



AIA[®] Document A101[™] – 2007

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the Fourth day of June in the year Two Thousand Thirteen
(In words, indicate day, month and year.)

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

The City of Lawrence, Kansas
P.O. Box 708
6 East 6th Street
Lawrence, KS 66044-0708
Attn: David L. Corliss, City Manager

and the Contractor:
(Name, legal status, address and other information)

Gene Fritzel Construction Co., Inc.
643 Massachusetts, Ste. 300
Lawrence, KS 66044
Attn: Thomas Fritzel

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

Construction of New City Recreation and Wellness Center
at Rock Chalk Park

The Architect:
(Name, legal status, address and other information)

Gould Evans Associates
706 Massachusetts Street
Lawrence, KS 66044
Ph: 785-842-3800 / fax: 785-842-3830
Attn: John Wilkins

The Quality Assurance Consultant ("QAC") for Owner:
Cpenzlersports LLC
4821 Normandy Park
Lawrence, KS 66049
Attn: Craig Penzler

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201[™]-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

The Owner and Contractor agree as follows.

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User Notes: City of Lawrence - A101 Recreation Center at Rock Chalk Park, 6-4-13

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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Request for Quotation, Bidding Instructions, all Exhibits to Request for Quotation, Addenda issued prior to bid and/or execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 9. In the event Contractor discovers any conflict between or among the Contract Documents, the Contractor shall immediately notify, in writing, the Owner and the Architect and request clarification. To assist in such clarification, the documents will be given precedence in the following order of priority:

- (a) Modifications issued after the execution of this Agreement
- (b) This Agreement
- (c) Supplementary Conditions, if any
- (d) Final Drawings and Specifications
- (e) General Conditions of the Contract for Construction

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

Leadership in Energy and Environmental Design (LEED):

The Owner has set as a goal for the Project that it be a sustainable building, which is LEED certified. Accordingly, Contractor and Architect will cooperate in identifying necessary steps to obtain credits for such rating. The Contractor shall also endeavor to suggest economically viable amendments to the Work, which, if instructed as a Change, may result in an improvement in environmental performance in the carrying out of the Work or of the completed Work. In addition, Contractor shall provide to Owner and Architect all information that Owner reasonably request regarding the environmental impact of the supply and use of materials and goods which the Contractor selects.

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ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement

(Paragraphs deleted)

shall be the date of (a) Owner's delivery of a Notice to Proceed, or (b) the issuance of the appropriate building permits necessary for the performance of the Work, whichever is later. It is understood, however, that the Contractor shall promptly obtain the appropriate building permits necessary for the Project, as provided herein.

If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

N/A

§ 3.2 The Contract Time shall be measured from the date of commencement, as identified in Section 3.1 above.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than

(Paragraphs deleted)

three hundred thirty (330) calendar days from the date of commencement defined above, subject to adjustments of this Contract Time as provided in the Contract Documents.

§ 3.3.1 Liquidated Damages: The Contractor acknowledges that Time is of the Essence and agrees that if the Contractor fails to timely complete the project within the time set forth for Substantial Completion herein, as may be amended pursuant to this Agreement, the Owner will sustain extensive damages and loss as a result of such delay and failure. The Parties agree that the exact amount of such damages and loss is not readily ascertainable at the time of the execution of this Agreement. Therefore, the Owner and the Contractor agree that, in the event the Contractor fails to achieve Substantial Completion of the Work, the Owner shall be entitled to retain or recover from the Contractor, as liquidated damages and not as a penalty, the amount of \$500.00 per day for each day the Project is late beyond the Contract Time for Substantial Completion. The liquidated damage rate will continue to accrue until the actual date of Substantial Completion. The amount of liquidated damages assessed by the Owner shall be deducted from any sums due the Contractor and, in the event that such liquidated damages exceed amounts owed, the Contractor shall promptly pay Owner, upon demand, the amount of such excess.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Ten Million Five Hundred Thousand Dollars and No Cents (\$10,500,000.00) per the executed Bid Form consisting of 4 pages, attached hereto as Exhibit A, and incorporated herein by this reference, subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

N/A

§ 4.3 Unit prices, if any:

(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit (\$0.00)
N/A		

§ 4.4 Allowances included in the Contract Sum, if any:

(Identify allowance and state exclusions, if any, from the allowance price.)

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Item
N/A

Price

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Architect, Owner and City's QAC by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

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

§ 5.1.3 Provided that an Application for Payment is received by the Architect, QAC, and Owner not later than the fifth day of a month, the Owner shall make payment of the certified amount to the Contractor not later than thirty (30) calendar days after receipt of the Application for Payment. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Architect and Owner receive the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 With each Application for Payment, the Contractor shall submit supporting documentation as to costs as may be required by Owner and such information may include payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 5.1.5 Lien Waivers. With each Application for Payment, the Contractor must submit partial lien waivers (conditional), executed by Contractor and its subcontractors and major suppliers (those suppliers providing more than \$10,000 in supplies). Such partial lien waivers shall reflect that each subcontractor/major supplier has received full payment for all prior work/materials that have been the subject of prior Applications for Payment, less retainage.

§ 5.1.6

(Paragraphs deleted)

Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.7

(Paragraphs deleted)

Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.8 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ten percent (10%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™-2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ten percent (10 %);

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- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 5.1.9 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.5 of AIA Document A201-2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007.

§ 5.1.10 Unless otherwise provided by applicable law, retention shall be held at the rate of ten percent (10%) of Contractor's billings, including the Contractor's Fee, insurance and General Condition Cost.

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

§ 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when, as a condition precedent:

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.
- .3 the Contractor has provided to the Owner the following:
 - *Completed Punch List, signed off by Architect and Contractor
 - *Final Conditional Lien Releases (from Subcontractors and Suppliers)
- .4 provided all spare parts, spare keys, copies of operations and maintenance manuals;
- .5 As-built drawings; and,
- .6 Executed Consent of Surety for final payment.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, and satisfaction of the conditions precedent set forth in Section 5.2.1.

ARTICLE 6 DISPUTE RESOLUTION

(Paragraphs deleted)

§ 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- ☐ Arbitration pursuant to Section 15.4 of AIA Document A201-2007
- ☒ Litigation in a court of competent jurisdiction
- ☐ Other (Specify)

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§ 6.3 In the event a lawsuit shall be brought because of the breach of any covenant herein contained on the part of Owner or Contractor, and the breach is subsequently established, the prevailing party, as determined by the judge, shall be entitled to recover all expenses incurred therefor, including reasonable attorneys' fees.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201-2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. *(Insert rate of interest agreed upon, if any.)*

Interest on amounts 30 days past due shall bear interest in accordance with Kansas law.

§ 8.3 The Owner's representative:
(Name, address and other information)

David L. Corliss
City Manager
City of Lawrence, Kansas
P.O. Box 708
6 East 6th Street
Lawrence, KS 66044-0708

and

The Quality Assurance Consultant ("QAC") for Owner:
Cpenzlersports LLC
4821 Normandy Park
Lawrence, KS 66049
Attn: Craig Penzler

§ 8.4 The Contractor's representative:
(Name, address and other information)

Thomas Fritzel
Gene Fritzel Construction Co., Inc.
643 Massachusetts, Ste. 300
Lawrence, KS 66044

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

§ 8.6.1 Relationship of the Parties

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The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and QAC and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

§ 8.6.2 The Contractor represents that it is authorized to do business in the state of the location of the Project and is licensed by all governmental and public agencies having jurisdiction over the Work or the Project.

§ 8.6.3 **Kansas Act Against Discrimination:** The contractor agrees to comply with and require its subcontractors to comply with Kansas Act Against Discrimination. See K.S.A. 44-1030. The Contractor agrees that:

(1) The Contractor shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin or ancestry;

(2) in all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the commission;

(3) if the Contractor fails to comply with the manner in which the Contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency;

(4) if the Contractor is found guilty of a violation of the Kansas act against discrimination under a decision or order of the commission which has become final, the Contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency; and

(5) the Contractor shall include the provisions of subsections (a)(1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

(b) The Kansas human rights commission shall not be prevented hereby from requiring reports of contractors found to be not in compliance with the Kansas act against discrimination.

(c) The provisions of this section shall not apply to a contract entered into by a contractor:

(1) Who employs fewer than four employees during the term of such contract; or

(2) whose contracts with the governmental entity letting such contract cumulatively total \$5,000 or less during the fiscal year of such governmental entity.

§ 8.6.4 **Compliance with Laws:** In addition to the Kansas Act Against Discrimination set forth above, Contractor agrees to: a) comply with Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.)(ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the Contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration. Parties to this contract understand that the provisions of this section (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four

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employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

(Table deleted)

All Appendix's as identified in the Project Manual Table of Contents, dated May 10, 2013, Consisting of 6 pages and attached hereto as Exhibit B and incorporated herein by this reference.

§ 9.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

See Project Manual, Issue for Bid and Construction, dated April 16, 2013; and Exhibit B.

(Table deleted)

§ 9.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

See The Drawings index attached hereto as Exhibit C and incorporated herein by this reference.

(Row deleted)

§ 9.1.6 The Addenda, if any:

Number	Date	Pages
Addendum #1	May 8, 2013	14 page narrative and all corresponding drawings and specifications
Addendum #2	May 10, 2013	2 page narrative and all corresponding drawings and specifications

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

- 1 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

N/A

- 2 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Exhibits A, B, C

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ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

(Table deleted)

§ 10.1 The Contractor shall purchase and maintain such insurance acceptable to Owner as will protect the Contractor from claims which may arise out of or result from the Contractor's operations under this Agreement at all times during the period in which this Agreement is in force and effect. The Contractor shall provide and maintain insurance of the type and limits set forth below. Such insurance shall be in a form and issuing companies acceptable to Owner. The Contractor shall purchase and maintain the following insurance coverage and provide to Owner Certificates of Insurance reflecting the following insurance coverage, together with copies of such policies.

(a) **Worker's Compensation:** Insurance sufficient to discharge its obligations under all applicable worker's compensation laws in the state where the Project is located:

Limit	Statutory
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(b) **Employer's Liability:** Policy endorsed to include the following endorsements: Voluntary Compensation, Borrowed Servant. Insurance to be provided with the minimum limits of:

Bodily Injury by Accident	\$1,000,000 Each Accident
Bodily Injury by Disease	\$1,000,000 Policy Limit
Bodily Injury by Disease	\$1,000,000 Each Employee

(c) **Comprehensive Automobile Liability Insurance:** Coverage to include contractual liability insurance for the indemnities set forth in this Agreement covering all owned, non-owned and hired automobiles used in connection with the services or other work hereunder:

Liability	\$1,000,000 Combined Single Limit
Hired and Non-Hired Auto	\$1,000,000 Combined Single Limit

(d) **General Liability:** Insurance is to be on an occurrence from insuring personal injury, bodily injury, mental anguish and property damage against the hazards of (1) construction operation; (2) Subcontractors and independent Subcontractors; (3) products and completed operations (with completed operations to remain in force for two (2) years following Project completion; (4) underground explosion and collapse; and (5) contractual liability insuring the indemnities set forth in the Agreement. General Aggregate limits to apply on a per project/per location basis.

General Aggregate	\$2,000,000
Products/Completed Ops Aggregate	\$2,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage	\$ 100,000
Medical Expense	\$ 5,000
Employer's Liability	\$1,000,000

(e) **Excess Liability:** Coverage to be provided on an Umbrella form. Minimum limits of liability.

Each Occurrence	\$10,000,000
Aggregate	\$10,000,000

With respect to the above coverages, the Owner, QAC, Architect, and their respective assigns, subsidiaries and affiliates shall be listed as Additional Insureds. To the extent allowed by law, such policies must contain a waiver of any right of subrogation of the insureds thereunder against Owner and all its assigns, affiliates, employers, employees, insurers and underwriters. With respect to the above coverage, the coverages shall be provided on an occurrence basis.

All policies of insurance provided pursuant to this Agreement shall be written as primary policies, and any insurance maintained by Owner or Owner's Agent is non-contributing and not in excess of the primary coverage

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The required coverages referred to and set forth shall in no way affect, nor are they intended as a limitation of Contractor's liability with respect to its performance of the Work.

§ 10.2 Subcontractor Insurance: Contractor shall cause all Subcontractors to provide identical types of coverage as required herein, unless a deviation from the following is approved by Owner. The limits for Excess Liability coverage for the Subcontractors shall be a minimum of:

Each Occurrence	\$1,000,000
Aggregate	\$1,000,000

The Subcontractors shall purchase, maintain and provide to Contractor and Owner Certificates of Insurance reflecting that such insurance is in effect and will not be canceled, fail to be renewed, reduced or changed without thirty (30) days' written notice to Contractor and Owner.

§10.3 Bonds The Contractor shall provide Performance and Payment Bonds in accordance with Article 11.4 of the General Conditions. The Bonds shall be in a form provided by Owner and shall be tendered by a surety authorized by the State of Kansas.

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner..

THE CITY OF LAWRENCE, KANSAS



OWNER (Signature)

David L. Corliss, City Manager
(Printed name and title)

GENE FRITZEL CONSTRUCTION CO., INC.



CONTRACTOR (Signature)

(Printed name and title)

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