiar with all Federal, State, and local laws, ordinances, and procedures that in any manner affect the project and scope of services. Ignorance of any of the same will not relieve the proposer from responsibility in complying.

Exhibit A – Site Concept Plan

MHK Airport Fixed Base Operations (FBO) Facility
AP1501

City of
Manhattan
Kansas



FLYMHK
Manhattan Regional Airport

Manhattan Regional Airport

GA Area Development

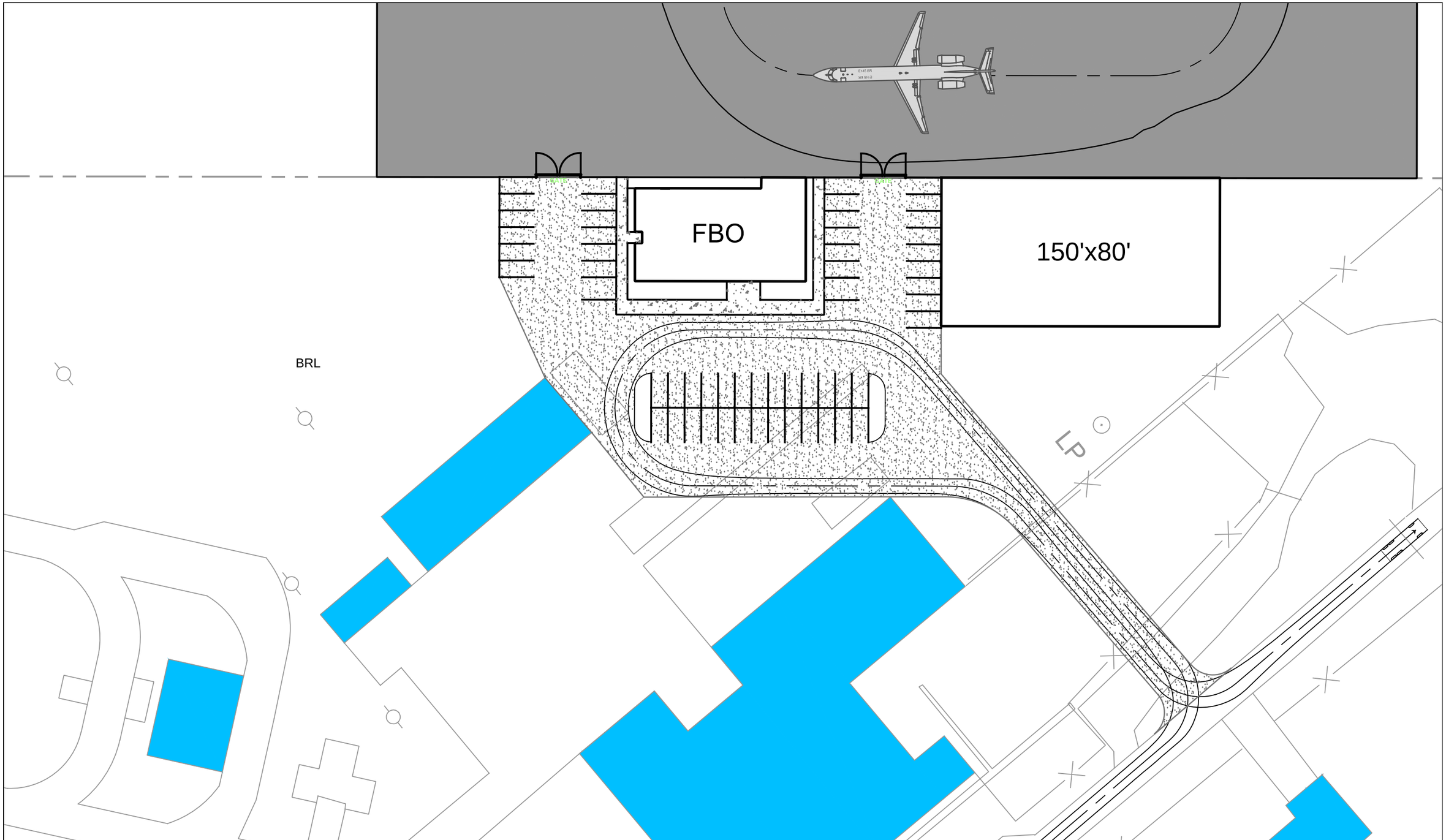
13463-00-131794.01
January 2014

0 FEET 50

FBO SITE PLAN - FBO PARKING

Mead & Hunt

EXHIBIT 4.0



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Manhattan Regional Airport

Manhattan Regional Airport

GA Area Development

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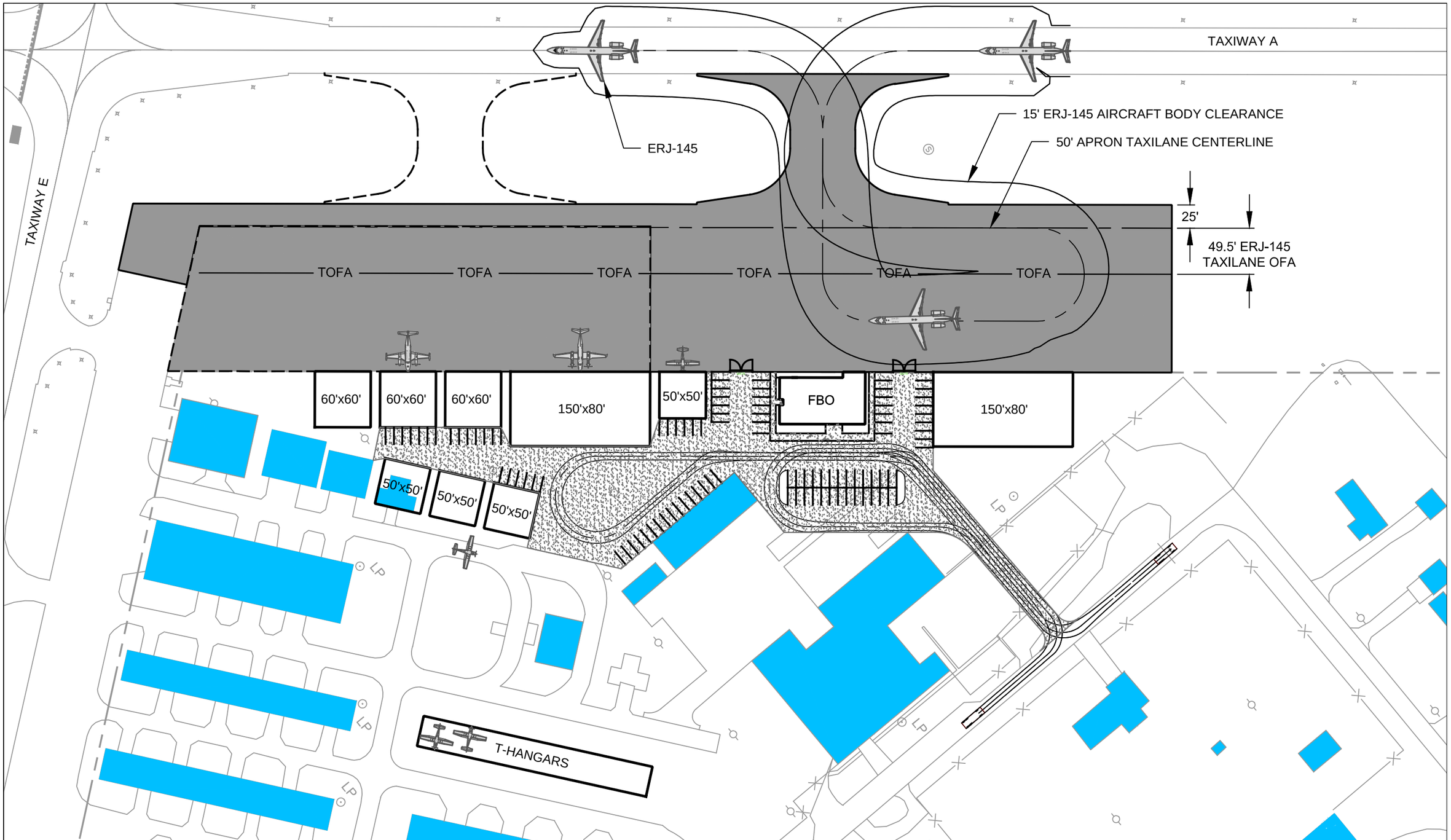
January 2014

0 FEET 50

FBO SITE PLAN - FBO HANGAR

Mead & Hunt

EXHIBIT 4.1



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Manhattan Regional Airport

Manhattan Regional Airport

GA Area Development

13463-00-131794.01
January 2014

100'
0 FEET 200'

FBO SITE PLAN - FUTURE APRON LAYOUT

Mead & Hunt

EXHIBIT 4.2

Initial Price Proposal

MHK Airport Fixed Base Operations (FBO) Facility

AP1501

City of
Manhattan
Kansas

INITIAL PRICE PROPOSAL FORM

PROJECT IDENTIFICATION

A. Project Identification, Fixed Base Operator Terminal Building, located in Manhattan, Kansas, Consisting of one (1) new FBO Terminal building.
B. Date of Issuance of Request for Qualifications and Initial Proposals (RFQ/RFP) April 17, 2015.
C. Proposal to: City of Manhattan, Kansas(Owner)
D. Proposer:_____

PROPOSER'S OBLIGATIONS AND REPRESENTATIONS

A. The undersigned Proposer proposes and agrees that prices provided herein are firm, including all escalation and contingencies, and meet the terms and conditions of the Agreements for Phase 1 Services and Phase 2 Services, as applicable.
B. The undersigned Proposer proposes and agrees, if this Initial Price Proposal is accepted, to enter into and Agreement for Phase 1 Services with the Owner in the form included in the RFQ/RFP documents to perform all Services as specified or indicated in the RFQ/RFP documents, for the Contract Price, and within the Contract Times specified in the Proposal, in accordance with all other terms and conditions of the Contract Documents.
C. This Proposal will constitute one of the Contract Documents, except for provisions that contradict the requirements of the RFQ/RFP Documents, and that are not specifically accepted in writing by the Owner prior to the execution of the Agreement for Phase 1 Services.
D. This Proposal will remain subject to acceptance for 90 days from the date of submittal. The Proposer will sign and deliver the required number of copies of the Agreement with any documents or certificates required by the RFQ/RFP, within (7) days after the date of the Owner's Notice of Award.
E. In submitting this Proposal, the Proposer represents and agrees, as more fully set forth in the Agreements, that:
    1. The Proposer has examined and carefully studied the RFQ/RFP Documents, including:
        a. Addendum No. _____, dated _____.
        b. Addendum No._____, dated _____.
        c. Addendum No._____, dated_____.
    2. The Proposer has visited the site and become familiar with the general, local, and site conditions that may affect cost, progress and performance of the work.
    3. The Proposer is familiar with all applicable federal, state and local laws and regulations that may affect cost, progress, and performance of the work.
    4. The Proposer has carefully studied all data relating to existing surface and subsurface conditions and structures, which has been furnished or made available by Owner.
    5. The Proposer is aware of the general nature of the work to be performed at the site that relates to the work for which this Proposal is submitted.
    6. The Proposer has correlated the information known to the Proposers, information and observations obtained from visits to the site, drawings identified in the RFQ/RFP documents, and all additional examinations, investigations, explorations, tests, studies, and data furnished by the Owner.

7. The Proposer has given the Owner written notice of all conflicts, errors, ambiguities, and discrepancies that the Proposer has discovered in the RFQ/RFP Documents and the written resolution thereof by the Owner is acceptable to the Proposer, and the RFQ/RFP Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing the work for which this Proposal is submitted.
8. This Proposal is genuine and is not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of group, association, organization, or corporation; the Proposer has not directly or indirectly induced or solicited any other Proposer to submit a false Proposal: the Proposer has not solicited or induced any individual or entity to refrain from submitting a proposal: and the Proposer has not sought by collusion to obtain for itself any advantage over any other Proposer or over the Owner.

THE PROPOSER WILL COMPLETE THE WORK AND/OR SERVICES IN ACCORDANCE WITH THE RFQ/RFP DOCUMENTS AND THE CONTRACT AGREEMENTS FOR THE FOLLOWING PRICE(S): (enter all costs in both words and figures) AND PERCENTAGES OF THE COST OF THE WORK.

A. Phase 1 Services:

1. Services include work and professional services necessary for the development of a Basis of Design, Schematic Design (30% level design), a Guaranteed Maximum Price (GMP) Proposal that meets owner's objectives for budget, quality, and schedule as it is further described in the RFQ/RFP and Phase 1 Agreement. Phase 1 Services also includes efforts to support the Owner in preparing and presenting the Basis of Design, Schematic Design, and Guaranteed Maximum Price (GMP) to the Manhattan City Commission for plan approval (including but not limited to the Schematic Design Documents).

   The Lump Sum Price includes all design, staff labor, materials and equipment, direct and indirect costs and expenses, subcontract costs, overheads, mark-ups and profits, including escalation and contingencies.

   Performance of Phase1 Services for the Lump Sum of:

   _____($_____).

   Note: If at the completion of Phase 1 Services, the Owner does not contract for Phase 2 Services with the Design-Builder or contracts with others for Phase 2 Services, Owner has no further obligations to the Design-Builder other than providing payment for Phase 1 Services completed.

B. Design-Builder's Fees and Warranty GMP for Phase 2 Services:

   Design-Builder's Fees for Phase 2 Services are in the following subcategories and based on Cost of the Work, as more fully described in the Agreement for Phase 2 Services:

1. Construction General Conditions Fee: _____% of the Cost of the Work. Construction General

Conditions shall include all direct and indirect labor, materials, site office including owner representative facilities, office equipment, furniture, construction vehicles, and general consumable materials. Such would include but not be limited to, off site support, mobilization and demobilization, all temporary facilities, construction utilities, site cleanup, waste disposal, telephone, local transportation, and site management and supervision down to, but not including the foreman. This percentage applied to the actual Cost of Work as determined in the Phase 1 Services GMP Proposal, may be established by the Owner as a fixed lump sum in accepting the GMP Proposal, not subject to changes in the cost of Work within the GMP. This percentage may be applicable to approved change orders to the GMP subject to the nature of each change of the GMP.

2. Overhead & Profit Fee: _____% of the Cost of the Work. This includes all overhead and profit, as well as mark-ups on design consultants contracts, special consultants contracts, all trade subcontracts, materials and equipment, and any self-performed work. This percentage applied to the actual Cost of Work as determined in the Phase 1 Services GMP Proposal may be established by the Owner as a fixed lump sum in accepting the GMP Proposal, not subject to changes in the Cost of the Work within such GMP. This percentage may be applicable to approved change orders to the GMP subject to the nature of each change of the GMP

3. Design Consultant's Fee: _____% of the Cost of the Work. This includes design overhead and profit for Phase 2 Services to be negotiated during the performance of Phase 1 Services as the scope of work of the Project in Phase 2 is developed and approved by the Owner. Such fee will be incorporated in the GMP Proposal for the Phase 2 Services. It may, at the sole option of the Owner, be established as a fixed lump sum amount. This percentage may be applicable to approved change orders to the GMP subject to the nature of each change of the GMP

4. Warranty Services Amount: _____% of the Cost of the Work. This shall be an amount, established as a separate warranty guaranteed maximum price (WGMP) outside the Project GMP, for necessary services performed and materials and equipment furnished during the warranty period. Any savings in this amount will be shared in the same proportion as savings in the Project GMP. Any overrun of this account will be at the expense of the Design-Builder with no reimbursement. The Design-Builder's warranty for the correction of defective work as described in the General Condition of Contract shall be through the end of twelve (12) months from the date of Substantial Completion.

5. Rate Sheet (not scored): Provide a current hourly and expense rate sheet for planning, design, administrative support, management, estimating and scheduling, and other common design and construction management services. This rate sheet will not be scored for selection, however it may, subject to negotiations, be utilized as a basis for additional services required by the Owner.

6. Percentages as provided above shall be applied to the estimated Cost of Work for the GMP Proposal developed during Phase 1 Services. Proposer agrees that their above Design-

Builder's Fees may, at the Owner's option, be established as fixed lump-sum amounts at the time of the Owner's acceptance of the Guaranteed Maximum Price (GMP) Proposal, subject only to adjustments indicated herein.

7. For the purposes of providing the percentages above and calculating a comparative price, the Proposer shall utilize for proposer selection purposes only an estimated Cost of the Work amount for Phase II Services, Final Design and Construction, of $900,000 including all escalation and Design-Builder contingencies.

8. Notes:
   a. In establishing above fees, Proposer shall take into consideration all Agreement provisions and General Conditions, providing that all fees including the Guaranteed Maximum price (GMP) and Warranted Guaranteed Maximum Price (WGMP) shall fall within the constraints of the Project Budget, including those applicable to liquidated damages and the sharing of savings between the Owner and Design-Builder, if available, below the GMP at Final Payment. Such sharing formula is 50% of available savings to Design-Builder and remaining 50% to the Owner, up to and including a total savings amount of $50,000, after which all savings is for the sole benefit of the Owner. See Agreement for Phase 2 Services for further detail.
   b. A breakdown of all items of work to be procured, purchased, and subcontracted will be proposed by the Design-Builder during Phase 1 Services, as part of the GMP Proposal for Phase 2 Services. For the construction of the project, as designated by the Owner during the Phase 1 Services, specific work packages (excluding professional services), and/or material and equipment orders estimated at over $25,000 are to be competitively bid with at least two outside bids required. Those estimated at over $50,000 are to be competitively with 3 bids required. Those items over $250,000 shall require sealed bids, opened jointly by the Design-builder and Owner representative. All bids for items of $25,000 and above shall be in writing, signed by the supplier or subcontractor.

CONTRACT TIMES – THE PROPOSER AGREES THAT THE WORK WILL BE:

Phase 1 Services, including Program of Facility Requirements, assistance with the Schematic Design Documents and a GMP Proposal Price equal to or less than the Owner's Project Budget, as may be adjusted by the Owner, shall be complete and provided to the Owner in accordance with the terms and conditions of the Agreement for Phase 1 on or before the dates indicated in the Schedule after Notice to Proceed with Phase 1 Services.

EXHIBITS – THE FOLLOWING DOCUMENTS ARE ATTACHED TO AND MADE A CONDITION OF THIS PROPOSAL:

A. Proposer's Statement of Qualifications, dated: _____

MISCELLANEOUS

A. Communications from the Owner concerning this Proposal shall be directed to the individual at the address, e-mail address, phone number, and facsimile number of the Proposer indicated below.

B. The terms used in the Proposal, which are defined in the General Conditions of Contract Between Owner and Design Builder, have the meanings assigned to them in the Contract Documents.

No proposals will be accepted by those not in attendance of the mandatory pre-proposal meeting.

Submitted by (proposer to fill in all blanks):

A. By:_____(SEAL)

B. Signature:_____

_____

C. Title: _____

D. Address:_____

_____

E. Phone No.:_____ E-Mail_____ Facsimile No.:_____

F. State of Incorporation: _____

G. Out-of-State Corporation Business Authorization : Attached (Yes) (No)

H. Architect's Registration Name/Number:_____

I. Submitted on _____ (Proposer to enter date of signature)

END OF PROPOSAL FORM

PROPOSAL EVALUATION WORKSHEET

(To be completed by the Proposer)

A. For the sole purposes of evaluating the Proposer's Initial Price Proposal, the Owner shall assume that the Phase II Services (Final Design and Construction) is $900,000. Proposer is requested to insert its proposed Design-Builder's Fee below and include the resulting dollar amounts in the calculation of a Total Proposal Price, for the Owner's evaluation purposes only.

1. Performance of Phase 1 Services for the **Fixed Lump Sum of:**
   $_____

2. Design-Builder's Fees to be provided for Phase 2 Services:
   $_____

   a. General Conditions Fee: _____% of the Cost of the Work
      $_____

   b. Overhead & Profit Fee: _____% of the Cost of the Work
      $_____

   c. Design Consultant's Fee _____% of the Cost of the Work
      $_____

3. Total Design-Builder's Fee Amount (2.a + 2.b + 2.c): $_____

4. Warranty Services Amount:_____% of the Cost of the Work
   $_____

B. Grand Total Initial Price Proposal (1+3+4): $_____

Notes:

1. Percentage figures provided in 2 a, b, and c above will be utilized as multipliers against the actual estimated Cost of Work for the respective items, as developed by the Design-Builder in the GMP Proposal presented to the Owner during the performance of Phase 1 Services.

END OF PROPOSAL EVALUATION WORKSHEET

General Conditions of Contract between Owner and Design-Builder

MHK Airport Fixed Base Operations (FBO) Facility
AP1501

City of
Manhattan
Kansas

General Conditions
of Contract between Owner and Design-Builder

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Article 1
General

1.1 Mutual Obligations

1.1.1 Owner and Design-Builder shall cooperate with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.2 Basic Definitions

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder *for a Guaranteed Maximum Price*

1.2.2 *Day* or *Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.3 *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder or Subcontractor, to furnish design services required under the Contract Documents.

1.2.4 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.2.5 *General Conditions* refer to this, City of Manhattan *General Conditions of Contract between Owner and Design-Builder*.

1.2.6 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

1.2.7 *Owner's Criteria* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

1.2.8 *Site* is the land or premises on which the Project is located.

1.2.9 *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

1.2.10 *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

1.2.11 *Substantial Completion* is the date on which the Work is sufficiently complete so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

1.2.12 *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

Article 2
Design-Builder's Services and Responsibilities

2.1 General Services

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

2.1.2 Design-Builder shall provide Owner with a monthly status report detailing the work planned for the upcoming month and the progress of the Work, including whether (i) the Work is proceeding according to schedule, (ii) discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) health and safety issues exist in connection with the Work, and (iv) other items require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time.

2.1.3 Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of and response to the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

2.1.4 The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.2 Design Professional Services

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

2.3 Standard of Care for Design Professional Services

2.3.1 Design-Builder shall exercise the same degree of care, skill, and diligence in the performance of all Work that is ordinarily possessed and exercised by reasonable, prudent, and experienced professional engineer under similar circumstances. At Owner's request, Design-Builder shall re-perform the Work which fails to satisfy this standard of care. If Design-Builder fails to possess and exercise such care, skill and diligence in providing all Work, Design-Builder shall be responsible to Owner for any resulting loss or damages. Notwithstanding the preceding sentence, if the parties agree upon specific performance standards for any aspect of the Work, which standards are to be set forth in an exhibit to the Agreement entitled "Performance Standard Requirements," the design professional services shall be performed to achieve such standards.

2.4 Design Development Services

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

2.4.2 Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions; as such submissions may have been modified in a design review meeting. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth Section 2.4.1 of the General Conditions. Design-Builder shall proceed with construction in accordance with the approved

Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

2.4.3 Owner's review and approval of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.5 Legal Requirements

2.5.1 Design-Builder shall comply with, and perform the Work in accordance with, all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

2.5.2 Design-Builder shall cause its sub-consultants and sub-contractors to comply with, and perform their Work in accordance with, all Legal Requirements.

2.6 Government Approvals and Permits

2.6.1 Except as identified in an Owner's Permit List, attached as an exhibit to the Agreement, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

2.6.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

2.7 Design-Builder's Construction Phase Services

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

2.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified in the City of Manhattan, Kansas, to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance.

2.7.4 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.7.5 Design-Builder shall coordinate the activities of all Subcontractors. It shall be the responsibility of Design-Builder to measure the completed work in place and report to Owner's Representative immediately any difference between completed work by any others and the drawings. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption. Design-Builder shall cooperate with other contractors with regard to storage of materials and execution of their work. Design-Builder shall examine all work by other contractors affecting its work and to report to the Owner's Representative any irregularities which will not permit it to complete its work in a satisfactory manner. Its failure to notify the Owner's Representative of such irregularities shall indicate the work of other contractors has been satisfactorily completed to receive Design-Builder's Work. Design-Builder shall not be responsible for defects of which it could not have known which develop in the work of others after Design-Builder's Work is completed.

2.7.6 Design-Builder shall keep the Site reasonably free from debris, trash and construction waste to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.8 Design-Builder's Responsibility for Project Safety

2.8.1 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work.

Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

2.8.2 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.8.3 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

2.9 Design-Builder's Warranty

2.9.1 Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than Design-Builder or anyone for whose acts Design-Builder may be liable. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.9.2 The approval of the Final Request for Payment by the Owner's Representative and the making of the final payment by the owner to the Design-Builder shall not relieve the Design-Builder of responsibility for faulty materials or workmanship. The Owner shall promptly give notice of faulty materials or workmanship and the Design-Builder shall promptly replace any such defects discovered within the warranty period.

2.10 Correction of Defective Work

2.10.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, through the end of twelve (12) months from the date of Substantial Completion of the Work, or within such longer period to the extent required by the Contract Documents.

2.10.2 All materials which do not conform to the requirements of the Contract Documents, are not equal to samples approved by the Owner's Representative, or are in any way unsatisfactory or unsuited to the purpose, for which they are intended, shall be rejected. Any defective work whether the result of poor workmanship, use of defective materials, damage through carelessness or any other given cause shall be removed within ten (10) days after written notice is given by the Owner's Representative, and the work shall be re-executed by the Design-Builder. The fact that the Owner's Representative may have previously overlooked such defective work shall not constitute an acceptance of any part of it.

- **.1** Should the Design-Builder fail to remove any equipment rejected within ten (10) days after written notice to do so; Owner may remove them and may store them.
- **.2** Correction of faulty work after final payment shall be in accordance with Article 2.9.2

2.10.3 Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day periods identified herein shall be deemed inapplicable.

2.10.4 The period of twelve (12) months referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

2.11 Character of Workers

2.11.1 The Design-Builder shall at times be responsible for the conduct and discipline of its employees and/or any sub-contractor or persons employed by sub-contractors. All workmen must have sufficient knowledge, skill, and experience to perform properly the work assigned to them. Any foreman or workman employed by the Design-Builder who, in the opinion of the Owner's Representative, does not perform his/her work in a skilled manner, or appears to be incompetent or to act in a disorderly or intemperate manner shall, at the written request of the Owner's Representative, be discharged immediately and shall not be employed again in any portion of the Work without the prior approval of the Owner's Representative.

Article 3
Owner's Services and Responsibilities

3.1 Duty to Cooperate

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

3.2 Furnishing of Services and Information

3.2.1 Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely upon in performing the Work:

- **.1** Information describing the property, boundaries, topography and reference points Owner may have for use during construction, including existing service and utility lines;
- **.2** Civil site plan, grading plan, and utility plan
- **.3** Any existing geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the site that Owner may have;
- **.4** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of Owner;
- **.5** A GIS location of the Site;
- **.6** To the extent available, as-built and record drawings of any existing structures at the Site; and,
- **.7** To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site

3.3 Owner's Representative

3.3.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work.

3.4 Government Approvals and Permits

3.4.1 Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in the Owner's Permit List attached as an exhibit to the Agreement.

3.4.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

Article 4
Site Conditions and Salvageable Materials

4.1 Site Conditions

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder shall stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

4.1.2 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner provides it with written confirmation that (i) the Hazardous Conditions have been remediated removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

4.1.3 Design-Builder may be entitled, in accordance with these General Conditions, to an adjustment in its Contract Price and/or Contract Time(s), to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

4.1.4 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.2 Salvageable Materials

4.2.1 When applicable, Design-Builder shall, according to the Contract Documents, recover all salvageable materials. Owner shall designate a site for storage of salvageable material. Design-Builder shall, at no additional cost to Owner, dispose of any materials not retained by Owner.

Article 5
Bonds

5.1 Bonds and Other Performance Security

5.1.1 In accordance with the General Conditions, Design-Builder shall furnish a Statutory Bond, pursuant to the laws of the state of Kansas, in substantially the form set forth hereinafter, as security for the faithful payment of all its obligations under the Contract Documents.

5.1.2 Statutory Bond Requirements. Design-Builder shall furnish a Statutory Bond, legally issued, meeting the approval of Owner and running to the State of Kansas, in an amount equal to the contract price of the proposed improvements, and conditioned that Design-Builder shall pay all indebtedness incurred for labor, supplies, equipment and materials furnished in making the improvements called for herein. The Statutory Bond shall be placed on file with the Clerk of the District Court of the district where the work is located by the Owner. The Statutory Bond required by the contract documents shall be in the amount at least equal to the contract price and shall be delivered to the Owner simultaneously with the execution and delivery of the Agreement for Phase 2 Services.

5.4.3 Performance and Maintenance Bond. Design-Builder shall furnish Performance and Maintenance Bonds as security for the faithful performance of all its obligations under the Contract Documents.

5.4.4 Bond Requirements. Design-Builder shall furnish a Performance and Maintenance Bond, legally issued, meeting the approval of and running to Owner, in an amount not less than the total contract price of the proposed improvements, conditioned upon the prompt, full and complete performance by Design-Builder of its covenants and agreement contained in the Contract Documents.

.1 Incorporated in the Performance and Maintenance Bond, legally issued and running to Owner, shall be the condition that Design-Builder shall maintain and make all repairs to the improvements constructed by it, at its own expense and free of charge to Owner, for the period through the end of twelve (12) months starting from the date of Substantial Completion, any of which repairs may become necessary within such period by reason of imperfection of the material used, by reason of any defective workmanship, or any improper, imperfect or defective preparation of the ground upon which any such improvement shall be laid including the correction of any backfill settlement and all results of backfill settlement.

The Performance and Maintenance Bond required by the Contract Documents shall be in an amount at least equal to the Contract Price and shall be delivered to Owner simultaneously with the execution and delivery of the Agreement for Phase II services.

Article 6
Payment

6.1 Schedule of Values

6.1.1 Within seven (7) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts; (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

6.2 Monthly Progress Payments

6.2.1 The Design-Builder may submit periodically, but not more than once each month, a request for payment for work done and materials delivered and stored on the site. The Design-Builder shall furnish the Owner's Representative all reasonable facilities required for obtaining the necessary information relative to the progress and execution of the work. Payment for materials stored on the Site will be conditioned upon evidence submitted to establish Owner's title to such materials. Each request for payment shall be computed from the Work completed on all items listed in the detailed breakdown of Contract Price, less the retainage provided in Section 7.2 of the Agreement, and less previous payments. Where unit prices are specified, the request for payment shall be based on the quantities completed.

6.2.2 Owner's Representative Action on a Request for Payment:

Within ten (10) days of submission of any request for payment by Design-Builder, Owner's Representative shall:

.1 Approve the request for payment as submitted;
.2 Approve such other amounts as he shall decide is due Design-Builder, informing Design-Builder in writing of his reasons for approving the amended amount; or
.3 Withhold the request for payment, informing the Design-Builder in writing of his reasons for withholding it.

6.2.3 Owner's Action on an Approved Request for Payment:

Within thirty (30) days from the date of Owner's Representative's approval of a request for payment, Owner shall:

.1 Pay the request for payment as approved;
.2 Pay such other amount in accordance with Section 6.3 of the General Conditions as he shall decide is due the Design-Builder, informing the Design-Builder and the Owners Representative in writing of his reasons for paying the amended amount; or,
3. Withhold payment in accordance with Section 6.3 of the General Condition, informing Design-Builder and the Owners Representative of his reasons for withholding payment.

6.3 Withholding of Payments

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or any part of an Application for Payment, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold and the reasons and contractual basis for the withholding. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment are due.

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

6.4 Other Payment Provisions

6.4.1 Payment for Uncorrected Work. Should the Owner's Representative direct Design-Builder not to correct Work that has been damaged or that was not performed in accordance with the Contract Documents, an equitable deduction from the Contract Price shall be made to compensate Owner for the uncorrected work.

6.4.2 Payment for Rejected Work and Materials. The removal of work and materials rejected under Section 2.10 and the re-execution of acceptable work by Design-Builder shall be at the expense of Design-Builder, and it shall pay the cost of replacing the work of other contractors, destroyed or damaged by the removal of rejected work or materials and the subsequent replacement of acceptable work.

.1 Removal of rejected work or materials and storage of materials by Owner in accordance with Section 2.10 shall be paid by Design-Builder within thirty (30) days after written notice to pay is given by Owner. If Design-Builder does not pay the expenses of such removal and after ten (10) days written notice being given by Owner of its intent to sell the materials, Owner may sell the materials at auction or at private sale and shall pay to Design-Builder the net proceeds there from after deducting all the costs and expenses that should have been borne by Design-Builder.

6.4.3 Payment for Work by Owner. The cost of the Work performed by Owner in removing construction equipment, tools and supplies in accordance Section 2.10 of the General Conditions and in correcting deficiencies in accordance with Section 2.10 of the General Conditions shall be paid by Design-Builder.

6.4.4 Payment for Work by Owner Following its Termination of the Agreement. Upon termination of the Agreement by Owner in accordance with Article 11 of the General Conditions, no further payments shall be due Design-Builder until the Work is completed. If the unpaid balance of the Contract Price shall exceed the cost of completing the Work, including all overhead costs, the excess shall be paid to Design-Builder. If the cost of completing the Work shall exceed the unpaid balance, Design-Builder shall pay the difference to Owner. The cost incurred by

Owner, as herein provided, and the damage incurred through the Design-Builder's default, shall be certified by Owner.

6.4.5 Payment for Work Terminated By the Design-Builder. Upon suspension of the work or termination of the contract by the Design-Builder in accordance with Article 11 of the General Conditions, Design-Builder may recover payment from Owner for the work performed up to the time of termination of the Agreement, plus loss on plant and materials, plus established profit, as approved by Owner's Representative.

6.4.6 Payment for Samples and Testing Of Materials. Design-Builder shall furnish, at its expense, samples in accordance with the Contract Documents.

6.4.7 Release of Liens. Design-Builder shall deliver to Owner a complete release of all liens arising out of this Project before the retained percentage or before the final request for payment is paid. If any lien remains unsatisfied after all payments are made, Design-Builder shall refund to Owner such amounts as Owner may have been compelled to pay in discharging such liens including all costs and a reasonable attorney's fee.

6.5 Design-Builder's Payment Obligations

6.5.1 Design-Builder shall pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder shall impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder shall indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

6.5.2 Responsibility of Design-Builder. Unless specifically noted otherwise, Design-Builder shall furnish all materials and services and perform all the Work described by the Contract Documents or shall have all materials and services furnished and all the Work performed at its expense. Design-Builder shall pay for the following:

.1 Replacement of survey bench marks, reference points and stakes provided by Owner.
.2 Insurance obtained in accordance with the Agreement for Phase II services.
.3 All bonds obtained in accordance with the Agreement for Phase II services.
.4 Royalties required to others.
.5 Permits and licenses required of Design-Builder, subconsultants, and subcontractors.

6.6 Substantial Completion

6.6.1 Design-Builder shall notify Owner when it believes the Work is substantially complete. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder shall jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents. If such Work is substantially complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

6.6.2 Upon Substantial Completion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the Work, less an amount equal to one hundred fifty percent (150%) to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

6.6.3 Owner, at its option, may use the Work which has been determined to be substantially complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the Work addressing the items set forth in Section 6.6.1 above, and (ii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work. Owner shall have the right to take possession of and use the completed work, notwithstanding that the time for completing the work may not have expired; but such taking possession and use shall not be deemed an acceptance of any work not completed in accordance with the Contract Documents.

6.7 Final Payment

6.7.1 At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

- **.1** an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;
- **.2** a general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;
- **.3** consent of Design-Builder's surety, if any, to final payment;
- **.4** all operating manuals, warranties and other deliverables required by the Contract Documents; and
- **.5** certificates of insurance confirming that required coverage's will remain in effect consistent with the requirements of the Contract Documents.

Following Owner's approval of these submittals, Owner shall accept the Work and release Design-Builder except as to the conditions of the performance bond, warranty period, any legal rights of Owner, required guarantees, and correction of faulty work after final payment, and shall authorize payment of Design Builder's final request for payment. Design-Builder must allow sufficient time between the final request for payment and approval of the final payment for the Owner's Representative to review and approve the necessary data.

6.7.2 Upon approval pursuant to Section 6.7.1 hereof, Owner shall make final payment by the time required in the Agreement for Phase II services. When the Design-Builder shall have completed the work in accordance with the terms of the Contract Documents, Owner's Representative shall certify his acceptance to Owner and his approval of Design-Builder's final request for payment, which shall be the Contract Price plus all approved additions, less all approved deductions and less previous payments made.

6.7.3 The Agreement will be considered complete when all work has been finished, the final inspection made by Owner's Representative, and the Project accepted in writing by Owner. Design-Builder's responsibility shall then cease, except as set forth in the Design-Builder's performance and maintenance bonds, as required by the warranty period.

Article 7
Indemnification

7.1 Patent and Copyright Infringement

7.1.1 To the fullest extent, not prohibited by law, Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

7.1.2 If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright or arising from modifications to the Work by Owner or its agents after acceptance of the Work.

7.1.4 The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement of violation of any patent or copyright.

7.2 Payment Claim Indemnification

7.2.1 Providing that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.3 Design-Builder's General Indemnification

7.3.1 To the fullest extent not prohibited by law, Design-Builder shall defend, indemnify and hold harmless Owner, its agents, officers and employees from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, losses, penalties, fines, costs, and expenses, including attorney fees, of whatsoever kind or character in connection with, or arising out of, the performance of Design-Builder, its agents, employees or subcontractors hereunder, except to the extent such matters arise out of the acts or omissions of Owner its agents, officers or employees. The provisions of this paragraph shall survive the completion of the Agreement as well as any early termination of the Agreement.

7.3.2 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligation set forth in Section 7.3.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

Article 8

Time

8.1 Obligation to Achieve the Contract Times

8.1.1 Design-Builder agrees that it understands that time is of the essence and that it will commence performance of the Work and achieve the Contract Time in accordance with Article 5 of the Agreement.

8.2 Delays to the Work

8.2.1 If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, Design-Builder's sole remedy shall be an extension of Contract Time for performance. The Contract Time may be reasonably extended by Change Order as determined by Owner, provided, however, that Design-Builder shall immediately give written notice to Owner of the cause of such delay. By way of example, events that may entitle Design-Builder to an extension of the Contract Time include acts or omissions of Owner in its contractual capacity or anyone under Owner's control (including separate contractors), changes in the Work, wars, floods, fires, labor disputes, and earthquakes.

Article 9
Changes to the Contract Price and Time

9.1 Change Orders

9.1.1 Owner may, as the need arises, order changes in the Work through additions, deletions or modifications without invalidating the contract. Compensation and time of completion affected by additions or modifications shall be adjusted at the time of ordering such changes. Owner may delete, without regard to extent, any portion of the Project prior to entering into an agreement with Design-Builder. This deletion of work may be done without prior approval of Design-Builder and no additional compensation shall be due Design-Builder for such deletions.

9.1.2 A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

- **.1** The scope of the change in the Work;
- **.2** The amount of the adjustment to the Contract Price, if any; and
- **.3** The extent of the adjustment to the Contract Time, if any.

9.1.3 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

9.2 Work Change Directives

9.2.1 A Work Change Directive is a written order prepared and signed by Owner, directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time.

9.2.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.3 Minor Changes in the Work

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments

9.4.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

- **.1** Unit prices set forth in the Agreement or as subsequently agreed to between the parties;
- **.2** A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;
- **.3** Costs, fees and any other markups set forth in the Agreement; and
- **.4** If an increase or decrease cannot be agreed to as set forth in items .1 through .3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement. If the net result of both additions and deletions to the Work is an increase in the Contract Price, overhead and profit shall be calculated on the basis of the net increase to the Contract Price. If the net result of both additions and deletions to the Work is a decrease in the Contract Price, there shall be no overhead or profit adjustment to the Contract Price. Design-Builder shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

9.4.2 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any Work required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder

shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the Work in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed Work, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the Work that is to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the Work, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed Work if Owner's order is deemed to be a change to the Work.

9.5 Emergencies

9.5.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

Article 10
Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

10.2 Dispute Avoidance and Resolution

10.2.1 The parties are committed to working with each other throughout the Project and agree to communicate regularly with each other so as to avoid or minimize disputes or disagreements. If disputes or disagreements arise, Design-Builder and Owner shall attempt to resolve such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

10.2.2 Design-Builder and Owner shall first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder’s Representative and Owner’s Representative.

10.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, then Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than fifteen (15) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties shall exchange relevant information that will assist the parties in resolving their dispute or disagreement.

10.2.4 If after meeting, the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties; either party may seek the remedies available at law.

10.3 Duty to Continue Performance

10.3.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work, and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

Article 11

Stop Work and Termination

11.1 Owner's Right to Terminate for Convenience or Suspend Work

11.1.1 Owner may, without cause and for its convenience terminate the Agreement, or order in writing Design-Builder to suspend the Work or any portion thereof. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project. Design-Builder shall resume the work upon written notice from Owner within five (5) days after receipt of such notice.

11.1.2 Design-Builder may be entitled to seek an adjustment of the Contract Price and/or Contract Time if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of work by Owner.

11.1.3 If Owner terminates the Agreement, as provided in Section 11.1.1 herein, Owner shall compensate Design-Builder for the Work that has been completed to Owner's satisfaction at the date of termination.

11.2 Owner's Right to Perform and Terminate for Cause

11.2.1 Owner shall have the right to terminate the employment of the Design-Builder after giving ten (10) days written notice of termination of the Design-Builder in the event of any default by the Design-Builder certifying the cause for such action. It shall be considered a default by the Design-Builder whenever it shall:

.1 Declare bankruptcy, become insolvent, or assign its assets for the benefit of its

creditors.

.2 Disregard or violate important provisions of the Contract Documents or Owner's Representative's instructions, or fail to prosecute the Work according to the agreed schedule of completion, including extensions thereof.

.3 Fail to provide a qualified superintendent, competent workmen or sub-contractors, or proper materials, or fail to make prompt payment thereof.

11.2.2 Upon declaring the Agreement terminated pursuant to Section 11.2.1, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the reprocurement and defense of claims arising from Design-Builder's default.

11.2.3 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Section 11.1 of the General Conditions.

11.3 Design-Builder's Right to Stop Work

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop work for the following reasons:

.1 If an order of any court caused the work to be stopped or suspended for a period of ninety (90) days through no act or fault of the Design-Builder or its employees.

.2 Owner's failure to pay amounts properly due under Design-Builder's Application for Payment within (30) thirty days after presentation for payment.

11.3.2 Should the events set forth in Section 11.3.1 above occur, Design-Builder shall provide Owner with written notice that Design-Builder will stop work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

11.4 Design-Builder's Right to Terminate for Cause

11.4.1 Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

- **.1** The Work has been stopped for a period of ninety (90) days during the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.
- **.2** Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Section 11.1 of the General Conditions.

11.5 Bankruptcy of Design-Builder

11.5.1 If Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

- **.1** The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the Owner, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and
- **.2** The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the Owner shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the Owner under this Article 11.

11.5.2 The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of Owner to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or to stop Work under any applicable provision of these General Conditions.

Agreement for Phase I Services

MHK Airport Fixed Base Operations (FBO) Facility
AP1501

City of
Manhattan
Kansas

Agreement for Phase I Services
between
Owner and Design-Builder

This **AGREEMENT** is made as of the _____ day of _____, 2015, by and between the following parties, for services in connection with the Project identified below.

OWNER
City of Manhattan, Kansas, a Municipal Corporation
1101 Poyntz Avenue
Manhattan, KS, 66502

DESIGN-BUILDER:
Name of Prime_____
Address of Prime_____
City, ST Zip_____

PROJECT:
Fixed Base Operations Facility at MHK Airport

NOW, in consideration of the mutual promises contained herein, Owner and Design-Builder agree as set forth herein.

Article 1
General

1.1 Duty to Cooperate. Owner and Design-Builder shall cooperate with each other, and proceed on the basis of trust and good faith to permit each party to realize the benefits afforded under this Agreement.

1.2 Definitions. Terms, words, and phrases used in this Agreement shall have the meanings given them in General Conditions of Contract between Owner and Design-Builder ("General Conditions"). Provided that, the term "Services" when used in this Agreement, shall include only the Phase I Services performed by Design-Builder pursuant to this Agreement.

1.3 Services. All services relate to Phase I only and no elements beyond that scope are included.

Article 2
Design-Builder's Services and Responsibilities

2.1 Design Services. Design-Builder shall, consistent with applicable state licensing laws, provide design services, including architectural, engineering and other design professional services, required by this Agreement. Such design services shall be provided through qualified,

licensed design professionals who are either (i) employed by Design-Builder, or (ii) procured by Design-Builder from independent sources. Nothing in this Agreement is intended to create any legal or contractual relationship between Owner and any independent design professional.

2.2 Preliminary Services.

2.2.1 Owner shall provide Design-Builder with a preliminary design concept that includes criteria relating to Owner's use, space, price, time, site, performance, and expandability requirements. Owner and Design-Builder shall meet periodically to discuss the GMP Proposal and agree upon which, if any, amendments and revisions shall be made to the Owner's Criteria to develop the Project Proposal.

2.2.2 Design-Builder shall provide a detailed Basis of Design, developed by the Design-Builder, in consultation with Owner. The Program shall include Owner's requirements for size, arrangement, organization, and location of functional spaces, description of space functions, identification of fittings, equipment and furnishings, description of the physical and environmental requirements for each space, together with a description of the image, goals, or "mission" of the Project.

2.3 Schematic Design and Related Services.

.1 Design-Builder shall prepare Schematic Design Documents based on Owner's approved Basis of Design, as may be revised in accordance with Section 2.2.2 hereof. The Schematic Design Documents shall include design criteria, drawings, diagrams and specifications setting forth the requirements of the Project. The parties shall meet to discuss the Schematic Design Documents and agree upon what revisions, if any, should be made. Design-Builder shall perform such agreed-upon revisions.

.2 Design-Builder shall perform any additional survey and measurements required to prepare the Schematic Design documents and prepare a Guaranteed Maximum Price (GMP) and schedule in accordance with Section 2.4.

2.4 GMP Proposal. Based on Owner's Preliminary Design Concept, Basis of Design, Civil and Utility Site Plan, Grading Plan, and the Schematic Design Documents as each may be revised pursuant to Sections 2.2.2 and 2.3 (.1 to .3), and any other documents upon which the parties may agree, Design-Builder shall submit a proposal to Owner (the "GMP Proposal"), which shall include the following unless the parties agree otherwise:

.1 A proposed contract price for the final design, construction, testing, and commissioning of the Project, which does not exceed the Owner's Project Budget as indicated in the RFQ/RFP, unless otherwise agreed by Owner, and which is in the form agreed to by the Owner. Such contract price shall consist of an estimate of the cost of the work and the design-builder fees, including the design fee and any proposed contingency, with a Guaranteed Maximum Price (GMP). The Owner retains the right to convert all or parts of the GMP into a fixed lump sum at the time of acceptance of the GMP Proposal.

.2 A breakdown of the construction work to indicate the items of work, equipment, and materials that will be competitively bid to outside parties and the items of work that will be self-performed with their respective estimated costs in the GMP.

.3 A schedule indicating the main design, procurement, and construction activities and guaranteed dates of Substantial and Final Completion for the Project upon which the GMP price for the project is based, and a time-phased list of major purchases and contracts.

.4 A schedule of planned interim design submittals and meetings for the Owner to review the design development and confirm that the design meets the Owner-approved Basis of Design, Schematic Design, and Contract Documents.

.5 A proposed Warranty Guaranteed Maximum Price (WGMP), all other information necessary for the parties to enter into the Agreement for Phase II Services.

.6 A time limit of thirty (30) days for acceptance of the GMP Proposal or written response of recommended changes such that it can be accepted.

2.5 Review of and Adjustment to GMP Proposal. After submission of the GMP Proposal, Design-Builder and Owner shall meet to discuss and review the Proposal. If Owner has any comments regarding the Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall give written notice to Design-Builder of such comments or findings. If Design-Builder finds the revisions acceptable, Design-Builder shall, upon receipt of Owner's notice, adjust the Proposal.

2.6 Acceptance of GMP Proposal. If Owner accepts the GMP Proposal, its basis shall be set forth in the Agreement for Phase II Services.

2.7 Failure to Accept GMP Proposal. If Owner rejects the GMP Proposal, or fails to notify Design-Builder in writing on or before the date specified in the Proposal, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, the parties shall meet to determine how the Project shall proceed, with Owner having the following options:

.1 Owner may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 2.6.

.2 Owner may terminate this Agreement and shall compensate Design-Builder for services performed in good faith.

2.8 Completion of this Agreement. Design-Builder’s services under this Agreement shall be deemed completed upon meeting with Owner to discuss the GMP Proposal and making those revisions to the GMP Proposal, if any, Design-Builder finds acceptable, or proceeding in accordance with Section 2.6 or 2.7.

2.9 Additional Services. Design-Builder shall not provide any services or materials not described by this Agreement unless Design-Builder obtains prior written consent from Owner. If Owner gives prior written consent for additional services, Owner shall compensate Design-Builder with a fee mutually agreed upon by the parties prior to performance of the additional

services. Any additional services or materials provided by Design-Builder without Owner's prior written consent shall be at Design-Builder's own risk, cost, and expense, and Design-Builder shall not make a claim for compensation from Owner for such services.

Article 3
Owner's Services and Responsibilities

3.1 Timely Performance. Owner shall perform its responsibilities, obligations and services, including its reviews and approvals of Design-Builder's submissions, in a timely manner so as not to delay or interfere with Design-Builder's performance of its obligations under this Agreement.

3.2 Owner's Project Criteria. Owner shall provide Design-Builder with Owner's Project Criteria and other relevant data for Design-Builder to provide Services under this Agreement. If Owner desires that Design-Builder assist Owner in developing such additional studies and/or criteria as an Additional Service under Section 2.9, Owner shall provide Design-Builder with its objectives, limitations and other relevant information regarding such services.

3.3 Owner Provided Information. Owner shall provide, at its own cost and expense, for Design-Builder's information and use, the following, all of which Design-Builder is entitled to reasonably rely upon in performing its obligations hereunder:

- **.1** Information describing the property, boundaries, topography and reference points Owner may have for use during construction, including existing service and utility lines;
- **.2** Civil site plan, grading plan, and utility plan
- **.3** Any existing geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the site that Owner may have;
- **.4** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of Owner;
- **.5** To the extent available, as-built and record drawings of any existing structures at the Site; and,
- **.6** To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

Article 4
Ownership of Work Product

4.1 Work Product. All planning, investigations, programs, drawings, specifications and other documents and data produced by Design-Builder for Owner under this Agreement ("Work

Product") shall be the sole property, including property interests therein and copyrights thereto, of the Owner upon the Owner's payment for such services.

4.2 Owner's Use of Work Product. If Owner, in its sole discretion, does not enter into a contract on this Project with Design-Builder for Phase II for any reason, or if Owner otherwise abandons the Project, Owner may use the Work Product, at its sole risk, without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design consultants of any tier.

Article 5
Contract Time

5.1 Commencement Date. Design-Builder shall commence performance of the Services set forth in this Agreement within seven (7) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing. Design-Builder shall complete such services no later than sixty (60) calendar days after the Date of Commencement, or as dates defined in the RFP pertaining to this agreement.

5.2 Interim Dates. Interim milestone dates, if any, of identified portions of the Services set forth in this Agreement and in the Design-Builder's Proposal shall be achieved as follows: Schematic Drawings Completed, forty-five (45) days; GMP Proposal Presented to the Owner, sixty (60) days.

Article 6
Contract Price

6.1 Contract Price. The Contract Price for this Agreement is a lump sum amount, as set forth below:

_____ ($ _____)

6.2 Scope of Contract Price. The Contract Price shall be the full compensation due Design-Builder for the performance of all services set forth in this Agreement. The Contract Price shall be adjusted to reflect any Additional Services agreed upon by the parties after execution of this Agreement.

Article 7
Procedure for Payment

7.1 Payment. Design-Builder shall submit an itemized invoice to Owner on the first of each month that details the hours worked, services performed and completed, and cost of services. In the event of a dispute, and prior to the invoice's due date, Owner shall pay the undisputed portion of the invoice and notify Design-Builder of the nature of the dispute regarding the

balance. City shall pay the balance of an approved invoice, or undisputed portions of a disputed invoice, within forty-five (45) days of the date of receipt by the City. With each invoice shall be included the following: 1) any items perceived to be problems for the next work period, 2) a projected Monthly Progress Report showing upcoming monthly work items.

Article 8
Insurance

8.1 Insurance. Design-Builder shall purchase and maintain throughout the duration of this Agreement such types of insurance and in such amounts as provided in this Article. Insurance Companies must be rated a minimum "A-" by the Best's Key Rating Guide's latest edition. The requirements of Design-Builder to purchase and maintain insurance shall not in any manner limit or qualify the liability and obligations otherwise assumed by Design-Builder in this Agreement.

.1 **Commercial General Liability ("CGL")** with limits of insurance of not less than $1,000,000 each occurrence and $2,000,000 Annual Aggregate.

- **.1** If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project.
- **.2** CGL coverage shall be written on ISO Occurrence form CG00 01 1096 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury.
- **.3** Owner shall be included as additional insured on the CGL. This insurance for the **additional insured** shall be as **broad as the insurance for the named insured** Design-Builder**.** It shall apply as **Primary and non-contributory insurance before any other insurance or self-insurance**, including any deductible, maintained by, or provided to, the additional insured.
- **.4** Design-Builder shall maintain CGL coverage for itself and all additional insureds for the duration of the Project and maintain Completed Operations coverage for itself and each additional insured for at least 3 years after completion of work.

.2 **Automobile Liability** with limits of at least $1,000,000 each accident.

- **.1** Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non owned automobiles.
- **.2** Owner shall be included as insured on the auto liability policy.

.3 **Professional Liability:** $1,000,000 for each claim and in the aggregate.

.4 **Workers Compensation and Employers Liability:** limit of at least $500,000 each accident, $500,000 for bodily injury by accident, and $500,000 each employee for injury by disease.

8.2 Certificate of Insurance. Design-Builder shall provide with execution of this Agreement and prior to any construction activities commencing, a certificate of insurance illustrating compliance with the insurance requirements outlined in this Article. This

certificate and the insurance policies required shall contain a provision that coverage afforded under the policies shall not be cancelled or allowed to expire until at least ten (10) days prior written notice has been given to the City of Manhattan, Kansas, Attn: Cathy Harmes, Risk Manager, 1101 Poyntz Avenue, Manhattan, Kansas, 66502.

Article 9
Liability/Indemnification

9.1 Patent and Copyright Infringement

9.1.1 To the fullest extent not prohibited by law, the Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the services or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

9.1.2 Section 9.1.1 shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright or arising from modifications to the Services by Owner or its agents after acceptance of the Services.

9.1.3 The obligations set forth in this Section 9.1 shall constitute the sole agreement between the parties relating to liability for infringement of violation of any patent or copyright.

9.2 Design-Builder's General Indemnification

9.2.1 To the fullest extent not prohibited by law, the Design-Builder shall defend, indemnify and hold harmless the Owner, its agents, officers and employees from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, losses, penalties, fines, costs, and expenses, including attorney fees, of whatsoever kind or character in connection with, or arising out of, the performance of Design-Builder, its agents, employees or subcontractors hereunder, except to the extent such matters arise out of the acts or omissions of the Owner its agents, officers or employees. The provisions of this paragraph shall survive the completion of this Agreement as well as any early termination of the Agreement.

9.2.2 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligation set forth in Section 9.2.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers'

compensation or disability acts.

Article 10
Stop Work & Termination

10.1 Owner's Right to Terminate for Convenience or Suspend Work

10.1.1 Owner may, without cause and for its convenience, terminate this Agreement, or order in writing Design-Builder to suspend the Services or any portion thereof. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Services. The Design-Builder shall resume the Services upon written notice from Owner within five (5) days after receipt of such notice.

10.1.2 Design-Builder may be entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Services has been adversely impacted by any suspension or stoppage of Services by Owner.

10.1.3 If Owner terminates the Agreement, as provided in Section 10.1.1, Owner shall compensate Design-Builder for the Services that have been completed to Owner's satisfaction at the date of termination.

10.2 Owner's Right to Perform and Terminate for Cause

10.2.1 Owner shall have the right to terminate the employment of the Design-Builder after giving ten (10) days written notice of termination of the Design-Builder in the event of any default by the Design-Builder certifying the cause for such action. It shall be considered a default by the Design-Builder whenever it shall:

.1 Declare bankruptcy, become insolvent, or assign its assets for the benefit of its creditors.

.2 Disregard or violate important provisions of the Agreement or Owners Representative's instructions, or fail to prosecute the Services according to the agreed schedule of completion, including extensions thereof.

10.2.2 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 10.1 of this Agreement for Phase I Services.

Article 11
Representatives of the Parties and Notices

11.1 Owner's Representative

11.1.1 Owner designates the individual listed below as its Owner's Representative or its representative duly authorized in writing to act for the Owner's Representative:

Peter Van Kuren
Airport Director
5500 Skyway Drive Suite 120
Manhattan, KS

11.2 Design-Builder's Representative

11.2.1 Design-Builder designates the individual listed below as its Design-Builder's Representative, or its representative duly authorized in writing to act for the Design-Builder's Representative:

First Last Name
Name of Prime Design-Build Firm
Address

11.3 Notices

11.3.1 All notices to be given with respect to this Agreement shall be in writing. Each notice shall be sent to the party to be notified at the address set forth herein or at such other address as either party may from time to time designate in writing. Every notice shall be deemed to have been given at the time it shall be deposited in the United States mails, or reputable overnight delivery system with a certified tracking system, in the manner prescribed herein.

Notices required herein shall be in writing and made by certified mail, return requested to the following addresses:

Design-Builder: Name of Firm, Inc.
First Last Name
Address
City, ST Zip

Owner: City of Manhattan
ATTN: Ron Fehr, City Manager
1101 Poyntz Avenue

Manhattan, KS 66502

Article 12
Other Provisions

12.1 Dispute Resolution. The parties agree that disputes relative to the Services shall be first addressed by negotiations between the parties. After such direct negotiations, each party may take steps necessary to protect its interests, provided that Design-Builder shall proceed with the Services as if no dispute existed, and Owner shall continue to make payment for accepted Services completed by Design-Builder. No dispute shall be submitted to mediation or arbitration without both parties' express written consent.

12.2 Assignment. Neither Design-Builder nor Owner shall, without the written consent of the other party assign, transfer, or sublet any portion or part of its obligations under this Agreement.

12.3 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Kansas.

12.4 Severability. If any provision or any part of a provision of this Agreement shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to applicable laws by any authority having jurisdiction, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provisions or parts of the provision of this Agreement, which shall remain in full force and effect as if the unenforceable provision or part was deleted.

12.5 Non-waiver. The failure of a party to strictly enforce any provision of this Agreement shall not constitute the party's waiver to fully enforce any rights provided hereunder.

12.6 Amendments. This Agreement may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of both parties.

12.7 Entire Agreement. This Agreement forms the entire agreement between Owner and Design-Builder. No oral representations or other agreements have been made by the parties except as specifically stated in this Agreement.

12.8 Section Titles. The titles to sections of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify or aid in the interpretation of this Agreement.

12.9 Compliance with Laws. Design-Builder shall abide by all federal, state or local laws, regulations or ordinances applicable to the Project and the Services, and to furnish any certification required by any federal, state or local agency in connection with the same.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year above written.

OWNER:
CITY OF MANHATTAN

_____
KAREN McCULLOH, MAYOR

ATTEST:

_____
GARY FEES, MMC, CITY CLERK

STATE OF KANSAS, COUNTY OF RILEY, SS:

BE IT REMEMBERED, that on this ____ day of _____, 2015, before me, the undersigned, a notary public in and for the County and State aforesaid, came Karen McCulloh, Mayor for the City of Manhattan, and Gary S. Fees, City Clerk, who are personally known to me to be the same persons who executed the foregoing Agreement, and duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year last above written.

_____
NOTARY PUBLIC

My appointment expires:

NAME OF PRIME, INC.
DESIGN-BUILDER:

_____

BY: First M. Last
Title

STATE OF KANSAS, COUNTY OF _____, SS:

BE IT REMEMBERED, that on this ____ day of _____, 2015, before me, the undersigned, a notary public in and for the County and State aforesaid, came _____who is personally known to me to be the same persons who executed the foregoing Agreement, and duly acknowledged the execution of the same on behalf of the corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year last above written.

_____
NOTARY PUBLIC

My appointment expires:

Agreement for Phase II Services

MHK Airport Fixed Base Operations (FBO) Facility
AP1501

City of
Manhattan
Kansas

Agreement for Phase II Services
between
Owner and Design-Builder

This **AGREEMENT** is made as of the _____ day of _____, 2015, by and between the following parties, for services in connection with the Project identified below.

OWNER
City of Manhattan, Kansas, a municipal corporation
1101 Poyntz Avenue
Manhattan, KS, 66502

DESIGN-BUILDER:
Name of Prime_____
Address of Prime_____
City, ST Zip_____

PROJECT:
Fixed Base Operations Facility at MHK Airport
NOW, in consideration of the mutual promises contained herein, Owner and Design-Builder agree as set forth herein.

Article 1

Scope of Work

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

Article 2

Contract Documents

2.1 The Contract Documents are comprised of the following, which are attached hereto and incorporated by reference:

- **.1** All written modifications, amendments and change orders to this Agreement
- **.2** GMP Proposal **(Attachment A)**
- **.3** This Agreement, including all exhibits (but excluding, if applicable, the GMP Exhibit) and attachments
- **.4** Written Supplementary Conditions, if any, to the General Conditions of Contract
- **.5** General Conditions of Contract between Owner and Design Builder ("General Conditions")
- **.6** Construction Documents prepared and approved in accordance with Article 2 of the General Conditions

.7 Owner's Project Criteria
.8 Technical Specifications
.9 Standard Specifications
.10 Performance Standard Requirements
.11 Statutory Bond
.12 Performance & Maintenance Bond
.**13** Notice of Award
.14 Notice to Proceed
.15 EEO Requirements and Affirmative Action Provisions

Article 3

Interpretation and Intent

3.1 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof.

3.2 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions.

3.3 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 4

Ownership of Work Product

4.1 **Work Product.** All planning, investigations, programs, drawings, specifications and other documents and data produced by Design-Builder for Owner under this Agreement ("Work Product") shall be the sole property, including property interests therein and copyrights thereto, of the Owner upon the Owner's payment for the Work Product.

4.2 **Owner's Use of Work Product.** Owner may use the Work Product, at its sole risk without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design consultants of any tier.

Article 5

Contract Time

5.1 Date of Commencement. The Work shall commence within seven (seven (7) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

5.2.1 Substantial Completion of the entire Work shall be achieved no later than **June 19, 2016.**

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved as per the schedule developed as part of the GMP Proposal in Phase I.

5.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable, but no later than thirty (30) days after Substantial Completion, unless approved in writing by the Owner.

5.2.4 All of the dates set forth in this Article 5 ("Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions.

5.3 Time is of the Essence. Time is an essential element of the Contract Documents, and it is therefore important that the work be pressed vigorously to completion.

5.4 Liquidated Damages. Liquidated damages shall be assessed for failure to complete the work as required and described in the Contract Documents in the timeframe set forth by the Contract Documents in the amount of $500.00 per calendar day. Should the Design-Builder, or in the case of default, the surety, fail to complete the Work within the time specified, or within such extra time as may be allowed in the manner set out in the preceding sections, a deduction of $500.00 will be made for each and every calendar day that such contract remains uncompleted after the time allowed for the completion. The amount set out in this Agreement is hereby agreed upon, not as a penalty, but as liquidated damages for loss to Owner and the public, after the expiration of the time stipulated in the Contract Documents, and will be deducted from any money due the Design Builder under this Agreement, and the Design Builder and its surety shall be liable for any and all liquidated damages. Permitting the Design Builder to continue and finish the Work or any part of it after the expiration of the specified time, or after any extension of the time, shall in no way operate as a waiver on the part of Owner or any or its right under this Agreement. Design Builder shall be liable for liquidated damages chargeable under this Agreement when the Work is being completed by Owner by reason of default of this Agreement unless the delay is due to Owner's negligence. A delay in any part of the Work or in the final completion of the Project caused by Owner or its agents shall not avoid the provisions of this Agreement as to liquidated damages. Any such delay by Owner or its agents will be compensated for only by the extension of contract time.

5.5 Warranty Period. The warranty period shall be through the end of twelve (12) months starting from the date of Substantial Completion. The warranty period does not limit the warranties provided by suppliers of furnished materials or services, or any established legal provision.

Article 6

Contract Price

6.1 Owner shall pay Design-Builder, in accordance with Article 6 of the General Conditions, a contract price ("Contract Price") equal to the Design-Builder's Fees (as defined in Section 6.2 hereof for the purpose of this Article) plus the Cost of Work (as defined in Section 6.3 hereof for the purpose of this Article), subject to any Guaranteed Maximum Price (GMP) established in Section 6.5 hereof and any adjustments made to such GMP in accordance with the General Conditions.

6.2 Design-Builder Fees

6.2.1 Design-Builders Fees shall be comprised of the following:

.1 Design Fee is $ **0.00** fixed lump sum.

.1 Wages and salaries, all direct and indirect expenses, and all overheads and profits associated with providing the architecture, engineering, and design services required for the Project in both the Design Consultants offices, other offices and the Project site for design and during construction, testing and commissioning.

.2 Design-Builder General Conditions cost is a **$ 0.00** fixed lump sum.

.1 Wages or Salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.

.2 Costs less salvage of consumable materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.

.3 Cost of removal of debris and waste from the site, and site sanitary services.

.4 The reasonable costs and expenses incurred in establishing, operating, and demobilizing the site office, including the cost of facsimile transmissions, long distance phone calls, postage and express delivery charges, telephone service, photocopying and similar offices services.

.5 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the site, whether rented from Design-Builder or others, and incurred in the performance of the Work.

.6 All fuel and utility costs incurred by the Design-Builder field office and for management and administration in the performance of the Work.

.7 Sales, use or similar taxes, tariffs or duties incurred in the performance of Work that are not included by Sales Tax Exemption for Project provided by Owner.

.8 General signing for the Project.

.9 Safety equipment, clothing, and materials for the Project.

.3 Overhead & Profit is a **10%** of the Cost of Work

.1 Wages or salaries and expenses of Design-Builder's personnel stationed at Design-Builder's principal or branch offices to manage the company operations and/or support the Project.

.2 Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder.

.3 The cost of Design-Builder's capital used in the performance of the Work.

.4 Legal costs, court costs and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work.

.5 The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process, or product, paying legal judgments against Design-Builder resulting from such suits or claims. If such suits or claims are from items or circumstances specifically required by Owner, the related costs and settlements as approved by Owner will be an adjustment to the Contract Price.

.6 Other overhead and general expenses.

.7 All profit or loss associated with performing the Project.

6.2.2 If Design-Builder Fees are established by the Owner as fixed lump sums as indicated herein, they will not change unless there are changes in the GMP. Design-Builder Fees may be adjusted for changes in the GMP for scope changes in accordance with the provisions of the Contract Documents. In such cases, the Design-Builder design fee, general conditions, and overhead and profit fees will utilize their respective percents indicated in 6.2.1 above of the changed amount, as applicable and, if so, would not be changed.

6.3 Cost of the Work. The term Cost of the Work shall mean costs reasonably incurred by Design-Builder in the direct and proper performance of the Work. The Cost of the Work is limited to the following:

.1 Wages, benefits and employment cost (e.g. drug testing) of direct craft labor employees up to and including foreman of Design-Builder performing the Work at the Site or, with owner's agreement, at location off the site.

.2 Payments properly made by Design-Builder to subcontractors for performance of portions of the Work, including any insurance and bond premiums incurred by subcontractor. This excludes payments to any parties included in the Design Fee.

.3 Costs incurred by Design-Builder in repairing or correcting defective damaged or nonconforming Work, provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such defective, damaged or nonconforming Work are recoverable from insurance, Subcontractors or Design Consultants, design-Builder shall exercise best effort to obtain recovery from the appropriate source and credit Owner if recovery is obtained. This item is not applicable to

and excludes costs associated with lump sum subcontracts.

.4 Cost for construction equipment utilized to move, lift, or otherwise perform direct construction of the Work. This excludes general purpose vehicles or equipment associated with the site office such as a power generator, which should appropriately be covered in the General Conditions Fee.

.5 Costs by Design-Builder for transportation of equipment and materials to site, inspection, testing, handling, and storage, of such materials, equipment and supplies incorporated or reasonably used in completing the Work. This includes special storage facilities as may be required to the extent not included in General Conditions Fee.

.6 Premiums for insurance and bonds required by this Agreement or the performance of the Work.

.7 Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.

.8 Costs incurred in preventing damage, injury or lass in case of an emergency affecting the safety of persons and property.

.9 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.

6.3.1 Competitive pricing with respect to Cost of the Work

Unless otherwise agreed in writing by Owner, all Work packages and material/equipment items estimated in the Cost of the Work at or above specified amount will require that the Design-Builder obtain competitive bids in writing as follows:

At or above $25,000 — at least two (2) competitive bids
At or above $50,000 — at least three (3) competitive bids
At or above $250,000 — at least three competitive sealed bids which shall be opened jointly with the authorized OWNER REPRESENTATIVE or their DESIGNEE.

The Design-Builder shall accept the lowest responsible bid received for each of the packages or items requested for bid, unless the Owner advises otherwise. If Owner directs selection of any other than the lowest responsible bid, the GMP shall be increased by the difference in the price between the lowest responsible bid and the bid selected.

6.4 Non-Reimbursable Costs

Costs that would exceed the GMP as adjusted in accordance with the Contract Documents will not be reimbursed to the Design-Builder.

6.5 The Guaranteed Maximum Price (GMP)

6.5.1 GMP Established Upon Execution of this Agreement for Performance of the Project.

6.5.1.1 Design-Builder guarantees that it shall not exceed the Guarantee Maximum Price (GMP) of _____ ($ _____**)** and agrees

that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents. Documents used as a basis for the GMP shall be identified in an exhibit to the Agreement ("GMP Exhibit").

6.5.1.2 The Cost of Work may, with agreement of Owner, also include a contingency amount of _____ **($ _____)**, which is available for Design-Builder's exclusive use for costs that are typically incurred in performing the Work that are not specifically known at this time and that are not included in performing the Work that are not authorized as a change under the Contract Documents. Such costs may include, but are not limited to, cost estimate variances or unforeseen changes in market pricing, quantity of work increases in the project based on design development that are not changes in scope, subcontractor or supplier nonperformance, and unforeseen site conditions that are the Design-Builder responsibility. Design–Builder shall provide Owner with notice of all anticipated charges against the Cost of Work Contingency. If such Contingency is not fully utilized during the course of the Project, any residual amount is considered as savings in the Cost of Work and shared by Design-Builder and Owner in accordance with the shared savings provisions of this agreement.

6.5.1.3 GMP Composition

.1 The GMP is comprised of the following elements:

- **.1** Design-Builder's Fees as defined in Section 6.2.1 hereof;
- **.2** The Cost of the Work as defined in Section 6.3 hereof; and
- **.3** Any agreed Design–Builder contingency as defined in Section 6.5.1.2

.2 Technical documents, including but not limited to, the Owners Basis of Design, Schematic Design which comprised a list of the drawings and specifications, the RFQ/RFP, including all addenda as used for the basis for the GMP Proposal;

.3 A list of the assumptions and clarifications made by Design-Builder in the preparation of the GMP Proposal, which list is intended to supplement the information contained in the drawings and specifications;

.4 The Substantial Completion Date upon which the proposed GMP is based, and the schedule upon which the Scheduled Substantial Completion date is based;

.5 If applicable, a list of estimate allowances in the Cost of Work and a statement of the basis; overruns of underruns of such allowances do not change the GP unless the Owner changes the basis for such allowances.

.6 If applicable, a schedule of alternate prices;

.7 If applicable, a schedule of unit prices;

.8 If applicable, a statement of Additional Services and related rates for such services

6.5.2 Savings

6.5.2.1 If, at the time of final payment to Design-Builder, the sum of the actual Cost of the Work and Design-Builder's Fees is less than the GMP, as such GMP may have been adjusted over the course of the Project for approved scope changes, the difference ("Savings") shall be shared as follows:

Up to and including a total Savings of _____**($ _____)**, shall be shared Fifty percent (50%) to Design-Builder and Fifty percent (50%) to Owner. All Savings over $50,000 shall be for the total benefit of the Owner.
6.5.2.2 Saving shall be calculated and paid as part of Final Payment under Section 7.3 hereof.

6.5.3 Warranty Guaranteed Maximum Price (GMP): The WGMP is established as _____ _____**($ _____)**, and is applicable, with Owner approval, to performing warranty work and services by the Design-Builder. Amounts not utilized from the WGMP at the completion of the warranty period will be shared fifty percent (50%) to the Owner and fifty percent (50%) to the Design-Builder.

Article 7

Procedure for Payment

7.1 Progress Payments

7.1.1 Design-Builder shall submit to Owner on the first (1st) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions.

7.1.2 Owner shall make payment within **twenty (20) days** after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions.

7.1.3 If Design-Builder's Fee under Section 6.2.1 hereof is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

7.1.4 For amounts invoiced as Cost of the Work, such amounts shall be supported by actual cost documentation such as subcontractor invoices approved by the Design-Builder, Design-Builder craft labor and material cost records, transportation costs associated with delivery of equipment and materials to be permanently installed, and other supporting documentation. Invoiced amounts without valid supporting cost documentation will not be paid and are not subject to claim by the Design-Builder.

7.2 Retainage on Progress Payments

7.2.1 Prior to substantial completion, Owner will retain **five percent (5%)** of each Application for Payment.

7.2.2 Upon Substantial Completion of the Work, pursuant to Section 6.6 of the General Conditions, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work, less an amount equal to one hundred fifty percent (150%) of the reasonable

value of all remaining or incomplete items or Work as noted in the Certificate of Substantial Completion.

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within twenty (20) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7 of the General Conditions.

7.4 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work, which is not fixed lump sum or unit price amounts. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access from time to time, upon reasonable notice, to Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment.

Article 8

Representatives of the Parties and Notices

8.1 Owner's Representatives

8.1.1 Owner designates the individual listed below as its Senior Representative or its representative duly authorized in writing to act for the Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions:

Ron Fehr
City Manager
1101 Poyntz Avenue
Manhattan, KS

8.1.2 Owner designates the individual listed below as its Owner's Representative or its representative duly authorized in writing to act for the Owner's Representative, which individual has the authority and responsibility set forth in Section 3.3 of the General Conditions:

Peter Van Kuren
Airport Director
5500 Skyway Drive Suite 120
Manhattan, KS

8.2 Design-Builder's Representatives

8.2.1 Design-Builder designates the individual listed below as its Senior Representative or its representative duly authorized in writing to act for the Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions:

First M. Last
Title
Prime Contractor – City, ST

8.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, or its representative duly authorized in writing to act for the Owner's Representative, which individual has the authority and responsibility set forth in Section 3.3 of the General Conditions:

First M. Last
Title
Prime Contractor – City, ST

8.2 Notices

8.2.1 All notices to be given with respect to this agreement shall be in writing. Each notice shall be sent to the party to be notified at the address set forth herein or at such other address as either party may from time to time designate in writing. Every notice shall be deemed to have been given at the time it shall be deposited in the United States mails, or reputable overnight delivery system with a certified tracking system, in the manner prescribed herein.

Notices required herein shall be in writing and made by certified mail, return requested to the following addresses:

Design-Builder:	Prime Contractor, Inc. Address City, ST Zip
Owner:	City of Manhattan, Kansas, a municipal corporation 1101 Poyntz Avenue Manhattan, KS 66502

Article 9

Bonds and Insurance

9.1 Insurance. Design-Builder shall purchase and maintain throughout the duration of this Agreement such types of insurance and in such amounts as provided in this Article. Insurance Companies must be rated a minimum "A-" by the Best's Key Rating Guide's latest edition. The requirements of Design-Builder to purchase and maintain insurance shall not in any manner limit or qualify the liability and obligations otherwise assumed by Design-Builder in this Agreement.

.1 **Commercial General Liability ("CGL")** with limits of insurance of not less than $1,000,000 each occurrence and $2,000,000 Annual Aggregate.

.1 If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project.

.2 CGL coverage shall be written on ISO Occurrence form CG00 01 1096 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury.

.3 Owner shall be included as additional insured on the CGL. This insurance for the **additional insured** shall be as **broad as the insurance for the named insured** Design-Builder**.** It shall apply as **Primary and non-contributory insurance before any other insurance or self-insurance**, including any deductible, maintained by, or provided to, the additional insured.

.4 Design-Builder shall maintain CGL coverage for itself and all additional insured's for the duration of the Project and maintain Completed Operations coverage for itself and each additional insured for at least 3 years after completion of work.

.2 **Automobile Liability** with limits of at least $1,000,000 each accident.

.1 Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non owned automobiles.

.2 Owner shall be included as insured on the auto liability policy.

.3 **Professional Liability:** $1,000,000 for each claim and in the aggregate. The policy shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

.4 **Professional Errors and Omissions Insurance:** limit of at least $2,000,000 per occurrence. Shall be endorsed to provide contractual liability coverage.

.5 **Workers Compensation and Employers Liability:** limit of at least $500,000 each accident, $500,000 for bodily injury by accident, and $500,000 each employee for injury by disease.

9.2 **Certificate of Insurance.** Design-Builder shall provide with execution of this Agreement and prior to any Phase II construction activities commencing, a certificate of insurance illustrating compliance with the insurance requirements outlined in this Article. This certificate and the insurance policies required shall contain a provision that coverage afforded under the policies shall not be cancelled or allowed to expire until at least 10 days prior written notice has been given to the City of Manhattan, Kansas, Attn: Cathy Harmes, Risk Manager, 1101 Poyntz Avenue, Manhattan, Kansas, 66502.

9.3 **Bonds and Other Performance Security.** Design-Builder shall provide performance bond and labor and material payment bond or other performance security as set forth in Article 5 of the General Conditions.

Article 10

Other Provisions

10.1 **Dispute Resolution.** The parties agree that disputes relative to the Project shall be first addressed by negotiations between the parties, pursuant to Article 10 of the General Conditions. After such direct negotiations, each party may take steps necessary to protect its

interests, provided that Design-Builder shall proceed with the Work as if no dispute existed, and Owner shall continue to make payment for accepted Work completed by Design-Builder.

10.2 Assignment. Neither Design-Builder nor Owner shall, without the written consent of the other party assign, transfer, or sublet any portion or part of its obligations under the Contract Documents.

10.3 Governing Law. The Contract Documents shall be governed and construed in accordance with the laws of the State of Kansas.

10.4 Severability. If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to applicable laws by any authority having jurisdiction, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provisions or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part was deleted.

10.5 Amendments. This Agreement may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of both parties.

10.6 Compliance with Laws. Design-Builder shall abide by all federal, state or local laws, regulations or ordinances applicable to the Project and the Work, and to furnish any certification required by any federal, state or local agency in connection with the same.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year above written.

OWNER:
CITY OF MANHATTAN

_____

KAREN McCULLOH, MAYOR

ATTEST:

_____

GARY FEES, MMC, CITY CLERK

STATE OF KANSAS, COUNTY OF RILEY, SS:

BE IT REMEMBERED, that on this ____ day of _____, 2015, before me, the undersigned, a notary public in and for the County and State aforesaid, came Karen McCulloh, Mayor for the City of Manhattan, and Gary S. Fees, City Clerk, who are personally known to me to be the same persons who executed the foregoing Agreement, and duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year last above written.

_____
NOTARY PUBLIC

My appointment expires:

NAME OF PRIME, INC.
DESIGN-BUILDER:

_____

BY: First M. Last
Title

STATE OF KANSAS, COUNTY OF _____, SS:

BE IT REMEMBERED, that on this ____ day of _____, 2015, before me, the undersigned, a notary public in and for the County and State aforesaid, came _____who is personally known to me to be the same persons who executed the foregoing Agreement, and duly acknowledged the execution of the same on behalf of the corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year last above written.

_____
NOTARY PUBLIC

My appointment expires: