



City of Grand Island

Tuesday, July 12, 2005

Council Session

Item F3

#8986 - Consideration of Lease-Purchase Agreement with the Grand Island Facilities Corporation and Authorizing the Execution of Documents for the Library Expansion

Staff Contact: Doug Walker

Council Agenda Memo

From: Douglas R. Walker, City Attorney

Meeting: July 12, 2005

Subject: Consideration of Lease Purchase Agreement with the Grand Island Facilities Corporation and Authorizing the Execution of Documents for the Library Expansion

Item #'s: F-3

Presenter(s): Douglas R. Walker, City Attorney

Background

The City Council has established the Grand Island Facilities Corporation, which is a non-profit entity to assist the city in issuing bonds to enable the construction of municipal facilities. The Grand Island Facilities Corporation has entered into negotiations with Mid Plains Construction for a design/build contract to construct the addition on the Grand Island city library and has concluded an agreement for the design/build services for the new library addition. As part of the process of proceeding with the library project with the Facilities Corporation, a lease purchase agreement is needed between the City of Grand Island and the Facilities Corporation which will obligate the city to make lease payments for the period of the bonded indebtedness so that the expansion of the library can be built.

Discussion

The proposed ordinance would authorize the City of Grand Island to enter into a lease purchase agreement with the Grand Island Facilities Corporation which would enable it to proceed with the plans for constructing the addition to the city library and to enter into other documents necessary to proceed with the library project. Prior to the issuance of any bonds, there would be an addendum to this Lease Purchase Agreement which would set forth the specific amount of the payments for the bonded indebtedness and at that time there would also be a final trust security agreement as well. If the Council approves the Lease Purchase Agreement this will enable the city to proceed with securing a tax exempt status for the project which would save a substantial amount of money in sales taxes on the materials going into the project. Also included in the Council packet is a copy of the Design/Build Contract between the Facilities Corporation and Mid Plains Construction and a copy of the Lease Purchase Agreement that has been prepared by Richard

Pedersen, who is the city's bond counsel. Mr. Pedersen has also prepared a preliminary Trust Indenture Agreement which is available in the City Clerk's Office for inspection. This agreement was not included in your Council packet because it is voluminous and because the final amounts will not be included in the agreement until the city knows the final terms of the Bond Issue for the Library Project.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve the ordinance which would authorize the execution and delivery of a Lease Purchase Agreement with the Grand Island Facilities Corporation and other related documents.
2. Not approve the ordinance.
3. Postpone the issue to future date.
4. Take no action on the issue.

Recommendation

City Administration recommends that the Council approve the ordinance that would authorize the execution and delivery of a Lease Purchase Agreement with the Grand Island Facilities Corporation and other related documents.

Sample Motion

Motion to suspend the rules for three separate readings and to approve the ordinance.

(This instrument constitutes a Construction Security Agreement under the Nebraska Construction Lien Act, Sections 52-129 to 52-159, R.R.S. Neb. 2004, and secures an obligation of the City of Grand Island, Nebraska, as lessee, incurred for the purpose of making an improvement of the real estate described in this instrument. This instrument is recorded to perfect a security interest which is a construction security interest.)

LEASE-PURCHASE AGREEMENT

THIS LEASE-PURCHASE AGREEMENT (this "Agreement"), made and entered into as of the _____ day of July, 2005, by and between GRAND ISLAND FACILITIES CORPORATION, a nonprofit corporation duly organized and existing under the laws of the State of Nebraska (the "Lessor"), and the CITY OF GRAND ISLAND, NEBRASKA (the "Lessee" or the "City"),

WITNESSETH: That:

Lessee is a city of the first class of the State of Nebraska with full, lawful power and authority to enter into this Agreement acting by and through its Mayor and Council (the "Governing Body") pursuant to the authority granted by Section 19-2421, R.R.S. Neb. 1997, as amended;

Lessee is in need of a new library addition and related improvements, fixtures, furniture and equipment to serve its citizens (the "Project");

Lessor has been organized and exists for the purpose of acquiring and improving real and personal property for lease to the City in connection with its general activities;

Lessor and Lessee have agreed upon the terms of this Agreement to provide such building and facilities and said agreement should be reduced to writing;

The following words and phrases used in this Agreement to have the following meaning, unless the context or use indicates another or different meaning or intent:

"Act" shall mean Section 19-2421, R.R.S. Neb. 1997, as amended.

"Addendum" shall mean that addendum to this Agreement (whether one or more) executed and delivered by the parties setting further terms, including but not limited to the payment amounts and due dates for basic rental payments (the "Payments" as defined below in this Agreement) and setting the termination date in accordance with the terms of this Agreement.

“Bond Fund” shall mean the Fund created pursuant to Section 5.02 of Article V of the Indenture into which the Payments due under this Agreement shall be deposited.

“Bond Purchase Agreement” shall mean that Bond Purchase Agreement to be entered into by and between the Underwriter and the Corporation and approved by the City providing for the sale of the Building Bonds to the Underwriter upon the terms and conditions set forth therein.

“Building Bonds” or “Bonds” shall mean the Building Bonds (Library Project), Series 2005, to be issued by Lessor pursuant to the Indenture to provide funds for the Project.

“Construction Fund” shall mean the fund created pursuant to Section 6.01 of Article VI of the Indenture to be maintained by the Trustee and into which the net principal proceeds of the sale of the Building Bonds shall be deposited to be disbursed for payments due for costs related to the Project.

“Contractor” shall mean that contractor or contractors designated by the Lessor and approved by the City to effect the construction and acquisition of the Project.

“Costs of Issuance Fund” shall mean the fund created pursuant to Section 6.05 of Article VI of the Indenture to be maintained by the Trustee and into which certain of the principal proceeds of the sale of the Building Bonds shall be deposited to be disbursed for payments related to the expenses for issuance of the Building Bonds.

“Indenture” shall mean that Trust Indenture and Security Agreement to be entered into by and between Lessor and the Trustee governing the Building Bonds.

“Project” shall mean the Site and the library addition and related improvements, fixtures, furniture and equipment to be located on the Site. Said building and related improvements, fixtures, furniture and equipment are described in greater detail on Exhibit A hereto attached, which is by such reference incorporated herein.

“Site” shall mean the real estate located in the City of Grand Island, Hall County, Nebraska, more particularly described on Exhibit “A” attached hereto.

“Trustee” shall mean that state or national bank or trust company designated by the Lessor and approved by the City to serve as trustee under the Indenture and any successor or successors as such trustee under the Indenture.

“Underwriter” shall mean Ameritas Investment Corp. (or any other firm of municipal bond underwriters designated by the Lessor and approved by the City) -

the purchaser of the Building Bonds under the terms of the Bond Purchase Agreement.

WHEREFORE, IN CONSIDERATION of the premises and the mutual covenants and agreements herein set forth, Lessor and Lessee do hereby covenant and agree as follows:

ARTICLE I
GRANTING OF EASEMENT AND GRANTING OF LEASEHOLD

Section 1.01(a) Lessee hereby covenants and warrants that it has full right, title and authority to grant the license and easement rights granted in this Section 1.01(a) and further covenants and warrants that it will defend such rights in Lessor against the claims of all persons whomsoever. Lessee (as easement grantor) hereby grants to Lessor (in the separate capacity of easement grantee) a license and easement with respect to the tracts of real estate located in the City of Grand Island, Hall County, Nebraska, which are described as the Site for the Project on Exhibit A hereto attached and incorporated by reference herein, for the location, construction, acquisition, installation, operation and maintenance of improvements, structures, goods which are to become fixtures, fixtures and equipment constituting the Project, being all of property constituting the Project, is to be leased and sold by Lessor to the City pursuant to this Agreement. Such license and easement shall include full access and use by Lessor (as grantee and its licensees and invitees and shall permit all actions necessary or incidental to the location, construction, acquisition, installation, operation and maintenance of the Project. The Project as financed from the proceeds of Lessor's Building Bonds is hereby acknowledged to be the separate property of the Lessor, subject to the rights provided for Lessee under the terms of this Agreement. This license and easement shall continue until August 15, 2025 unless all of the Building Bonds and any refunding bonds issued by Lessor to refund the Building Bonds (whether one such series or more) have been paid in full.

(b) Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, upon and subject to the terms and conditions hereinafter set forth, the Project, as and to the extent constructed and acquired under the terms of this Agreement. Lessor shall lease the Project to Lessee for a term beginning on date of issuance of the Building Bonds and ending on August 15, 2025 (subject to modification to any lesser term as may be provided for in the Addendum). Until payment in full of all rental obligations hereunder the Project shall remain the property of the Lessor and shall not become a part of the real estate described on Exhibit A hereto attached. Upon the final payment of all rental obligations under this Agreement the Project shall be conveyed to Lessee in accordance with Article XVIII hereof.

Section 1.02. Lessor and Lessee agree that, as and to the extent that this Agreement may be regarded as relating to goods, goods which may become fixtures, fixtures, furniture or equipment, this Agreement as assigned to the Trustee shall constitute a "finance lease" within the meaning of such term as used in Article 2A of the Nebraska Uniform Commercial Code. In such connection Lessee acknowledges (a) that neither Lessor nor the Trustee has selected, manufactured or supplied any goods constituting the Project, (b) that Lessor is acquiring the Project in connection with this Agreement and (c) that Lessee has received a copy of Lessor's contract with the contractor constructing the Project prior to the execution of this Agreement. Lessee further acknowledges that Lessee has been informed in writing before the execution of this Agreement that Lessee is entitled

under said Article 2A to the promises and warranties provided by such contractor and any other person supplying the Project or items incorporated therein and that Lessee may communicate with any such person and obtain a complete and accurate statement of any such promises and warranties, including any disclaimers and limitations of them or of remedies.

Section 1.03. Lessee acknowledges that it has supplied Lessor with the specifications for the Project and hereby holds Lessor and the Trustee harmless against any claim by way of infringement or the like that arises out of compliance with such specifications.

ARTICLE II RENT

Section 2.01. Lessee shall pay to Lessor basic rent during the term hereof in the amounts and on or prior to the dates set forth in the Addendum. Such basic lease-purchase payments are intended to be equal to the payments of principal and interest on the Building Bonds and are referred to herein as the "Payments".

Section 2.02. Lessee shall pay as additional rent:

- (a) the fees and expenses of the Trustee under the Indenture, at least semiannually or annually as statements are rendered by said Trustee and furnished to Lessee,
- (b) any expenses incurred in making of any audit of Lessor requested by Lessee,
- (c) an amount equal to all taxes and fees required to be paid by Lessor to the State of Nebraska or any other government, to keep the Lessor a corporation in good standing during the term of this Agreement,
- (d) all impositions (as defined in Article VI hereof) costs, expenses, liabilities, obligations and other payments of whatever nature which Lessee has agreed to pay or assume under the provisions of this Agreement,
- (e) any and all taxes which may be incurred by Lessor by virtue of Lessor's ownership interest in the Project and any and all costs incurred by Lessor in preserving its ownership interest in the Project, including but not limited to any legal expenses incurred in preserving Lessor's ownership interest free and clear from all encumbrances other than those created pursuant to this Agreement or the Indenture, and
- (f) any amounts owing for costs of the Project in excess of monies in the Construction Fund as provided in Article IV hereof.

If at any time any amount paid by Lessee as additional rent is, or becomes, in excess of the amount required for the purpose for which it was paid, such excess amount, if held by Lessor, shall be refunded to Lessee.

Section 2.03. All of the Payments and additional rent shall be made by Lessee on or before the date the same shall become due, without notice or demand, and without abatement or setoff, irrespective of whether the Lessee shall have taken possession of any part of the Project, the taking by eminent domain of title to all or part of the Project, or the right of temporary use of all or part thereof, or any loss or damage to the Project, from any cause whatsoever, none of which shall relieve Lessee of the liability for payment of the Payments and additional rent as herein provided, except as insurance or condemnation proceeds may be applied on the Payments as herein specifically permitted.

Section 2.04. Lessee hereby acknowledges receipt of notice that this Agreement and the Payments due hereunder have been or are to be assigned to the Trustee pursuant to the Indenture. The Payments shall be made to Lessor by Lessee remitting the same directly to the Trustee, for the account of the Lessor, and Lessor shall cause the Trustee to deposit all such payments in the trust account provided for in the Indenture and designated as the "Bond Fund," to be used and applied by the Trustee as provided in the Indenture. Payments of additional rent specified in Section 2.02 hereof shall be made to Lessor by Lessee remitting the same directly to the respective payees for the account of the Lessor.

Section 2.05. Lessee may at any time prepay all or any part of the Payments provided for hereunder. Lessee shall receive such credits against the Payments as are provided for in the Indenture. In connection with any such prepayment, Lessee shall have the right to direct the redemption of bonds outstanding under the Indenture.

ARTICLE III ISSUANCE AND SALE OF BONDS

Section 3.01. Lessor shall issue and sell, as and when determined by mutual agreement of Lessor and Lessee, after the execution and delivery of this Agreement, its Building Bonds in the aggregate principal amount of not to exceed Seven Million Dollars (\$7,000,000) which shall be issued under the terms of the Indenture and sold to the purchaser thereof for the price determined in the Bond Purchase Agreement plus accrued interest, if any, to date of delivery and payment. Such issuance terms and sale terms shall be approved by the terms of the Addendum.

Section 3.02. Upon receipt of the proceeds of the sale of the Bonds, Lessor shall promptly pay such proceeds, including the full amount of any accrued interest, if any, received upon such sale, to the Trustee to be held and applied as provided in the Indenture, including the payment of costs of the Project and issuance expenses as provided in Article IV hereof.

Section 3.03. Lessor shall cause the Trustee to invest and reinvest the money from time to time in the Bond Fund, the Construction Fund and the Costs of Issuance Fund in the manner and to the extent and with such application of the income therefrom as provided in the Indenture.

Section 3.04. Additional bonds may not be issued by Lessor with respect to this Agreement or the Project as set forth in the Indenture.

ARTICLE IV
ACQUISITION AND CONSTRUCTION OF PROJECT

Section 4.01. Lessor hereby agrees to acquire and construct the Project in the manner set forth in Section 4.03 of this Article IV. The net proceeds of the Bonds, after certain deposits provided for in Article V of the Indenture, including deposits to the Costs of Issuance Fund, are to be deposited in the Construction Fund under the terms of the Indenture. The Project shall be constructed in accordance with plans and specifications, as approved by the Lessee. Lessor is in the process of awarding a contract to the Contractor. Lessee shall, upon the making of such award, approve such award of contract, acting through its Library Board, and Lessor agrees to provide for the construction of the Project in accordance with the terms of said contract. Lessor's obligation to make payment of costs for the Project shall be limited to the funds in the Construction Fund held by Trustee, which fund contains only certain funds from the proceeds of the sale of the Building Bonds issued by Lessor and interest on such monies while invested in the Construction Fund. Lessee shall be required to make any payments to contractors, suppliers and workers in excess of such funds out of its own monies, as additional rent.

Section 4.02. Lessor and Lessee hereby acknowledge and agree to the appointment of the City's Library Director and the City's Finance Director, respectively, as project manager and alternate project manager pursuant to the Indenture. Requisition for payments to contractors and suppliers, or for reimbursement to the Lessor or Lessee for costs incurred, signed by the project manager or alternate project manager; and such requisitions shall be submitted to the Trustee for payment as provided in Article VI of the Indenture.

Section 4.03 Based upon consultation with the City's Library Board, Lessor agrees to provide for the planning, design, construction and acquisition of the Project. The Project shall be constructed in accordance with the plans and specifications prepared by the project architect on behalf of the Lessor as approved by the City's Library Board. Lessor shall take bids for construction of the Project in the discretion of the Lessor, subject to review and approval by the City's Library Board, and award the contract to the project contractor. Lessor shall administer and provide for construction of the Project in accordance with the terms of said contract, subject to consultation and advice provided by the City's Library Board. Lessor shall make payment for costs of the Project from the funds in the Construction Fund held by the Trustee, which fund shall contain the proceeds from the sale of Building Bonds issued by Lessor and interest on such funds while invested in the Construction Fund. The City shall make any payments to suppliers and contractors, in excess of such funds in the Construction Fund, as additional rent.

The City shall be financially responsible to Lessor for the costs of the Project under any contracts awarded by Lessor for the planning, design, construction and acquisition of the Project and entered into by Lessor with payment for such costs of the Project to be made from the funds in the Construction Fund held by the Trustee, which fund shall contain the proceeds from the sale of Building Bonds issued by Lessor and interest on such funds while invested in the Construction Fund or otherwise by the City as provided hereinabove. The City shall take all action to appoint Lessor or any project contractor, subcontractor, supplier or other designee of Lessor as purchasing agent; it being the intention of the City and Lessor that the City shall make such appointment of purchasing agents in regard to the construction and acquisition of the Project for the purposes of altering the status of Lessor or any project contractor, subcontractor, supplier or other

designee of Lessor as the ultimate consumer of property which is physically annexed to or becomes a part of the Project and which belongs to the City (by full beneficial ownership rights) under the terms and conditions of this Agreement as provided in Section 77-2704.15(2), R.R.S. Neb. 2003, as amended. To the extent that property is annexed to the Project without the City first issuing a purchasing agent authorization within the meaning of Section 77-2704.15(3), R.R.S. Neb. 2003, as amended, the City shall apply for a refund of sales and use tax paid on property physically annexed to the Project and any such refund shall be paid to the Trustee for deposit to the Construction Fund and applied to pay costs of the Project. The City and Lessor shall make any further amendments to this Agreement required by the Nebraska Department of Revenue so that purchases in connection with any contracts awarded by the Lessor for the planning, design, construction and acquisition of the Project and entered into by Lessor are considered to be purchases by the City under Section 77-2704.15, R.R.S. Neb. 2003, as amended, and the City may effectively appoint Lessor or any project contractor, subcontractor, supplier or other designee of Lessor as purchasing agent for the purposes of altering the status of Lessor or any project contractor, subcontractor, supplier or other designee of Lessor as the ultimate consumer of property which is physically annexed to the Project and which belongs to the City under the terms and conditions of this Agreement as provided in Section 77-2704.15(2), R.R.S. Neb. 2003, as amended.

Section 4.04. Any dispute with any supplier concerning the Project or interpretation of any contract related to the Project shall be adjusted and settled by Lessee; and Lessee shall be liable and make payment to such contractor or supplier and all other persons for any judgment, claim or liability in connection with said improvements in excess of the monies in the Construction Fund held by the Trustee.

ARTICLE V COVENANTS OF LESSEE

Section 5.01. Lessee covenants that it is a duly organized existing city of the first class of the State of Nebraska with full and lawful power and authority to enter into this Agreement pursuant to the Act and that it has taken all actions necessary to validly enter into this Agreement.

Section 5.02. Lessee covenants that the Payments and additional rent payable under this Agreement do not exceed any limitation imposed by law. Until the Building Bonds and interest thereon are fully paid, Lessee covenants and agrees to make and continue to make for so long as permitted by law an annual levy on the taxable property within its geographical area pursuant to Section 16-702, R.R.S. Neb. 1997, as amended which will be sufficient, along with any other funds available for the purpose, specifically including amounts collected from the additional sales tax approved by the voters of the City on May 11, 2004, to enable Lessee to make all of the Payments and pay additional rent as and when the same become due, and to take all action required to provide funds to make the Payments and pay additional rent as herein required.

Section 5.03. Lessee covenants and agrees that throughout the term of this Agreement it will observe all budget, tax and spending limitations now or hereafter imposed by law in such a manner that a sufficient portion of its tax levy or other monies shall be lawfully available

to make all the Payments and pay additional rent due under this Agreement. Lessee agrees that commencing with its budget for the next-ensuing fiscal year it will include amounts sufficient to make the Payments as the same fall due in its annual budget and appropriations.

Section 5.04. Lessee covenants and agrees that it shall neither take any action nor omit to take such action which such action or omission would have the affect of causing interest on the Building Bonds to be no longer excludable from gross income under the Internal Revenue Code of 1986, as amended.

Section 5.05. In accordance with the requirements of Rule 15c2-12 (the "Rule") promulgated by the Securities and Exchange Commission (the "Commission"), the City hereby agrees that it will provide the following continuing disclosure information:

(a) to each nationally recognized municipal securities information repository (a "NRMSIR") and to the Underwriter, the City shall provide annual financial and operating information generally consistent with the information set forth under the heading "FINANCIAL STATEMENT" in the Official Statement for the Building Bonds and its audited financial statements; such information is expected to be available not later than seven months after the end of each fiscal year for the City. Audited financial information shall be provided for governmental and fiduciary fund types based on the modified accrual basis of accounting and as to proprietary fund types on an accrual basis in accordance with generally accepted accounting principles;

(b) in a timely manner to each NRMSIR or to the Municipal Securities Rulemaking Board ("MSRB"), notice of the occurrence of any of the following events with respect to the Building Bonds, if in the judgment of the City, such event is material:

- (1) principal and interest payment delinquencies,
- (2) non-payment related defaults,
- (3) unscheduled draws on debt service reserves reflecting financial difficulties,
- (4) unscheduled draws on credit enhancements reflecting financial difficulties,
- (5) substitution of credit or liquidity providers, or their failure to perform,
- (6) adverse tax opinions or events affecting the tax-exempt status of the Building Bonds,
- (7) modifications to rights of the holders of the Building Bonds,

- (8) bond calls,
- (9) defeasances,
- (10) release, substitution, or sale of property securing repayment of the Building Bonds, and
- (11) rating changes.

The City has not undertaken to provide notice of the occurrence of any other material event, except the events listed above.

- (c) in a timely manner to each NRMSIR or to the MSRB notice of any failure on the part of the City to provide required annual financial information not later than seven months from the close of the City's fiscal year.

The City reserves the right to modify from time to time the specific types of information provided or the format of the presentation of such information, to the extent necessary or appropriate in the judgment of the City, consistent with the Rule. The City hereby agrees that such covenants are for the benefit of the registered owners of the Building Bonds (including Beneficial Owners, as defined in the Indenture) and that such covenants may be enforced by any registered owner or Beneficial Owner, provided that any such right to enforcement shall be limited to specific enforcement of such undertaking and any failure shall not constitute an event of default under the Indenture or this Agreement. The continuing disclosure obligations of the City under this Section 5.05 shall cease when none of the Building Bonds remain outstanding.

ARTICLE VI IMPOSITIONS

Lessee shall pay all taxes and assessments on or with respect to the Project of any sort whatsoever which become due or payable or are assessed during the term of this Agreement, including all water and sewer charges, assessments and other governmental charges and impositions whatsoever, foreseen and unforeseen, against the Project (all of which are herein called "impositions"). Lessor shall promptly forward to Lessee any notice, bill or other advice received by Lessor concerning any impositions.

ARTICLE VII REPAIRS, MAINTENANCE AND ALTERATIONS

Section 7.01. Lessee shall keep the Project and all parts thereof in good serviceable condition and repair during the term of this Agreement.

Section 7.02. Lessee shall have the right, at its own expense, to make additions, alterations and changes in or to the Project. All alterations, additions and improvements to the Project shall be deemed a part of the Project subject to this Agreement, and, upon final payment of

all rental obligations under this Agreement, shall become the property of Lessee pursuant to the provisions of Article XVIII of this Agreement.

Section 7.03. It is the intention of the parties that Lessor shall have no obligation for any cost in connection with the Project beyond the monies in the Construction Fund as described in Article IV hereof and that the Payments shall be net to the Lessor and this Agreement shall be construed accordingly.

Section 7.04. LESSEE HEREBY EXPRESSLY AGREES THAT LESSOR AND THE TRUSTEE HAVE MADE NO WARRANTIES WITH RESPECT TO THE PROJECT OR AS TO ITS SUITABILITY OR USEFULNESS FOR LESSEE'S PURPOSES AND LESSEE HEREBY EXPRESSLY AGREES THAT NEITHER THE LESSOR NOR THE TRUSTEE SHALL BE LIABLE TO IT FOR ANY DEFECT IN THE PROJECT. Lessor hereby agrees that Lessee shall be entitled to all warranties, express and implied, made by any other person with respect to the Project and that Lessee shall have full power to pursue any remedies which Lessor may have against any vendor, supplier or other person or entity because of any defect or breach of warranty relating to the Project in the name of Lessor, as well as in Lessee's own name as the ultimate user of the Project. Lessee hereby expressly acknowledges that by this Agreement Lessee has been given exclusive control of the Project and that it shall be liable for and shall save Lessor and the Trustee harmless against any and all expense or liability for any claim based upon any use of the Project which is determined upon by Lessee. Lessee shall not assign its rights under this Agreement or sublet the Project or any part thereof during the term of this Agreement.

ARTICLE VIII INSURANCE

Section 8.01. Throughout the term of this Agreement, Lessee shall, at Lessee's expense, keep the Project insured or cause the Project to be kept insured against loss or damage by fire and extended coverage perils in an amount not less than the full replacement value thereof with such insurance to be under policies issued by responsible insurers authorized to do business in the State of Nebraska; provided, however, that such insurance policy or policies may provide that no payment shall be made thereon for any claims thereunder of less than \$50,000. Such insurance policies shall name Lessor, the Trustee and Lessee as insureds as their respective interests may appear, but so long as the Lessee is not in default hereunder, any loss shall be adjusted by and be paid to the Lessee. In addition, Lessee shall maintain general liability insurance upon the Project in amounts not less than \$1,000,000 per occurrence, \$2,000,000 annual aggregate, for bodily injury, and not less than \$100,000 per occurrence, \$500,000 annual aggregate, for property damage.

Section 8.02. Upon occurrence of any damage covered by the insurance required by Section 8.01 hereof, the proceeds of such insurance shall be used to repair and replace the Project. Lessee agrees that if the available proceeds are insufficient to fully repair and replace the Project to the condition existing prior to the loss, such insufficiency shall not constitute any default of Lessor and Lessor shall have no responsibility to provide funds for such purpose beyond the funds available from such insurance, and further that such insufficiency shall not relieve Lessee of the responsibility for making the Payments and paying additional rent provided hereunder.

ARTICLE IX

INSPECTION OF PROJECT BY LESSOR

Lessee shall permit Lessor or the Trustee to inspect the Project during usual business hours for purposes of inspections which may be reasonably necessary for the protection of the Lessor's interest in the Project. Lessee shall permit Lessor or an authorized representative of Lessor or the Trustee to enter the Project at any time for the performance of any work upon the Project made necessary by reason of Lessee's default under any of the provisions of this Agreement. Lessor or the Trustee may, during the course of any work which either is authorized to perform on the Project keep and store on the Project all necessary materials, supplies and equipment, and shall not be liable for reasonable inconvenience, annoyance, disturbance, loss of use or other damage to Lessee suffered by reason of the performance of such work or the storage of materials, supplies and equipment.

ARTICLE X USE OF PROJECT

Lessor and Lessee agree that Lessee may use the Project for any governmental purpose permitted by law as may be desired by Lessee. Lessee shall, during the term of this Agreement, promptly comply with all valid statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the Project or any adjoining public way, as to the manner of use or the condition of the Project or any adjoining public way, including all laws relating to the protection of the environment. In no event shall the Project be used for the transportation, storage, processing or holding of any hazardous waste or substance, except for de minimis quantities maintained and used in accordance with all applicable environmental laws. Lessee covenants that the Project which is the subject of this Agreement is for the exclusive use of Lessee.

ARTICLE XI INDEMNIFICATION BY LESSEE

Lessee shall indemnify and save Lessor or any of its officers and directors and the Trustee harmless against and from all claims by or on behalf of any person, firm or corporation arising from the Lessor's acquisition and ownership of the Project, including but not limited to:

- (a) any condition of the Project;
- (b) any breach or default on the part of Lessee in the performance of any of its obligations under this Agreement;
- (c) any act or negligence of Lessee or of its officers, agents, contractors, servants, employees or licensees; or
- (d) any accident, injury or death of any person or damage to any property occurring in or as a result of any condition of the Project.

Lessee shall indemnify and save Lessor or any of its officers and directors and the Trustee harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid; or in connection with any action or proceeding brought thereon, and upon notice from Lessor or any of its officers and directors or the Trustee, Lessee shall defend the Lessor or any of its officers and directors or the Trustee in any such action or proceeding. In addition to the foregoing and notwithstanding anything contained in this Agreement which might be construed to the contrary, Lessee covenants and agrees, to the fullest extent permitted by law, to indemnify and save Lessor or any of its officers and directors and the Trustee harmless with respect to any pecuniary liability (other than Lessor's obligation to make payment for costs of the Project from the Construction Fund) to which it or they might become subject as a consequence of the performance by Lessor or the Trustee or the Lessee of any act in compliance with the terms and provisions herein contained.

ARTICLE XII LESSOR'S PERFORMANCE OF LESSEE'S OBLIGATIONS

If Lessee shall fail to keep or perform any of its obligations as provided in this Agreement, then Lessor or the Trustee may (but shall not be obligated to do so) upon the continuance of such failure on Lessee's part for thirty (30) days after written notice to Lessee, and without waiving or releasing Lessee from any obligation, as an additional but not exclusive remedy, make any payment or perform any obligation, and all sums paid by Lessor or the Trustee in performing such obligation shall be deemed additional rent and shall be paid to Lessor or the Trustee, as the case may be, on demand or, at the option of Lessor or the Trustee, as the case may be, may be added to any installment of the Payments thereafter falling due, and if not so paid by Lessee, Lessor and the Trustee shall have the same rights and remedies as in the case of default by Lessee in the making of the Payments as herein provided.

ARTICLE XIII DAMAGE OR DESTRUCTION

Section 13.01. If the Project shall be damaged from any cause whatsoever, Lessee shall, at Lessee's expense, promptly and with reasonable diligence proceed to repair, replace or reconstruct the Project to the extent required so that, in the judgment of the Lessee, the Project shall be suitable for use for Lessee's purposes and as required by Lessee. Insurance money may be used for such repair, replacement or reconstruction as provided in Article VIII hereof.

Section 13.02. No damage to or destruction of the Project or any part thereof from any cause whatsoever shall reduce or affect Lessee's obligation to make the Payments and pay additional rental as provided in this Agreement.

ARTICLE XIV CONDEMNATION

Section 14.01. If during the term hereof, the title to, or the right to temporary use, of any part of the Project shall be taken by the exercise of the right of eminent domain and if in the opinion of Lessee, the utilization of the Project by Lessee is not impaired by such taking, neither the terms nor any of the obligations of either party under this Agreement shall be reduced or affected in

any way and the net award or payment for such taking shall be paid to Lessee and Lessor shall not have any claim to such award or payment.

Section 14.02. If during the term of this Agreement, the title to, or the right to temporary use of, sufficient of the Project shall be taken by eminent domain that in the opinion of Lessee the use of the Project for Lessee's purposes shall be impaired, the net award or payment from such eminent domain taking may be applied in either of the following ways, at Lessee's option:

(a) the net award or payment may be paid to the Trustee and held by it in the Bond Fund and in such case the amount so held in the Bond Fund shall be considered as an advance payment by Lessee on the Payments due under this Agreement, or

(b) the net award or payment may be applied as directed by Lessee toward the acquisition of additional or replacement facilities to replace or supplement the portions of the Project so taken.

In any event, the taking of all or any portion of the Project by the right of eminent domain by any governmental body shall not affect or reduce Lessee's obligation to make the Payments and pay additional rent as provided in this Agreement.

ARTICLE XV DEFAULT AND REMEDIES

Section 15.01. This Agreement is made on condition that if:

(a) Lessee defaults in the due and punctual making of the Payments and such default continues for a period of five (5) days after the date such Payments or portion thereof fall due, or

(b) Lessee defaults in the due and punctual payment of any sums due under this Agreement lease other than the Payments, and such default continues for a period of twenty (20) days after notice of such default is given to the Lessee by the Lessor or the Trustee, or

(c) Lessee defaults in the performance of any of its obligations under this Agreement (other than those in (a) and (b) above) as and when required, and such non-performance continues for a period within which performance is required to be made by specific provision of this Agreement or, if no such period is provided, for a period of thirty (30) days after notice thereof is given to Lessee by Lessor or the Trustee (or within such additional period, if any, as may be reasonably required to cure such default if it is of such nature that it cannot reasonably be cured within such thirty (30) day period because of any cause beyond the control of the Lessee),

then Lessor may, at the election of Lessor then or at any time thereafter while such event of default shall continue (but only with the written consent of the Trustee), give Lessee written notice of intention to terminate this Agreement and the term herein provided for on a date specified therein, which date shall not be earlier than thirty (30) days after such notice is given, and if all defaults have

not been cured on the date so specified, then Lessee's rights to possession of the Project shall cease and the term hereof and this Agreement shall thereupon be terminated, and Lessor may re-enter and take possession of the Project, or any part thereof, as of Lessor's former estate; or, as an alternative remedy, Lessor may, without terminating the term or this Agreement, re-enter as above provided or take possession pursuant to legal proceedings or pursuant to any notice provided for by law and thereafter shall use reasonable diligence to relet the Project, or parts thereof, for such term or terms (but not beyond the term hereunder in which such default occurred), and at such reasonable rental or rentals and upon such other terms and conditions as Lessor (with the consent of the Trustee) may deem advisable, with the right to make alterations and repairs to the Project; and no such re-entry or taking of possession of the Project by Lessor shall be construed as an election on Lessor's part to terminate this Agreement unless the termination thereof be decreed by a Court of competent jurisdiction, and no such repossession by Lessor shall relieve Lessee of its obligation to make the Payments and pay additional rent or of any of its other obligations under this Agreement, all of which shall survive such repossession, and Lessee shall continue to make the Payments and pay all additional rent provided for in this Agreement until the end of the term and whether or not the Project shall have been relet, less the net proceeds, if any, of any reletting of the Project after deduction of all of Lessor's expenses in or in connection with such reletting, including without limitation all repossession costs, brokerage commissions, legal expenses, attorney's fees, expenses of employees, alteration costs and expenses of preparation for reletting. Having elected to re-enter or take possession of the Project without terminating this Agreement or the term herein provided for, Lessor may (but only with the consent of the Trustee) by notice to Lessee given at any time thereafter while Lessee is in default in the making of the Payments or paying additional rent or in the performance of any other obligation under this Agreement, elect to terminate this Agreement and the term then in effect on a date to be specified in such notice, which date shall not be earlier than ten (10) days after the giving of such notice, and if all defaults of Lessee shall not have been cured, on the date as specified, then the term hereof and this Agreement shall thereupon be terminated.

Section 15.02. If, in accordance with any of the foregoing provisions of this Article, Lessor shall have the right to elect to re-enter and take possession of the Project or any part thereof, Lessor may enter and expel Lessee and those claiming through or under Lessee and remove the property and effects of both or either (forcibly if necessary) without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or preceding breach of covenant.

Section 15.03. In addition to the remedies described above, Lessee (or the Trustee) shall be entitled to exercise any and all remedies of a secured party under the Nebraska Uniform Commercial Code with respect to any portion of the Project which constitutes fixtures or equipment.

Section 15.04. Anything in this Agreement to the contrary notwithstanding, the remedies available to Lessor and the Trustee relating to repossession as described above shall not be construed to preclude direct enforcement by legal proceedings of Lessee's obligation to make the Payments and to pay additional rent hereunder and the above described remedies of repossession, or otherwise, shall be construed as additional and supplemental to such direct enforcement Lessee's obligation to make the Payments and pay additional rent by legal proceedings.

ARTICLE XVI
REMEDIES TO BE CUMULATIVE
(No Implied Waiver)

Lessor and Lessee shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Agreement, notwithstanding the availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity. The specific remedies provided for in this Agreement are cumulative and not exclusive of any other remedy. The failure of any party to insist in any one or more cases upon strict performance shall not be construed as a waiver or relinquishment for the future. No acceptance of rent with knowledge of any default shall be deemed a waiver of such default.

ARTICLE XVII
ASSIGNMENT OF LEASE-AMENDMENTS-REMEDIES OF TRUSTEE

Lessee accepts notice that this Agreement has been or is to be assigned and pledged to the Trustee, and that the Payments and additional rent payable to Lessor under this Agreement have likewise been or are to be assigned to the Trustee to provide payment for and as security for the Building Bonds issued by Lessor; and Lessee consents and agrees for the benefit of the Trustee and the registered owners of said bonds, that until payment of all said bonds and interest thereon or until funds sufficient for such payments have been duly provided, this Agreement may not be effectively amended, changed or modified except as permitted by the Indenture, and that the Trustee has and may exercise all rights and remedies of Lessor provided for in this Agreement, either in its own name or in the name of the Lessor.


ARTICLE XVIII
CONVEYANCE TO LESSEE

On the termination of this Agreement, if the Lessee has paid all the rentals due to Lessor under the terms of this Agreement, Lessor will convey and transfer the Project to Lessee by good and sufficient instrument of conveyance free and clear of all liens and encumbrances, except any encumbrances caused by default of Lessee hereunder or agreed to by Lessee, and such conveyance shall be made without payment by Lessee of any additional rental or other consideration therefor. In the event that Lessee prepays the Payments in full as permitted under Article II in such manner that all bonds issued pursuant to the Indenture have been fully satisfied and any and all additional rentals then due have also been paid in full prior to the expiration of the term of this Agreement, this Agreement will thereupon be terminated and the Project transferred to the Lessee in the same manner and on the same conditions as above provided upon termination of this Agreement.

IN WITNESS WHEREOF, the Lessor has caused this Agreement to be signed in its name and behalf by its President and attested by its Secretary and its corporate seal to be affixed hereto, and the City has caused this Agreement to be signed in its name and behalf by its Mayor and attested by its Clerk, this Agreement to be effective as of the date first above written, regardless of the actual date of execution.

GRAND ISLAND FACILITIES
CORPORATION, Lessor

(SEAL)

By: 
President

ATTEST:

Vice President
Acting Secretary

CITY OF GRAND ISLAND, NEBRASKA,
Lessee

(SEAL)

By: _____
Mayor

ATTEST:

City Clerk

STATE OF NEBRASKA)
) ss.
COUNTY OF HALL)

The foregoing Lease-Purchase Agreement was acknowledged before me this 7 day of July, 2005, by Terry Hoschen the President of the Grand Island Facilities Corporation, a Nebraska nonprofit corporation, on behalf of said nonprofit corporation.

WITNESS my hand and seal this 7 day of July, 2005.

Carol A. Quandt
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF HALL)



The foregoing Lease-Purchase Agreement was acknowledged before me this ____ day of _____, 2005, by _____ the Vice-President, acting Secretary, of the Grand Island Facilities Corporation, a Nebraska nonprofit corporation, on behalf of said nonprofit corporation.

WITNESS my hand and seal this ____ day of _____, 2005.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF HALL)

The foregoing Lease-Purchase Agreement was acknowledged before me this ____ day of _____, 2005, by _____ and _____, the Mayor and City Clerk of the City of Grand Island, Nebraska, on behalf of said City.

WITNESS my hand and seal this ____ day of _____, 2005.

Notary Public

EXHIBIT "A"
to Lease-Purchase Agreement

Description of Project

The Project consists of the construction, equipping and acquisition of an addition to the City's existing library facility, including a _____ square foot building to be constructed the Site and the construction and acquisition of related improvements, fixtures and equipment therefor.

The site for Project shall be the following described real estate located in the City of Grand Island, Hall County, Nebraska, as to which the Corporation has certain easement rights as provided under Article I of this Lease-Purchase Agreement:

[provide legal description]

DESIGN/BUILD CONTRACT BETWEEN OWNER AND DESIGN/BUILDER

This DESIGN/BUILD CONTRACT (the "Contract") is made and entered into by and between the GRAND ISLAND FACILITIES CORPORATION, A Nebraska Non-Profit Corporation, (THE "Owner") and MID PLAINS CONSTRUCTION COMPANY, (the Design/Builder).

This Contract is for the design and construction of a project identified as the Edith Abbott Memorial Library 2005 Expansion/Remodel Project in the City of Grand Island, Nebraska (the "Project").

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Owner and Design/Builder agree as follows:

ARTICLE 1 THE CONTRACT AND THE CONTRACT DOCUMENTS

A. **The Contract:** The Contract between Design/Builder and Owner consists of this document and the other Contract Documents described in Paragraph 1(b). The Contract shall be effective as of July ____, 2005, the date of its approval, and that date shall also be considered the execution date of this Contract.

B. **The Contract Documents:** The Contract documents consist of this document, the Owner's project criteria in the Request for Proposals and the "Edith Abbott Memorial Library Building Program Document 2005 Expansion/Remodel Project" (hereinafter "Building Program Documents"), all Design documents hereafter prepared by Design/Builder and approved by Owner in accordance with this Contract, Change Orders and Field Orders issued hereafter, along with any other written amendments executed by Owner and Design/Builder, are hereby incorporated herein by reference and made a part of this Contract.

C. **Enumerated Documents Form Entire Contract:** Documents not specifically enumerated in Paragraph 1(B) of this Agreement are not Contract Documents.

D. **Contract Interpreted As A Whole:** This Contract is intended to be an integral whole and shall be interpreted as internally consistent. Work required by any page, part, or portion of the Contract shall be deemed to be required Contract Work as if called for in the whole.

E. **Provision Of All Things Required:** Anything that may be required by the Contract Documents which make up this Contract, or any one or more of them, shall be provided by Design/Builder for the Contract Price.

F. **Privity Only With Design/Builder:** Nothing contained in this Contract shall create, nor be interpreted to create, privity or any other relationship whatsoever between Owner and any person except Design/Builder.

G. **Agreed Interpretation Of Contract Terms:** When a word, term, or phrase is used in this Contract, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage. Headings are used herein solely for convenience.

H. **Term "Include" Intended To Be Encompassing:** "Include", "includes", or "including", as used in the Contract, shall be deemed in all cases to be followed by the phrase, "but not limited to".

I. **Use Of Singular And Plural:** Words or terms used as nouns in the Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

J. **Definition Of Material Breaches Not Exhaustive:** The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of the Contract shall not imply that any other, nonspecified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of the Contract.

K. **Order Of Precedence:** In the event of any conflict, discrepancy, or inconsistency among any of the Contract Documents which make up this Contract, the following shall control:

- (1) As between figures given on plans and scaled measurements, the figures shall govern;
- (2) As between large scale plans and small scale plans, the large scale plans shall govern;
- (3) As between plans and specifications, the requirements of the specifications shall govern;
- (4) As between this document and the plans or specifications, this document shall govern.

L. **Administration:** This Contract shall be administered on behalf of Owner by the Library Director of the City of Grand Island or his designee (hereinafter called the "Director"), and on behalf of the Design/Builder by its duly authorized representatives.

ARTICLE 2 DESIGN/BUILDER'S REPRESENTATIONS

A. **Specific Representations:** In order to induce Owner to execute this Agreement and recognizing that Owner is relying thereon, Design/Builder, by executing this Agreement, and without superseding, limiting, or restricting any other representation or warranty set forth elsewhere in this Agreement or the Contract, or implied by operation of law, makes the following express representations to Owner:

- (1) Design/Builder is professionally and fully qualified to act as the design professional and the general contractor for the Project and is, and will remain, licensed to practice engineering and architecture and general contracting by all public entities having jurisdiction over Design/Builder or the Project;
- (2) Design/Builder will maintain all necessary licenses, permits or other authorizations necessary to act as Design/Builder for the Project until Design/Builder's duties under this Contract have been fully satisfied;
- (3) Design/Builder has the expertise, experience, and knowledge as well as the necessary plant, personnel and financial capability to perform the Design Services and the Work in accordance with the terms of this Contract;
- (4) Prior to the execution of this Contract, Design/Builder has visited and inspected the Project site and the local conditions under which the Project is to be designed, constructed and operated;
- (5) Design/Builder assumes full responsibility to Owner for the improper acts and omissions of its Subcontractors or others employed or retained by Design/Builder in connection with the Project.

ARTICLE 3 REGULATORY GUIDELINES, REQUIREMENTS AND STANDARDS

A. **Generally:** Design/Builder shall perform all Design Services described in, or necessary to achieve the objectives stated in the Building Program Documents and the Contract, including all Design Services necessary for the Project to be properly constructed by Design/Builder and used, operated and maintained by Owner in accordance with all applicable guidelines, requirements and standards. "Design Services" means any and all architectural, engineering and design services required to be performed by Design/Builder pursuant to the Contract and all labor, materials, supervision, equipment, computers, documents, and all other things necessary for the performance of such services. "General Design/Construction Specification Program Document" means the document prepared by Owner which specifies the general scope of the Design Services to be performed by Design/Builder under the Contract. A copy of the Building Program Documents are attached hereto as Exhibit "A" and is incorporated

herein by reference. The Design Services shall be performed within the time provided by the Design Schedule for the performance of Design/Builder's Design Services as provided in Paragraph 3(H) of this Agreement.

B. **Owner's Review Of Design Services:** Subject to Paragraph 13(G) of this Agreement, Design/Builder shall submit all documents produced as part of the Design Services to the Director for review and approval in accordance with the terms of the Contract. However, any review or approval by the Director shall not relieve Design/Builder of or otherwise diminish its obligations under the Contract. The Director may direct Design/Builder to make changes to any design documents in order to conform such documents to Owner's objectives. Any changes by Design/Builder ordered by the Director shall not relieve Design/Builder of its obligations under this Contract unless, and only to the extent that, Design/Builder notifies Owner in writing, within five (5) business days after receipt of Owner's directive to make changes, concerning any adverse impact on schedules, budgets, operational costs, operational performance, satisfaction of regulatory requirements, or other adverse impact that may result from the directed changes. Failure of Design/Builder to submit its notice within the five (5) business day period constitutes a waiver by Design/Builder of any claim for an adjustment to the Design Schedule or the Contract Time.

C. **Preparation Of Site Information:** Owner shall prepare, as necessary, surveys and topographic information including aerial photographs needed to establish line and grade of sewers, location of property lines and easements. Sewer easements, both construction and permanent, shall be referenced to property lines by field surveys, and plans shall include the location of any improvement as it relates to property lines. Owner expressly does **not** warrant any information provided by it in connection with preparation of the above-mentioned information; Design/Builder, however, may reasonably rely on information provided by Owner to the extent the information has been prepared by Owner or an independent consultant hired by Owner to prepare the information specifically for this Project.

D. **Retention Of Geotechnical Consultants:** In preparing the Design Documents, Owner shall separately retain an experienced, qualified geotechnical consultant to evaluate all geotechnical considerations relating to the design and construction of the Project. Design/Builder shall be responsible for designing the Project in accordance with the analysis and recommendations of the geotechnical consultant. Nothing in this paragraph, however, prevents Design/Builder from retaining its own geotechnical consultant to review design work, raise issues for mutual discussion, and obtain further information in connection with the geotechnical nature of the Project. Owner expressly does **not** warrant any geotechnical information provided by it for use in connection with preparation of the design documents; Design/Builder, however, may reasonably rely on geotechnical information provided by Owner to the extent the information has been prepared by Owner or an independent consultant hired by Owner to prepare the information specifically for this Project.

E. **Quality Of Design Services:** Design/Builder shall be responsible for the professional quality, completeness, accuracy, and coordination of Design Documents. Design/Builder shall provide Design Services that will result in an operationally cost-efficient and economical facility that meets environmental and regulatory requirements as of the date hereof. Design/Builder shall provide for all quality control reviews required by sound

professional architectural and engineering practices and by governmental authorities having jurisdiction over the Project.

F. **Compliance With Laws And Regulatory Requirements:** In providing Design Services, Design/Builder shall comply with the lawful requirements of all federal, state, and local authorities having lawful jurisdiction over the Project. Design/Builder shall design the Project to meet all applicable requirements of building control laws and regulations in relation to the design, construction, occupation, and operation of the Project, including, but not limited to, environmental standards, fire and safety regulations, and requirements and compliance with all other applicable standards and codes.

G. **Duty To Correct Errors:** Design/Builder shall, without additional compensation, immediately correct any errors, omissions or deficiencies in its Design Services and Design Documents, caused by the Design/Builder.

H. **Schedule Of Design Services:** Design/Builder shall, within ten (10) calendar days after execution of the Contract, submit for Owner's approval the Design Schedule for the performance of Design/Builder's Design Services, which shall include allowance for reasonable time required for the Director's review of submissions and for approvals of authorities having jurisdiction over the Project. This Schedule shall, upon approval by the Director, be considered incorporated and made a part of this Contract as Exhibit "B."

ARTICLE 4 PRELIMINARY CONSULTATION AND PROJECT ANALYSIS

A. **Determining The Project Objectives:** Prior to the preparation of the Preliminary Design as required by Article 5 below, Design/Builder shall first consult in detail with Owner, and shall carefully analyze any information furnished by Owner concerning requirements of the Project, including but not limited to, any design, construction, scheduling, budgetary or operational requirements, limitations, and objectives, as well as the Design Scope Specification.

B. **Report On Project Requirements And Objectives:** Based on its study and analysis, and within a reasonable time prior to the commencement of construction, after the effective date of the Contract, Design/Builder shall prepare and submit to Owner a written report detailing Design/Builder's understanding and analysis of the Project requirements and identifying any design, construction, scheduling, budgetary, operational, or other problems which may result from said requirements. The written report of Design/Builder shall also include proposed solutions, including design alternatives if appropriate, addressing each of the identified problems. Design/Builder shall review such report with Owner and shall implement such changes as Owner may require as provided in Paragraph 3(B) of this Contract.

ARTICLE 5 PRELIMINARY DESIGN

A. **Time For Preliminary Design:** Not later than the date called for in the Design Schedule, Design/Builder shall prepare and submit to the Director a Preliminary Design for the Project.

B. **Contents Of Preliminary Design:** The Preliminary Design shall address all requirements of the Project and shall include, but not limited to, the following:

- (1) preliminary drawings which illustrate each of the basic components of the Project including the size, scale, location, dimensions, and character of each building structure;
- (2) preliminary drawings which illustrate each exterior view of the Project;
- (3) preliminary drawings which illustrate a floor plan for each room, office, and functional area of the Project and the dimensions thereof;
- (4) preliminary drawings and preliminary specifications illustrating and describing the architectural, electrical, mechanical, structural, and manufacturing systems of the Project;
- (5) a written description of the materials and equipment to be incorporated into the Project and the location of same; and
- (6) any other documents or things required to illustrate, describe or depict the Preliminary Design and the conformity of same with the requirements of the Design Scope Specification and this Contract.

C. **To Be Reviewed With Owner:** Design/Builder shall review the Preliminary Design with the Director and shall incorporate any agreed upon changes ordered by the Director in regard to the Preliminary Design or the requirements of the Project.

D. **Authorization To Proceed With Detailed Design:** After review of the Preliminary Design and incorporation of any agreed upon changes ordered by the Director, the Director shall authorize Design/Builder in writing to commence preparing the Detailed Design, or such part thereof as directed by the Director.

ARTICLE 6 DETAILED DESIGN

A. **Time For Preparation:** Not later than the date called for in the Design Schedule, after the Director has authorized Design/Builder to commence with the Detailed Design as provided in Paragraph 5(D) above, Design/Builder shall prepare and submit to the Director the complete Detailed Design.

B. **The Detailed Design:** The Detailed Design shall include all Design Documents which shall describe with specificity all elements, details, components, materials, and other information necessary for the complete construction of the Project and the rendering of the Project fully operational for its intended purposes, including satisfaction of all testing, permitting, qualifications, certifications, validations, and obtaining regulatory approvals by all applicable regulatory authorities required to render the Project and all its components operational and functionally and legally usable for their intended purpose. Subject to the provisions of Paragraph 13(G) of this Agreement, Owner shall review and approve, where appropriate, the Design Documents, or any portion thereof.

C. **Design Documents:** Design Documents means all the design documents provided by Design/Builder and approved by Owner pursuant to the Contract including, but not limited to, those for use in constructing the Project, performing the Work, and the rendering of the Project fully operational, and shall include, but not limited to, detailed plans, drawings, specifications, manuals, and related materials prepared by or on behalf of Design/Builder.

D. **Guaranteed Maximum Price Includes Detailed Design:** The Guaranteed Maximum Price, as set forth in Article 10 below, shall include the cost of constructing the Project Work in accordance with the requirements of the Detailed Design.

ARTICLE 7 CONSTRUCTION SERVICES

A. **General Intent:** Design/Builder shall perform all Work necessary to construct the Project in accordance with this Contract and the related Contract Documents, referred to in Article 1.B., and to render the Project and all its components operational and functionally and legally usable for their intended purpose.

B. **Work Defined:** The term "Work shall mean whatever is done by or required of Design/Builder to perform and complete its duties relating to the construction of the Project under the Contract, including, but not limited to, the following:

- (1) Construction of the whole and all parts of the Project in full and conformity with this Contract;
- (2) The provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of the Project;
- (3) The procurement and furnishing of all necessary building permits and other permits required for the construction of the Project;
- (4) The creation and submission to Owner of detailed record drawings depicting all

record construction;

- (5) The furnishing of any required surety bonds and insurance as required by the Contract;
- (6) The furnishing of all equipment and product warranties, manuals, test results and user guides required by the Contract or otherwise reasonably available to Design/Builder;
- (7) The furnishing of all other services and things required by the Contract Documents, including the provisions of Article 9 below.

ARTICLE 8

TIME FOR CONSTRUCTION: THE CONTRACT TIME

A. Notice Of Commencement: After Owner has approved the Design Documents for the Detailed Design, Owner shall issue a notice to commence the Work directing Design/Builder to proceed with the Work on the date indicated in the notice (the "Commencement Date"). The notice to commence Work shall be issued at least ten (10) days prior to the Commencement Date.

B. Time For Completion: Design/Builder shall commence the Work on the Commencement Date, and the Work shall be carried out regularly and without interruption. Design/Builder shall substantially complete the Work not later Five-hundred seventy (570) days from the Commencement Date, or such other date as may by Change Order be designated (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Design/Builder shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

C. Time Is Of The Essence: All limitations of time set forth in this Contract are material and time is of the essence of the Contract.

ARTICLE 9

ADDITIONAL DUTIES AND RESPONSIBILITIES OF DESIGN/BUILDER

A. **Design/Builder To Perform All Work Required By The Contract:** The intent of this Contract is to require complete, correct and timely execution of the design and the Construction Work. Any and all Construction Work that may be required by the Contract, or any part of it, as necessary to produce the intended result shall be provided by Design/Builder for the Guaranteed Maximum Price as provided in Article 10 of this Contract.

B. **Compliance With The Contract Documents:** All Construction Work performed by Design/Builder shall be in compliance with this Contract. "Substantial compliance" is not compliance.

C. **Supervision Of The Construction Work:** The Construction Work shall be supervised and directed using Design/Builder's best and highest skill and effort.

D. **Warranty Of Construction Workmanship And Materials:** Design/Builder warrants and guarantees to Owner that all labor furnished to perform the Construction Work under the Contract will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only first-class results in compliance with the Contract, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Contract, and that the Construction Work will be of high quality, free from faults and defects and in conformance with the Contract.

E. **Commencement Of Guarantee And Warranty:** Special or specific guarantees and warranties which are required by the Contract to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work.

F. **Design/Builder's Schedule Of Construction:** Design/Builder, within fifteen (15) days after the Commencement Date, shall submit to the Director for his information, in a form acceptable to the owner comply with, Design/Builder's Schedule of Construction. The Schedule of Construction shall be in a form acceptable to Owner. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each such revision shall be furnished to Owner.

G. **Record Copy Of Contract Documents:** Design/Builder shall continuously maintain at the site, for the benefit of Owner, an updated copy of this Contract, including one record copy of the Contract Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Design/Builder shall maintain at the site, for the benefit of Owner, a copy of all Shop Drawings, Product Data, Samples, and other Submittals. Upon Final Completion of the Construction Work, and upon final payment to the Design/Builder, all of the documents described in this Paragraph shall be finally updated and delivered to Owner and shall become the property of Owner.

H. **Review And Approval Of Submittals:** Design/Builder shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that the Project will be constructed in a timely fashion in compliance with the Contract. No deviation from, substitution for, or other modification from the Contract Documents shall be allowed by Design/Builder in a shop drawing or submittal without written approval, in the form of a Change Order, from Owner. Design/Builder shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule; Design/Builder also warrants it will use its best independent professional judgment in its review to determine compliance with the Contract Documents.

I. **Owner's Option To Review Submittals:** Owner shall also, in its discretion, have the right to review and approve Submittals, and if Owner so elects, Design/Builder shall not perform any portion of the Construction Work as to which Owner has required submittal and review until such Submittal has been approved by the Director. Approval by the Director, however, shall not be evidence that Construction Work installed pursuant to the Director's approval conforms with the requirements of the Contract nor shall such approvals relieve Design/Builder of any of its responsibilities or warranties under the Contract. If Owner elects to review Submittals, Design/Builder shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Design/Builder shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to Owner. Shop Drawings and other Submittals from Design/Builder do not constitute a part of this Contract.

J. **Procurement Of Operations And Maintenance Documentation:** Design/Builder shall prepare or procure and shall transmit to the Director all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

K. **Record Drawings:** Design/Builder shall prepare and provide to the Director a complete set of all record drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in compliance with the requirements of this Contract.

L. **Compliance With Labor Laws:** Design/Builder shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

M. **Testing, Inspections, And Approvals:** Design/Builder shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project, with the exception of soil compaction, concrete and asbestos testing, which is the responsibility of Owner. Design/Builder shall submit certified results of such tests to Owner. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Design/Builder shall assume full responsibility therefore, pay all costs in connection therewith and furnish to Owner the required certificates of inspection, testing or approval. The Design/Builder shall not, however, be responsible for any asbestos testing or removal, soil compaction testing or concrete testing, which shall be done by Owner at its expense.

N. **Owner's Regulations And Applicable Laws:** Design/Builder shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by Owner. Design/Builder warrants that it will comply with all public laws, ordinances, rules and

regulations applicable to the services to be performed under the Contract, including but not limited to, those relating to the terms and conditions of the employment of any person by Design/Builder in connection with the Construction Work to be performed under the Contract.

O. **Compliance With Construction Regulations:** Design/Builder shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Design/Builder, and Design/Builder shall fully indemnify and hold Owner harmless from all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, **regardless of a concurrent contribution by Owner, through negligence or other wrongful act, to such loss, damage, or expense**, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of Owner, its officers, agents, or employees.

P. **Permits, Licenses And Notices:** All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Design/Builder. Design/Builder shall notify the Director when it has received said permits, licenses, and authorizations, and upon receipt shall supply the Director with copies of same. The originals of permits, licenses and authorizations shall be delivered to the Director upon completion of the Construction Work, and receipt of these documents by Owner shall be a condition precedent to final payment. Design/Builder shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

Q. **Site Safety And Security:** Design/Builder shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Design/Builder shall at all times safeguard Owner's property and employees from injury or loss in connection with the performance of the Contract. Design/Builder shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction Work from damage. Design/Builder shall protect Owner's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

R. **Repair Of Collateral Damage:** Unless otherwise instructed by Owner, Design/Builder shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Design/Builder's performance of the Construction Work.

S. **Cleaning The Site:** Design/Builder shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Design/Builder shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Design/Builder's property therefrom.

T. **Owner's Access To Construction Work:** At all times relevant to the Contract, Design/Builder shall provide access to the Construction Work to Owner and its designees without formality or other procedure.

U. **Design/Builder To Remain An Independent Contractor:** In performing both Design Services and Construction Work under this Contract, the relationship between Owner and Design/Builder is that of independent contractor, and the execution of this Contract does not change the independent status of Design/Builder. Design/Builder shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Design/Builder in the performance of this Contract shall be construed as making Design/Builder the agent, servant or employee of Owner, or making Design/Builder or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which Owner provides its employees.

V. **Access to Existing Facility during construction.** Since the project contemplates an addition to an existing structure, Library employees and the public will require continuing access to the existing structure. The Design/Builder shall make provision for such access to the extent reasonably possible, taking into account the safety of the Library employees and public.

ARTICLE 10 CONTRACT PRICE

A. **Design Services Fee And Guaranteed Maximum Price:** Owner shall pay, and Design/Builder shall accept, as full and complete payment for the Design Services, an amount not to exceed Seven and four-tenths percent (7.4%) of GMP, plus the additional sums of 10.45% of the information systems contract amount and 11.55% of the defined furniture budget, payable on the basis of monthly billings as Design Services are completed and accepted by the Director. Exhibit "C" attached hereto sets for the scope of services for information systems. Exhibit "D" sets for the scope of services for planning furniture needs. Prior to final completion and acceptance of Design Services, and upon presentation of final Design and Contract Documents to the Director for final review, Design/Builder shall also provide to Owner a proposed final Guaranteed Maximum Price ("GMP") that guarantees to Owner the price for which all Construction Work will be completed within the construction schedule and the Project Budget. If the parties cannot mutually agree to a satisfactory GMP, Owner has the right to terminate this Contract for convenience pursuant to the applicable provisions of Article 19. If the GMP submitted is acceptable to Owner, then this Contract shall be modified by supplemental agreement to approve the GMP and provide any necessary funding for performance of Construction Work. The Supplemental Agreement is deemed to include by reference the following provision upon acceptance of the GMP (blanks to be filled in with the establishment of the final GMP):

(1) Owner shall pay, and Design/Builder shall accept, for the performance of all Construction Work required by the Contract, and the performance of all other requirements of this Contract, the Guaranteed Maximum Price ("GMP"). The GMP shall consist of the Design Services, Cost of the Construction Work as defined in the Contract, plus the Design/Builder's Management Fee, which is an amount equal to Six and one-tenth per cent (6.1%) of GMP. Design/Builder, however, agrees and guarantees that the GMP shall not exceed Five Million Seven-hundred Thousand Dollars (\$5,700,000), subject to additions and deductions by Change Order as provided in the Contract Documents. Owner agrees to perform its responsibilities so as to assist Design/Builder to facilitate the completion of the Construction Work and represents to Design/Builder that there will be sufficient funds available to pay Design/Builder up to the GMP of \$5,700,000, as adjusted by any Change Order. **The GMP, unless changed by Supplemental Agreement or Change Order, represents the absolute limit of obligation or liability that Owner may ever have insofar as the cost for full and final completion of the Construction Work, Design Services and Design Builder Management Fee and the total of all payments to Design/Builder or its Subcontractors, are concerned.**

B. **Management of Construction Work:** In addition to the Construction Work Design/Builder will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Management Fee described in Paragraph (A) is paid. The services required are not intended in any manner to diminish the overall responsibility of Design/Builder for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

C. **Cost of Construction Work:** Owner agrees to pay Design/Builder for the Cost of the Design Services and Construction Work as defined below, subject to submission by Design/Builder of all backup substantiation as may be reasonably required by the Director. Such payment shall be in addition to the Design/Builder's Management Fee specified above. However, in no event shall the sum of payments for the Cost of the Construction Work, Design/Builder's Management Fee and any other Design/Builder compensation exceed the Guaranteed Maximum Price, as adjusted by Change Order. The term "Cost of the Construction Work" shall mean costs necessarily incurred in the performance of the Construction Work during the Construction Phase, and paid or payable by the Design/Builder, and not included in the Design Services or Management Fee as set forth above. The Cost of the Construction Work includes, but is not limited to:

- (1) Wages paid for labor in the direct employ of the Design/Builder in the performance of the Work under any applicable collective bargaining agreement, or under a salary or wage schedule agreed upon by the Owner and Design/Builder, and including reasonable and customary benefits, if any, as may be payable with respect thereto. Such costs shall be at rates not higher than the standard pay in the locality of the Work except with prior consent of the Owner, and shall include the items set forth below in this Article. The reasonable cost of

drug testing for all of Design/Builder's employees utilized on or hired for the Project, whether management or labor, shall also be a Cost of the Construction Work.

- (2) Salaries of Design/Builder's employees at or below the level of Project Design/Builder, when engaged on the Work and stationed at the Field Office, in whatever capacity employed. Employees engaged, at shops or on the road, in expediting the production or transportation of materials or equipment, shall be considered as stationed at the field office and their salaries paid for that portion of their time spent on this Work.
- (3) Cost of reasonable and customary pension contributions, hospitalization insurance, medical insurance, assessments or taxes for such items as unemployment compensation and social security, insofar as such cost is reasonably based on wages, salaries, or other remuneration paid to employees of the Design/Builder and included in the Cost of the Work.
- (4) The proportion of reasonable travel and hotel expenses incurred outside of the Grand Island area by the Design/Builder's officers or employees in discharge of duties directly connected with the Work.
- (5) Cost of all materials, supplies and equipment or specifically designed and incorporated in the Work, including costs of transportation thereof.
- (6) Payments made by the Design/Builder to Subcontractors for Work performed pursuant to Subcontract, entered into in the performance of this Contract.
- (7) Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, which are employed or consumed in the performance of the Work, and cost less salvage value of such items used but not consumed which remain the property of the Design/Builder. Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design/Builder at the site, whether rented from the Design/Builder or others, and the cost of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Dates and quantities of equipment rented shall be subject to Owner's approval
- (8) Cost of the premiums for all bonds and insurance coverage required by this Contract, or deemed necessary by the Design/Builder, in the normal pursuit of the Construction Work. Premiums for company-wide coverage will be pro-rated on the basis of value of Construction Work completed during the premium period. Cost of (payment of) all deductible amounts, not otherwise recoverable from third parties or not the result of a claim based upon Design/Builder's negligence, under any insurance furnished by Owner, or under insurance policies required by this

Contract or deemed necessary by the Design/Builder in the normal pursuit of the Construction Work.

- (9) Taxes, if any, related to the Work. However, as Owner will seek an exemption from Nebraska Sales and Use Taxes, Design/Builder shall alert all Subcontractors to prevent erroneous payment of taxes covered by this exemption. Owner will provide documentation as needed to confirm this exemption.
- (10) Permit fees, licenses, tests, royalties; deposits lost for causes other than the Design/Builder's negligence.
- (11) Minor expenses such as telegrams, long-distance telephone calls, telephone service at the site, expressage, and similar petty cash items in connection with, and for the benefit of, the Work.
- (12) Cost of removal of debris.
- (13) Cost incurred due to an emergency affecting the safety of persons and property.
- (14) Other costs incurred in the performance of the Construction Work, if and to the extent approved in advance in writing by Owner.
- (15) Legal costs growing out of prosecution of the Work for the Owner will only be reimbursable if such were incurred for the direct benefit of the Owner and with prior written approval of Owner.
- (16) Cost or rental of temporary portable buildings and toilets as required; cost of utilities, ice, water, containers, cups, fire extinguishers, first-aid supplies, safety equipment, off-site storage space or facilities, progress photographs or video tape records.
- (17) All reasonable costs and expenditures necessary for the operation of the field office, such as stationery, supplies, blueprinting, furniture, fixtures, office equipment, etc.
- (18) Costs incurred by the Design/Builder in preparing and maintaining progress schedules, budgets, and reports required hereby.
- (19) Service fees assessed by Associated General Contractors of America and the Associated Building Contractors, but only as they relate to the Construction Work.
- (20) The reasonable, actual direct cost of computer services, including jobsite and main office terminal, for purposes of field payroll preparation and control. Such costs shall be specifically documented as having been done for the Project.

- (21) Design/Builder shall be responsible for enforcing warranties on the project and for obtaining correction and/or replacement of all defective work not constructed or installed in accordance with the Contract Documents
- (22) Salaries of Design/Builder's Project Design/Builder and Contract Design/Builder, Safety Engineer, M/WBE Coordinator, and Procurement Specialist (for coordinating, costing, scoping and purchasing of major Work items), earned after the date of approval and funding of the GMP, whether stationed at the Field Office or at the Main Office of the Design/Builder, for that portion of their time spent on this Work.
- (23) Where not otherwise included in the Cost of the Construction Work under Subparagraphs (C)(16), (C)(20), and (C)(22), cost of central accounting services in connection with the Construction Work, such as payment of invoices, maintaining material cost records, computer services, preparation of W-2 Reports, payroll tax reporting and preparation of other reports.

D. **Reconstruction Due to Casualty Loss:** If, after a substantial loss from fire, flood, or similar cause not due to the default or neglect of the Design/Builder, the Design/Builder is put in charge of reconstruction, the Design/Builder shall be paid a management fee for its services proportionate to the Management Fee specified in this Contract. Any reconstruction work shall be considered part of the Scope of the Work, except that the Design/Builder's Management Fee under the GMP shall be adjusted accordingly, unless otherwise reimbursed by the proceeds of insurance, or through utilization of the Change Order procedure set out in this Contract.

E. **Cost Not Included As Part Of The Cost Of The Construction Work And Services:** The following items of cost and expense are not included as part of the Cost of the Construction Work to be paid by Owner to Design/Builder:

- (1) Except as specifically provided above, salaries, wages, and other compensation of Design/Builder personnel stationed at Design/Builder's principal office or offices
- (2) Design/Builder's home office overhead, including, but not limited to, any and all expenses associated with Design/Builder's principal office and offices other than at the Project site.
- (3) Design/Builder's capital costs and expenses, including interest on capital utilized in the performance of this Contract.
- (4) Cost and expense incurred by Design/Builder, its Subcontractors, consultants, or

suppliers, or anyone directly or indirectly employed by any of them, when such costs or expenses are the result of their negligence or failure to perform any required contractual duty.

- (5) Any and all cost or expense not specifically allowed pursuant to Paragraph 10(C), above.

F.. Any and all cash discounts, rebates, or refunds relating to payments made by Design/Builder shall accrue to Owner and shall be credited or paid to Owner at its election.

G. Owner may, at its option, offset any amounts due and payable under this Contract against any debt (including taxes) lawfully due to Owner from Design/Builder, regardless of whether the amount due arises pursuant to the terms of this Contract or otherwise and regardless of whether or not the debt due to Owner has been reduced to judgment by a court.

ARTICLE 11

PAYMENT OF THE CONTRACT PRICE

A. **Payment Procedure:** Owner shall pay the Contract Price to Design/Builder in accordance with the procedures set forth in this Article 11.

B. **Request For Payment:** On or before the twentieth day of each month, Design/Builder shall submit to Owner its request for payment in such form, and with supporting documentation, as Owner may require. Each request shall seek payment for the Cost of the Construction Work and Services as defined and allowed by Paragraph 10(C) hereinabove incurred during the preceding month along with such portion of Design/Builder's Fee as allowed by Paragraph 11(D) below. The supporting documentation for each request for payment shall include, but not be limited to, certified payrolls, petty cash accounts, receipted invoices, and invoices with check vouchers attached. Similar documentation shall be included from each of Design/Builder's Subcontractors and consultants. The request for payment shall be verified under oath by an officer of Design/Builder.

C. **Time For Payment:** Within thirty (30) days after receipt by Owner of a properly prepared and certified request for payment, Owner shall make payment to Design/Builder in an amount equal to the total of the Cost of the Construction Work and Services properly performed or furnished as of the date covered by such request for payment, less retainage in the amount of five percent (5%), and less any payments previously made by Owner to Design/Builder. Such retainage shall be withheld until the project is 50% complete, at which time Owner shall cease withholding from any subsequent payments, provided that if the Owner, in its sole discretion, is not satisfied with the progress of construction, retainage as provided in this paragraph may continue.

D. **Payment Of The Management Fee:** In addition to the payment of the Cost of the Construction Work and Services as set forth hereinabove, Owner will pay Design/Builder its Management Fee monthly during performance of Construction Work, based upon the percentage of Construction Work completed in accordance with the Contract. From each scheduled

management Fee payment, Owner shall further withhold retainage in the amount of five percent (5%).

E. **Right To Audit:** Owner shall be entitled to rely upon the accuracy and completeness of the information furnished by Design/Builder in connection with its request for payment. Owner shall have the right, however, upon demand, to make a detailed examination, audit or inspection of Design/Builder's books and records for the purpose of verifying the accuracy and completeness of such information. In the event Owner determines that Design/Builder has been paid any sums not due Design/Builder, same shall be reimbursed by Design/Builder to Owner within forty-eight (48) hours of demand by Owner.

F. **Condition Precedent To Final Payment:** Notwithstanding any other provision in the Contract Documents, final payment shall not be made to Design/Builder until Design/Builder has fully performed all of its obligations under the Contract and the Design Services and the Construction Work has reached final completion.

G. **Owner's Review Of Pay Requests:** Owner shall have the right to review all pay requests and the Design Services and the Construction Work at the Project site or elsewhere to determine whether the quantity and quality of the Construction Work and the Design Services is as represented in the pay request and as required by the Contract.

H. **Conditions Precedent To Payment:** In addition to all other conditions precedent contained herein, it shall be a condition precedent to payment of any pay request that Design/Builder have submitted updated schedules for the performance of its Construction Work and Design Services as required by this Agreement and that Design/Builder shall have furnished to Owner properly executed waivers of lien, in a form acceptable to Owner, from all Subcontractors, materialmen, Suppliers or others having lien rights, wherein they shall acknowledge receipt of all sums due pursuant to all prior pay requests and waive and relinquish any liens or lien rights relating thereto.

I. **Passage of Title to Construction Work:** Notwithstanding progress payments made by Owner under this Contract, title to Construction Work under this Contract does not pass to Owner until final completion and acceptance of the Project by Owner, at which point title to all Construction Work is deemed to pass immediately to Owner. The risk of loss regarding completed Construction Work that is paid for by Owner prior to final completion and acceptance remains with Design/Builder.

J. **Design/Builder's Use Of Progress Payments:** Upon receipt of any payment from Owner, Design/Builder shall promptly pay all Subcontractors, materialmen, laborers, and Suppliers such amounts as they are entitled for the Construction Work covered by such payment.

K. **Use Of Joint Checks:** If Owner becomes informed that Design/Builder has not paid a Subcontractor, materialman, laborer, or Supplier as provided herein, Owner shall have the right, but not the duty, to issue checks and payment then or thereafter otherwise due to Design/Builder naming Design/Builder and any such Subcontractor, materialman, laborer, or Supplier as joint payees. Such joint check procedure, if employed by Owner, shall create no

rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit Owner to repeat the procedure in the future nor to create any contractual or other relationship of any kind between Owner and such person or entity.

L. **Payment Not A Waiver Or Acceptance:** No payment to Design/Builder, nor any use or occupancy of the Project by Owner, shall be interpreted or construed to constitute acceptance of any Construction Work not in compliance with the Contract, and Design/Builder expressly accepts the risk that defective Construction Work may not be detected (1) during any inspection by Owner, (2) prior to making of any payment to Design/Builder, or (3) before Owner's occupancy of the Project.

M. **Withholding Of Payment:** Owner shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to Design/Builder in an amount then believed by Owner to be adequate to cover the penalties, damages, and potential losses resulting or likely to result from:

- (1) The quality of a portion, or all, of Design/Builder's Construction Work not being in accordance with the requirements of this Contract;
- (2) The quantity of Design/Builder's Construction Work not being as represented in Design/ Builder's pay request, or otherwise;
- (3) Design/Builder's rate of progress being such that, in Owner's opinion, Substantial Completion, Final Completion, or both, may be inexcusably delayed;
- (4) Design/Builder's failure to use Contract funds, previously paid Design/Builder by Owner, to pay Design/Builder's Project-related obligations including, but not limited to, Subcontractors, laborers and material and equipment Suppliers;
- (5) Evidence that the balance of the Construction Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
- (6) Claims made against Owner or its property;
- (7) Loss caused by Design/Builder;
- (8) Design/Builder's failure or refusal to perform any of its obligations to Owner.

N. **Limitation On Duty To Pay:** In addition to the grounds for withholding payment as set forth in Paragraph 11(M) hereinabove, Owner and Design/Builder further agree as follows:

- (1) Each request for payment shall include a certification by Design/Builder of the percentage of completion, as of the date of such request for payment, of those portions of the Design Services and the Construction Work as identified in the

Schedule of Values. Design/Builder shall furnish to Owner such documentation or other supporting data as Owner may request in order to verify the percentage of completion certified by Design/Builder;

- (2) Owner shall have no obligation to make payment to Design/Builder for any Design Services or Construction Work where the amount for which such payment is requested is in excess of the amount allocated in the Schedule of Values for such Design Services or Construction Work based upon the percentage of completion as of the date of the request for payment.

O. **Unexcused Failure To Pay:** If Owner, without cause or basis hereunder, fails to pay Design/Builder any amounts due and payable to Design/Builder within thirty (30) days after the date established in this Contract for payment of such amounts, then the payment shall bear interest at the rate of 12% per annum. Provided, however, that Owner shall not be liable for interest due on any late or delayed progress payment or final payment caused by any good faith claim or dispute, any discrepancy in quantities, any failure to provide supporting documentation or other information required with the request for payment or as a precondition to payment under the Contract Documents, or due to any payment Owner has a right to withhold or not certify under the Contract Documents.

ARTICLE 12 SUBSTANTIAL AND FINAL COMPLETION

A. **Substantial Completion:** "Substantial Completion" means that stage in the progression of the Construction Work when the Project is sufficiently complete in accordance with the Contract that Owner can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by Owner of all necessary certificates of occupancy or other authorizations for the use and occupancy of the Project required by any governmental or regulatory authority. Owner reserves the right to occupy and use any part, phase or system of the Project when such part, phase or system is substantially completed.

B. **Determination Of Substantial Completion:** When Design/Builder believes that the Construction Work is substantially complete, Design/Builder shall notify the Director in writing and shall submit to Owner a list of items remaining to be completed or corrected. The Director (or an independent consultant hired by Owner) will perform an inspection. If the Construction Work is substantially complete, Owner will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of Owner and Design/Builder for Project security, maintenance, heat, utilities, damage to the Construction Work, and insurance, and shall fix the date, not longer than 30 days after the established date of Substantial Completion, within which Design/Builder shall complete any items of incomplete or defective Construction Work.

The Certificate of Substantial Completion shall be submitted to Design/Builder for its written acceptance of the responsibilities assigned to it in such certificate.

C. **Payment Upon Substantial Completion:** Upon Substantial Completion of the Construction Work, and upon execution by both Owner and Design/Builder of the Certificate of Substantial Completion, Owner shall pay Design/Builder, within thirty (30) days, all sums due Design/Builder, less the reasonable costs for completing all incomplete Construction Work and Design Services, correcting and bringing into conformance all defective and nonconforming Construction Work, and handling all outstanding or threatened claims.

D. **Final Completion:** "Final Completion" means the completion of all Design Services and all Construction Work required by, and in compliance with, the Contract, including Design/Builder's provision to Owner of all documents and things required to be provided by the Contract.

E. **Determination Of Final Completion:** When Design/Builder believes that all of the Construction Work is finally complete, and Design/Builder is ready for a final inspection, Design/Builder shall so notify the Director in writing. The Owner (or an independent consultant hired or designated by Owner) will then make final inspection of the Construction Work and, if the Construction Work is complete in accordance with the Contract, and the Contract has been fully performed, then Owner will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

F. **Payment After Final Completion:** Owner shall make final payment of all remaining sums due to Design/Builder within thirty (30) days after Final Completion as reflected by Owner's Certificate for Final Payment, provided that all documents and things required to be delivered to Owner under this Contract have been delivered as required, and provided that all other conditions precedent to payment have been satisfied.

G. **Conditions Precedent To Final Payment:** Prior to being entitled to receive final payment, and as a condition precedent thereto, Design/Builder shall furnish Owner, in the form and manner required by the Director, the following:

- (1) Owner's standard Affidavit of Final Payment and Release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them;
- (2) if required by Owner, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against Owner or Owner's property;
- (3) consent of surety to final payment;
- (4) a complete set of the Record Contract Documents; and
- (5) all product warranties, operating manuals, instruction manuals and other record

documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

ARTICLE 13

OWNER'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

In addition to payment, Owner shall undertake to perform the following:

A. **Provide Project Information:** Owner shall provide Design/Builder with information regarding Owner's requirements for the Project including any desired or required design or construction schedule.

B. **Review Of Documents:** Owner shall review any documents submitted by Design/Builder requiring Owner's decision, and shall render any required decisions pertaining thereto.

C. **Provide Notice Of Defects:** In the event Owner knows of any material fault or defect in the Construction Work, nonconformance with the Contract, or of any errors, omissions or inconsistencies in the Design Documents, then Owner shall give prompt notice thereof in writing to Design/Builder.

D. **Access To The Site And The Construction Work:** Owner shall provide Design/Builder access to the site and to the Construction Work, and shall provide Design/Builder with such information, existing and reasonably available, necessary to Design/Builder's performance of the Contract as Design/Builder may request.

E. **Cooperation To Secure Permits, Licenses, Approvals, And Authorizations:** Owner shall cooperate with Design/Builder in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

F. **Timely Performance:** Owner shall perform the duties set forth in this Article 13 in a reasonably expeditious fashion so as to permit the orderly and timely progress of Design/Builder's Design Services and of the Construction Work.

G. **Owner's Reviews, Inspections, Approvals, And Payments Not A Waiver:** Owner's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Design/Builder shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with Owner's construction program and requirements. No review, inspection, or approval by Owner of the Construction Work or documents shall relieve Design/Builder of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or Contract Documents shall not relieve Design/Builder of responsibility for the

performance of its obligations under the Contract. Payment by Owner pursuant to the Contract shall not constitute a waiver of any of Owner's rights under the Contract or at law, and Design/Builder expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by Owner.

H. **Delay Or Forbearance Not Waiver:** Owner's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require compliance with any obligation of Design/Builder under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

I. **Documents Requested By Design/Builder:** Owner shall furnish to Design/Builder, prior to the execution of this Agreement, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Design/Builder only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, Owner does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefore. If Design/Builder requests in writing, Owner shall also furnish surveys, legal limitations, and utility locations (if known), and a legal description of the Project site.

J. **Approvals And Easements:** Owner shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction Work. Design/Builder shall render such assistance as Owner may request in obtaining such easements, certificates of occupancy, and the like.

K. **Right To Stop Construction Work:** In the event Design/Builder fails or refuses to perform the Construction Work in accordance with the Contract, or is otherwise in breach of this Contract in any way, Owner may, at its option, instruct Design/Builder to cease and desist from performing further Construction Work, or any part thereof. Upon receipt of such instruction from Owner in writing, Design/Builder shall immediately cease and desist as instructed by Owner and shall not proceed further until the cause for Owner's instructions has been corrected, no longer exists, or Owner instructs that the Construction Work may resume.

L. **Owner's Right To Perform Construction Work:** In the event Owner issues such instructions to stop Construction Work, and in the further event that Design/Builder fails and refuses within seven (7) days of receipt of same to provide adequate assurance to Owner that the cause of such instructions will be eliminated or corrected, then Owner shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Design/Builder shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Paragraph 13(K) and this Paragraph 13(L) are in addition to, and without prejudice to, any other rights or remedies Owner may have against Design/Builder, including the rights to terminate or withhold payment as provided herein.

M. **Asbestos Inspection and Removal:** Owner shall have the current library building inspected by a qualified asbestos inspector and shall timely remove any asbestos required to be removed.

ARTICLE 14 PROJECT DOCUMENTATION

A. **Maintenance Of Project-Related Records:** Design/Builder shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

B. **Availability Of Project-Related Records To Owner:** All Project Records which are in the possession of Design/Builder or Design/Builders Subcontractors shall be made available to Owner for inspection and copying upon Owner's request at any time. Additionally, such records shall be made available upon request by Owner to any state, federal or other regulatory authorities, and any such authority may review, inspect and copy such records. The Project Records include, but not limited to, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, tape or videotape recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Design/Builder.

ARTICLE 15 PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

A. **Subcontractor Defined:** A "Subcontractor" means an entity which has a direct contract with Design/Builder to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing specially fabricated equipment and materials for the Project.

B. **Supplier Defined:** A "Supplier" means an entity providing only equipment or materials for the performance of the Construction Work.

C. **Objections To Subcontractors:** Upon execution of this Agreement, and at such later times as may be applicable, Design/Builder shall furnish Owner, in writing, the names of persons or entities proposed by Design/Builder to act as Subcontractors on the Project. Design/Builder shall provide such information regarding such proposed Subcontractors as Owner deems necessary. Owner shall promptly reply to Design/Builder, in writing, stating any objections Owner may have to such proposed Subcontractors. Design/Builder shall not enter into a subcontract with an intended Subcontractor with reference to whom Owner objects. Any consent or failure to reject by Owner shall in no way relieve Design/Builder of any of its duties or warranties under the Contract.

D. **Terms Of Subcontracts:** All subcontracts and purchase orders with Subcontractors shall afford Design/Builder rights against the Subcontractor which correspond to those rights afforded to Owner against Design/Builder under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between Owner and any Subcontractor of Design/Builder, and a

provision to this effect shall be inserted into all agreements between Design/Builder and its Subcontractors.

E. **Design/Builder Responsible For Acts Of Its Subcontractors:** Should Design/Builder subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Design/Builder from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Design/Builder shall be responsible for all and any acts, defaults, omissions or negligence of its Subcontractors, Suppliers, and consultants.

F. **Personnel:** In accordance with Article 2 above, Design/Builder shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Design/Builder shall designate one such person as the Project Design/Builder. Absent written instruction from Design/Builder to the contrary, the Project Design/Builder shall be deemed to be Design/Builder's authorized representative and shall be authorized to receive and accept any and all communications from Owner. Key design and supervisory personnel assigned by Design/Builder to this Project are as follows:

NAME	FUNCTION
Russ Giesenhagen, Mid Plains Construction Co.	Project Principal, Cost Estimator
Steve Mostek, Mid Plans Construction Co.	Project Manager (Contractor)
Dan Reilly, Mid Plains Construction Co.	Project Superintendent
Jim Cannon, Cannon Moss Brygger & Assoc.	Project Manager (Architect)
Kevin Eipperle, The Durrant Group	Co-Project Manager/Design Director
Greg Baum, The Durrant Group	Library Planner/Designer
Brad Kissler, Cannon Moss Brygger & Associates	Project Architect/Construction Administrator
Colleen Nelson, The Durrant Group	Interior Designer
Michael Lambert, The Durrant Group	Lighting Designer
Richard Cotton, The Durrant Group	Information Technology
Jon Jackson, ETI	Mechanical Engineer
Thomas Ernst, ETI	Electrical Engineer

Mike Spilinek, Olssen Associates

Structural Engineer

Clyde Fuhrmeister, The Durrant Group

Sustainability

Evidence of the above-named personnel's competence, such as a resume, shall be provided to Owner prior to said personnel beginning performance of the function indicated. So long as the individuals named above remain actively employed or retained by Design/Builder, or any related entity or affiliate thereof, they shall perform the functions indicated next to their names unless Owner agrees to the contrary in writing or unless Owner requests removal of any such individual from the Project. In the event Owner requests the removal of any of the individuals named above, Design/Builder shall immediately comply and shall immediately replace such individual with a qualified substitute to whom Owner makes no objection. In the event one or more individuals not listed above subsequently assumes one or more of those functions listed above, Design/Builder shall be bound by the provisions of this Paragraph 15(F) as though such individuals had been listed above.

G. **Removal Of Subcontractors And Personnel:** If, at any time during the course of the Project, Owner reasonably determines that the performance of any Subcontractor or any member of Design/Builder's staff construction Working on the Project is unsatisfactory, Owner's Representative may require Design/Builder to remove such Subcontractor or staff member from the Project immediately.

ARTICLE 16 CHANGES AND EXTENSIONS OF TIME

A. **Owner's Right To Order Changes:** Changes in the Design Services or the construction under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by Owner without invalidating the Contract. Such changes shall be communicated by Change Order, Field Order or supplemental agreement, as applicable. Design/Builder shall proceed diligently with any changes, and same shall be accomplished in accordance with the following terms and conditions as set forth in this Article 16.

B. **Changes and Extensions of Time:** All changes to the scope of Design Services or extensions of the agreed upon Design/Build Schedule during the design process shall be made by mutual agreement of Owner and Design/Builder, and claims for an increase in design compensation due to a change in the scope of design construction Work or for an extension of time to the Design Schedule shall be made in writing within seven (7) calendar days after occurrence of the event that gives rise to the claim. All requests for additional compensation due to a change in the scope of Design Services, and all requests for an extension of time to the Design Schedule, shall include sufficient backup documentation for Owner to reasonably understand the request and the amount of time or compensation requested and to determine the merits of the request.

C. **Adjustments To Guaranteed Maximum Price Or Contract Time:** Upon the occurrence of a change order for construction. Construction Work as set forth in Paragraph

16(A) hereinabove which increases the Cost of the Construction Work, the Guaranteed Maximum Price will thereafter include such Cost of the Construction Work and Services attributable to such change to the extent allowed by Paragraph 10(C) hereinabove. The failure of Design/Builder to provide notice in writing to Owner in accordance with Paragraph 16(B) of any request for an increase in the Guaranteed Maximum Price or for an extension of the Contract Time shall constitute a waiver by Design/Builder of any entitlement thereto.

D. **Continuing Duty To Perform Construction Work And Make Payment:** In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Design/Builder shall continue to diligently perform the Design Services and the construction, including any change directed by Owner by Change Order or Supplemental Agreement, and shall keep thorough records of the cost of performance of such Change Order or Supplemental Agreement. Owner shall continue to make payments for all costs up to the extent of the GMP.

E. **Relationship:** Design/Builder recognizes and accepts a relationship of trust and confidence hereby established between Design/Builder and Owner and agrees that it shall at all times in good faith use its best efforts to advance Owner's interests and agrees to perform the Design Services and the Construction Work in the highest professional manner.

ARTICLE 17 CLAIMS BY DESIGN/BUILDER

A. **Terms And Conditions Of Claims:** Claims by Design/Builder against Owner are subject to the terms and conditions of this Article 17, and compliance herewith shall be a condition precedent to any liability of Owner therefore.

B. **Claim Procedures:** All claims for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the design or construction phase, shall be as follows:

- (1) If Design/Builder believes that it is entitled to relief against Owner for any event arising out of or related to the Work or Project, Design/Builder shall provide written notice to the Owner of the basis for its claim. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in this Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the Design/Builder reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the Owner of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

- (2) The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design/Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.
- (3) Design/Builder and Owner will first attempt to resolve disputes or disagreements at the filed level through discussions between Design/Builder's Representative and Owner's Representative.
- (4) If a dispute or disagreement cannot be resolved through Design/Builder's Representative and Owner's Representative, 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 thirty (30) 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 will exchange relevant information that will assist the parties in resolving their dispute or disagreement.
- (5) 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 resolution in a court with jurisdiction to hear the dispute.

C. **Continuous Duty To Provide Documentation:** Design/Builder shall provide, and continue to provide, to Owner all such documentation, including cost and time records, as and when Owner may request so that Owner may evaluate Design/Builder's claim.

D. **Duty To Continue Performance:** Design/Builder shall continue its performance under this Contract regardless of the existence of any claims submitted by Design/Builder against Owner.

E. **Claims For Increase In Compensation:** In the event Design/Builder seeks to make a claim for an increase in Design Services compensation or in the Guaranteed Maximum Price, as a condition precedent to any liability of Owner for any claim, Design/Builder shall comply with the requirements of Paragraph 17(B) above and such notice shall be given by Design/Builder before proceeding to execute any alleged additional or changed Construction Work. Failure of the condition precedent to occur shall constitute a waiver by Design/Builder of any claim.

F. **Limit Of Owner's Liability For Increased Compensation:** In connection with any claim by Design/Builder against Owner for compensation in excess of the Guaranteed Maximum Price, any liability of Owner shall be limited to the Cost of the Construction Work as defined and allowed in Paragraph 10(C) above and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Design/Builder or its Subcontractors. Owner shall not be liable to Design/Builder for claims of third parties, including

Subcontractors, for acts, omissions, events, or conditions for which Owner would not be liable to Design/Builder under the terms of the Contract. As a condition precedent to Owner's liability to Design/Builder for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Design/Builder and such claims must have been submitted to Owner by Design/Builder in compliance with all the requirements of this Article 17. Owner shall not be liable to Design/Builder for claims of third parties including Subcontractors, unless and until the liability of Design/Builder has been established in a court of competent jurisdiction.

G. **Claims Resolved By Change Order:** The resolution of any claim under this Article 17 shall be reflected by a Change Order or Supplemental Agreement executed by Owner and Design/Builder.

ARTICLE 18

UNCOVERING AND CORRECTING CONSTRUCTION WORK

A. **Design/Builder Not To Cover Construction Work Contrary To Requirements:** If any of the Construction Work is covered, concealed or obscured contrary to the written request of Owner, or contrary to any provision of the Contract, said Construction Work shall, if required by Owner, be uncovered for inspection and shall be properly replaced at Design/Builder's expense without change in the Contract Time.

B. **Owner's Right To Order Uncovering Of Any Construction Work:** If any of the Construction Work is covered, concealed or obscured in a manner not inconsistent with Paragraph 18(A) above, it shall, if required by Owner, be uncovered for inspection. If such Construction Work conforms with the Contract, the cost of uncovering and proper replacement shall be charged to Owner and shall be a basis for adjustment of the GMP. If such Construction Work does not conform with the Contract, Design/Builder shall pay the cost of uncovering and proper replacement.

C. **Duty To Correct Rejected Construction Work:** Design/Builder shall immediately proceed to correct Construction Work properly rejected by Owner as defective or failing to conform to the Contract. Design/Builder shall pay all costs and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

D. **Duty To Correct Defective Construction Work Discovered After Completion:** In addition to its warranty obligations set forth elsewhere herein, Design/Builder shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Construction Work for a period of twelve (12) months following Final Completion upon written direction from Owner. This obligation shall survive final payment by Owner and termination of the Contract.

E. **No Period Of Limitation Established:** Nothing contained in Paragraph 18(D) shall establish any period of limitation with respect to other obligations which Design/Builder

has under the Contract. Establishment of the one-year time period in Paragraph 18(D) above relates only to the duty to Design/Builder to specifically correct the Construction Work.

F. **Owner's Option To Accept Defective Construction Work:** Owner may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work.

ARTICLE 19 SUSPENSION AND TERMINATION

A. **Suspension Of Performance:** Owner may for any reason whatsoever suspend performance under the Contract. Owner shall give written notice of such suspension to Design/Builder specifying when such suspension is to become effective.

B. **Ceasing Performance Upon Suspension:** From and upon the effective date of any Suspension ordered by Owner, Design/Builder shall incur no further expense or obligations in connection with this Contract, and Design/Builder shall cease its performance. Design/Builder shall also, at Owner's direction, either suspend or assign to Owner any of its open or outstanding subcontracts or purchase orders.

C. **Claim For Costs Of Suspension:** In the event Owner directs a suspension of performance under this Article 19, through no fault of Design/Builder, and provided Design/Builder submits a proper claim as provided in this Contract, Owner shall pay Design/Builder as full compensation for such suspension Design/Builder's reasonable costs, actually incurred and paid, of:

- (1) demobilization and remobilization, including such costs paid to Subcontractors;
- (2) preserving and protecting Construction Work in place;
- (3) storage of materials or equipment purchased for the Project, including insurance thereon; and
- (4) performing in a later, or during a longer, time frame than that contemplated by this Contract.
- (5) if the suspension of performance reaches 60 calendar days, the Design/Builder shall have the option to terminate the Contract. In the event of such termination, the Design/Builder shall be entitled to submit a termination claim as set forth in Article 19(F) of this Contract.

(D) **Resumption Of Construction Work After Suspension:** If Owner lifts the suspension it shall do so in writing, and Design/Builder shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Design/Builder has exercised its right of termination as provided herein.

E. **Termination By Owner For Convenience:** Owner reserves the right, for any reason whatsoever (including, but not limited to, nonappropriation of funding), or without reason, terminate performance under the Contract by Design/Builder for convenience. Owner shall give thirty (30) calendar days advance written notice of termination for convenience to Design/Builder. Design/Builder shall incur no further obligations in connection with the Contract and Design/Builder shall stop Design Services and the Construction Work when such termination becomes effective. Design/Builder shall also, at Owner's direction, either terminate or assign to Owner outstanding orders and subcontracts. Design/Builder shall settle the liabilities and claims arising out of any terminated subcontracts and orders. Owner may direct Design/Builder to assign Design/Builder's right, title and interest under terminated orders or subcontracts to Owner or its designee. Design/Builder shall transfer title and deliver to Owner such completed or partially completed Design Documents, Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Design/Builder has.

F. **Submission Of Termination Claim And Compensation For Termination For Convenience:** When terminated for convenience, Design/Builder shall be compensated as follows:

- (1) Design/Builder shall submit a termination claim to Owner specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by Owner. If Design/Builder fails to file a termination claim within three (3) months from the effective date of termination, Owner shall pay Design/Builder an amount derived in accordance with Subparagraph (3) below;
- (2) Owner and Design/Builder may agree to the compensation, if any, due to Design/Builder under this paragraph;
- (3) Absent agreement to the amount due to Design/Builder, Owner shall pay Design/Builder, as full compensation for termination for convenience, the following amounts:
 - (a) the Cost of the Construction Work and Services, as defined and allowed by Paragraph 10(C) above, to the extent incurred or paid prior to receipt by Design/Builder of the notice of termination;
 - (b) such portion of Design/Builder's Fee which is earned and unpaid as of the date of receipt by Design/Builder of the notice of termination; and
 - (c) reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph 19(E) hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Contract.

In no event shall Design/Builder be entitled to recover lost profits or other incidental or consequential damages from Owner on account of a termination for convenience.

G. **Termination By Owner For Cause:** If Design/Builder does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then Owner may by 7-day written notice to Design/Builder, without prejudice to any other right or remedy against Design/Builder or others, terminate the performance of Design/Builder and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Design/Builder shall not be entitled to receive any further payment until the Construction Work is finished.

ARTICLE 20 OWNERSHIP OF DOCUMENTS

A. **Documents Owner's Property:** The Design Documents and the Contract Documents, including but not limited to, the drawings, specifications and other documents or things prepared by Design/Builder for the Project, shall immediately become and be the sole property of Owner. Any documents furnished by Owner shall remain the property of Owner. Design/Builder may be permitted to retain copies of the Design Documents and Contract Documents and any documents furnished by Owner for its records with approval in writing of Owner.

ARTICLE 21 INDEMNITY

A. **General Indemnity:** Design/Builder agrees to defend, indemnify and hold Owner, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Design/Builder's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Design/Builder, its officers, agents, or employees, in the performance of this Contract to the fullest extent permitted by law.

ARTICLE 22 INSURANCE

A. **General Insurance Requirements:** Design/Builder shall procure, pay for, and maintain during the term of this Contract, with a company authorized to do business in the State of Nebraska and otherwise acceptable to Owner, the minimum insurance coverage contained in Exhibit "E", attached to and made a part of this Contract.

B. **Liability Notwithstanding Insurance:** Approval, disapproval or failure to act by Owner regarding any insurance supplied by Design/Builder or its Subcontractors shall not relieve Design/Builder of full responsibility or liability for damages, errors, omissions or accidents as set forth in this Contract. Neither the bankruptcy or insolvency of Design/Builder's insurer nor any denial of liability by Design/Builder's insurer shall exonerate Design/Builder from the liability or responsibility of Design/Builder set forth in this Contract.

ARTICLE 23 SURETY BONDS

A. **Performance Bond And Payment Bond:** Upon execution of this Contract, Design/Builder shall furnish to Owner separate performance and payment bonds in the penal sum of 100% of the GMP amount, or the amount of the Project construction budget if a GMP has not been established as of the date of execution of this Contract. If the GMP established under Article 10 of this Contract is less than the Project construction budget, Design/Builder may furnish a rider to adjust the amount of the bonds to reflect the GMP, and shall reflect the adjusted premium cost appropriately in the general conditions shown as a part of the GMP. The bonds shall be written by a corporate surety or sureties authorized to conduct an insurance business in the State of Nebraska and licensed to issue surety bonds in the State of Nebraska, and otherwise acceptable to Owner. The bonds shall be in a form acceptable by Owner, a copy of which bond forms are attached to and made a part of this Contract as Exhibit "F".

B. **Subcontractor Bonds:** Subcontractors may, in the joint discretion of the Design/Builder and Owner may be required, as a condition of their Subcontract, to execute similar Payment Bonds and Performance Bonds, **naming both Design/Builder and Owner as joint obligees**. Subcontractors not required to provide a payment bond will not be paid progress payments, but shall be paid upon final completion and acceptance of their Construction Work.

ARTICLE 24 NONDISCRIMINATION

A. **General:** As a condition of this Contract, Design/Builder covenants that Design/Builder will take all necessary actions to insure that, in connection with any work under this Contract, Design/Builder, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Design/Builder shall also

comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Design/Builder shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of Owner, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

ARTICLE 25 MISCELLANEOUS PROVISIONS

A. **Governing Law; Venue:** This Contract shall be governed by the laws and court decisions of the State of Nebraska. This Contract is performed in Hall County, Nebraska, and exclusive venue for the enforcement of rights or legal obligations under this Contract shall be in Hall County, Nebraska.

B. **Successors And Assigns:** This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, their assigns.

C. **Non-Assignment:** Design/Builder shall not assign this Contract, or any part of this Contract, without prior written consent of Owner.

D. **Notices:** All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five days after mailing.

If intended for Owner, to:

John R. Higgins
Attorney for Grand Island Facilities Corporation
Huston & Higgins
PO Box 429
108 North Locust Street
Grand Island, NE 68801

If intended for Design/Builder, to:

Russ Giesenhausen, President
Mid Plains Construction Company
1319 West North Front Street
Grand Island, NE 68801

E. **Publicity:** No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Design/Builder, either before or after

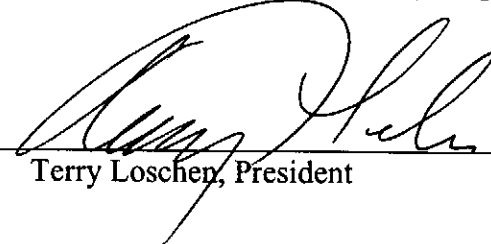
completion of the Project, for publication, advertising or any commercial purposes without Owner's prior written consent.

F. **Severability:** In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

G. **Entire Agreement:** This Contract, with all Exhibits and incorporated documents or referenced attachments, together with Design/Builder's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreement between Owner and Design/Builder with reference to the Project. This Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

EXECUTED as of the ____ day of July, 2005, by Owner, signing by and through its authorized representative and by Design/Builder, acting through its duly authorized officials.

GRAND ISLAND FACILITIES CORPORATION:

By: _____
Terry Loschen, President

Attest:

Corporate Vice-President
Acting Secretary

MID PLANS CONSTRUCTION, Design/Builder:

By: _____
Russ Giesenhausen, President

Attest:

Corporate Secretary

Ordinance No. 8986

AN ORDINANCE PROVIDING FOR THE PURCHASE AND LEASING OF AN ADDITION TO THE EXISTING LIBRARY FOR THE CITY OF GRAND ISLAND; AUTHORIZING EXECUTION AND DELIVERY OF A LEASE-PURCHASE AGREEMENT WITH GRAND ISLAND FACILITIES CORPORATION, RELATING TO THE CONSTRUCTION AND ACQUISITION OF SAID ADDITION FOR USE BY THE CITY OF GRAND ISLAND, NEBRASKA; APPROVING THE EXECUTION OF DOCUMENTS WITH RESPECT TO SAID LEASE-PURCHASE AGREEMENT; PROVIDING FOR THE ACCEPTANCE OF TITLE, FOR THE APPROVAL OF AN APPRAISAL AND FOR THE HOLDING OF A HEARING; APPROVING THE TERMS OF A TRUST INDENTURE AND SECURITY AGREEMENT; MAKING CERTAIN DETERMINATIONS WITH RESPECT TO BONDS TO BE ISSUED UNDER SUCH INDENTURE; AND PROVIDING FOR THE PUBLISHING OF THIS ORDINANCE.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA (the "City") as follows:

Section 1. The Mayor and Council hereby find and determine: that the City is in need of additions and improvements to its existing library facilities (the "Project"); that Grand Island Facilities Corporation (the "Corporation") has been formed under the Nebraska nonprofit corporation laws for the purposes of acquiring real and personal property and leasing the same to the City and has offered to enter into a Lease-Purchase Agreement with the City whereby the City may acquire the Project to be built in accordance with specifications approved by the Mayor and Council, all pursuant to the provisions of Section 19-2421, R.R.S. Neb. 1997; that the documents necessary for such purposes have been prepared and said documents should be approved and their execution authorized.

Section 2. The City of Grand Island shall enter into the Lease-Purchase Agreement (to be dated as of the date of its execution and delivery) with the Corporation and whereby the Corporation will construct and acquire the Project in accordance with specifications approved or to be approved by the Mayor and Council of the City (with the schedule of basic rental payments relating to the leasing and acquisition of the Project to be set forth in an addendum to be approved by subsequent resolution of the Mayor and Council) and that the Lease-Purchase Agreement in the form presented at this meeting is hereby approved.

Section 3. The Mayor and City Clerk of the City be and they are hereby authorized and directed to execute and deliver on behalf of the City the Lease-Purchase Agreement, including any necessary counterparts, in substantially the form and content as presented to this meeting, but with such changes or modifications therein as to them seem necessary, desirable or appropriate on behalf of the City; and said Mayor and City Clerk are further authorized and directed to execute and deliver any other documents or certificates and to do all other things necessary or appropriate in connection with the Lease-Purchase Agreement.

Section 4. The Mayor and Council hereby confirm approval of the formation of Grand Island Facilities Corporation, including the Articles of Incorporation and Bylaws thereof and the five directors thereof; and further approve the form of the Trust Indenture and Security Agreement (the "Indenture") from the Corporation in favor of a trustee to be designated by the Corporation, under which Building Bonds (Library Project), Series 2005, in the aggregate principal amount of not to exceed \$7,000,000 (the "Building Bonds") are to be issued, and the City hereby approves the issuance of the Building Bonds, in such principal amount and bearing interest and maturing as shall be set forth in the Indenture, subject to the setting of such terms by the Corporation in connection with the sale of said bonds to Ameritas Investment Corp. (the "Underwriter") in accordance with the terms of a Bond Purchase Agreement to be entered into (the "Bond Purchase Agreement"), at the price to be determined by agreement between the Corporation and the Underwriter. The Mayor is hereby further authorized to sign the approval form on the Bond Purchase Agreement on behalf of the City and to approve at the time of closing of the purchase of the Building Bonds the final form of the Indenture.

Section 5. In connection with the execution and delivery of the Lease-Purchase Agreement and the issuance by the Corporation of the Building Bonds, the following determinations and approvals are hereby made by the Mayor and Council:

(a) The City hereby declares, as provided in the Agreement, that it will take title to the Project (including any subsequent additions) when the Building Bonds are discharged.

(b) The designation in the Indenture of the City's Library Director (with the City Finance Director as Alternate) to act as Project Manager (as defined in the Indenture) is hereby approved.

(c) Prior to the issuance of the Building Bonds and the delivery of any addendum committing the City to make set rental payments, there shall be placed on file with the City Clerk an appraisal report for the Project prepared by a certified appraiser in accordance with Section 13-403, R.R.S. Neb. 1997.

(d) Prior to the issuance of the Building Bonds and the delivery of any addendum committing the City to make set rental payments, a public hearing shall be held in accordance with Section 18-1755, R.R.S. Neb. 1997, and the City Clerk is hereby directed to set the time for such hearing and publish notice thereof.

Section 6. The Mayor and Council hereby state that it is the intention of the City that interest on the Building Bonds issued by the Corporation shall be excludable from gross income under the federal income tax by virtue of Section 103 of the Code and Revenue Ruling 63-20 and Revenue Procedure 82-26 of the Internal Revenue Service and the Mayor and Council hereby authorize the Mayor, the City Clerk and the City Treasurer (Finance Director) (or any one of more of them) to take all actions necessary or appropriate to carry out said intention and for obtaining

such interest exclusion. The City hereby covenants with the Corporation for the benefit of the purchasers and holders of the Building Bonds that it will make no use of the proceeds of said issue, including monies held in any sinking fund for the payments to be set forth in the Lease-Purchase Agreement or for principal and interest on the Building Bonds, which would cause the Building Bonds to be arbitrage bonds within the meaning of Section 103 and 148 and other related sections of the Code and further covenants to comply with said Sections 103 and 148 and related sections and all applicable regulations thereunder throughout the term of said issue, including all requirements with respect to reporting and payment of rebates, if applicable. The Building Bonds, as issued on behalf of the City, subject to issuance and delivery thereof by the Corporation, are hereby designated by the City as “qualified tax-exempt obligations” under Section 265(b)(3)(B)(i)(III) of the Code and the City in connection with entering into the Lease-Purchase Agreement hereby covenants and warrants that it does not anticipate issuance directly by it or on its behalf of tax-exempt bonds or other tax-exempt interest bearing obligations in an amount exceeding \$10,000,000 in calendar 2005 (taking into consideration the exception for current refunding issues).

Section 7. The Mayor and Council hereby authorize the Mayor to approve the preliminary and final Official Statement for the Building Bonds with appropriate changes to reflect the final terms for the Building Bonds as sold pursuant to the Bond Purchase Agreement.

Section 8. This Ordinance shall be in force and take effect from and after its publication as provided by law.

Passed and approved this 12th day of July, 2005.

Mayor

City Clerk