

RE: Owner's Representative Services Agreement between Navigate Building Solutions and the City of Nixa

Background:

In early 2023, a sales tax ballot initiative was passed by the voters of Nixa to specifically fund police personnel and the construction of a new police facility. With the anticipated revenues from the sales tax scheduled to start being collected in early 2024, planning for the construction of the police facility needs to begin. A construction project of this magnitude is complex and necessitates the hiring of a project management company to ensure the project is on time, on budget, and built to meet standards.

Analysis:

The staff has met with consultants at Navigate Building Solutions about the services they provide as project managers/owner's representatives. Through several discussions with co-founder, Todd Sweeney, and our own due diligence, staff has determined Navigate Building Solutions has the skill, knowledge and expertise to serve in the vital role as the project management services for the new police facility construction project.

Navigate Building Services has provided a written agreement which details the services that will be provided, and the costs associated with those services. The total project costs are estimated at approximately 15 million dollars. Based on this estimated project cost, Navigate Building Solutions fees, as detailed in the agreement, would be \$165,000.00 along with a monthly fee of \$16,300.00 for an anticipated project timeline of 14 months. The monthly fee of \$16,300.00 would not be instituted during the design phase which is estimated to take approximately 12 months. This agreement also states the total amount of service is not to exceed \$400,000.00.

Because Navigate Building Solutions participates in a National Cooperative Purchasing Agreement, staff can bring this recommendation to enter this contract by resolution without a formalized bid procedure per city purchasing policy.

Recommendation:

It is the police department and city administration staff's recommendation that the City of Nixa enter into this owner's representative agreement between Navigate Building Solutions and the City of Nixa.

MEMO SUBMITTED BY:

Joe Campbell | Chief of Police

jcampbell@nixa.com | 417-725-2510

RESOLUTION NO. 2023-53

A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH NAVIGATE BUILDING SOLUTIONS, LLC, FOR CERTAIN PROFESSIONAL SERVICES RELATED TO THE CONSTRUCTION OF A NEW POLICE DEPARTMENT FACILITY.

WHEREAS Section 2-170 of the Nixa City Code authorizes the City to participate in cooperative purchasing arrangements provided that, when a cooperative purchase exceeds \$10,000.00, the purchase must be submitted to City Council for approval; and

WHEREAS City staff have been made aware of the services provided by Navigate Building Solutions, LLC, ("Contractor") and desires to enter into a contract with same; and

WHEREAS City Council desires to enter into a contract with same and to authorize the City Administrator to execute the Contract attached hereto as "Resolution Exhibit A."

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NIXA, AS FOLLOWS, THAT:

SECTION 1: City Council hereby authorizes the City Administrator, or designee, to enter into a contract with the Contractor. Said contract to be in substantially similar form as the document attached hereto, and incorporated herein by this reference, as "Resolution Exhibit A."

SECTION 2: The City Administrator and the officers of the City are hereby authorized to do all things necessary or convenient to carry out the terms and intent of this Resolution.

SECTION 3: This Resolution shall be in full force and effect from and after its final passage by the City Council and after its approval by the Mayor, subject to the provisions of section 3.11(g) of the City Charter.

[Remainder of page intentionally left blank. Signatures follow on next page.]

RESOLUTION NO. 2023-53

ADOPTED BY THE COUNCIL THIS 13th DAY OF November, 2023.

ATTEST:

PRESIDING OFFICER

CITY CLERK

APPROVED BY THE MAYOR THIS 13th DAY OF November, 2023.

ATTEST:

MAYOR

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

CONTRACT NUMBER:	
(X) NEW CONTRACT () ADDENDUM NO. ____	
CITY	CONTRACTOR
Name: City of Nixa, Missouri Address: 715 W. Mt. Vernon St., PO Box 395 Nixa, MO 65714 Phone: 417.725.3785 Email: jcampbell@nixa.com Attn: Joe Campbell Dept: Police Department	Name: Navigate Building Solutions, LLC Address: 8419 Manchester Rd., Brentwood, MO 63144 Phone: 314.458.3738 Email: todd@navigatebuildingsolutions.com Attn: Todd A. Sweeney, Member

CONTRACT FOR PROFESSIONAL SERVICES

THIS CONTRACT FOR PROFESSIONAL SERVICES ("Contract") is made and entered into upon its execution by the parties identified above.

WHEREAS the City, utilizing a cooperative purchasing contract between The Interlocal Purchasing System and Contractor executed on or about February 28, 2023, desires to engage Contractor to perform certain services; and

WHEREAS the City desires to engage Contractor to perform such services under the terms and conditions of this Contract; and

WHEREAS the Contractor desires to perform such services under the terms and conditions of this Contract.

NOW, THEREFORE, for the considerations herein expressed, it is mutually agreed by and between the City and the Contractor as follows:

1. Services. The City agrees to engage the services of the Contractor and the Contractor agrees to perform said Services in accordance with the standard of care, skill, and expertise ordinarily used by other members of Contractor's profession in performing similar services. The Services are described in Exhibit A, which is attached hereto and incorporated herein by this reference. Contractor shall furnish all supervision, labor, tools, equipment, materials, and supplies necessary to perform the Services at Contractor's own expense in accordance with the provisions of this Contract, any applicable City ordinances, and any applicable state or federal laws. The City may add to the Contractor's services or delete therefrom services, provided that the total cost of such work does not exceed the Cost Not to Exceed amount provided for herein. The Contractor shall undertake such changed activities only upon the written direction of the City. All such directives and changes shall be in written form and shall be accepted and countersigned by the Contractor.

2. Payment.

2.1. Conditioned on acceptable performance. Provided that Contractor performs the Services in the manner set forth herein, the City shall pay the Contractor in accordance with the applicable provisions set forth in Exhibit A, which shall constitute full and complete compensation for the Contractor's work provided that no partial payment to the Contractor shall operate as approval of acceptance of work done.

2.2. Total compensation not to exceed. It is expressly understood that in no event shall the total compensation or reimbursement to be paid to the Contractor under the terms of this Contract exceed the sum of **\$400,000.00** unless specifically and mutually agreed to in writing by both the City and the Contractor.

2.3. Final Payment. Final Payment shall only occur when the Contractor has completed all work required under the terms of this Contract and such work was completed in compliance with this Contract. The acceptance of Final Payment under this Contract expressly constitutes a release of the City by the Contractor and its subcontractors from any and all claims which were made or could have been made by the Contractor and its subcontractors against the City which may arise out of or are related to this Contract.

3. Exchange of Data. All information, data, and reports in the City's possession and necessary for the carrying out of the Services, shall be furnished to the Contractor without charge, and the parties shall cooperate with each other in every possible way in the carrying out of the Services.

4. Personnel. The Contractor represents that Contractor shall secure at Contractor's own expense; all personnel required to perform the services called for under this Contract by Contractor. Such personnel shall not be considered employees of the City. All of the services required hereunder shall be performed by the Contractor or under Contractor's direct supervision and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such services. None of the work or services covered by this contract shall be subcontracted without the prior written approval of the City.

5. Termination.

5.1. Termination for breach. Failure of Contractor to fulfill Contractor's obligations under this Contract in a timely and satisfactory manner in accordance with the terms of this Contract shall constitute a breach of the Contract, and the City shall thereupon have the right to immediately terminate the Contract. The City shall give written notice of termination to the Contractor. In the event of any litigation arising from breach of this Contract, the City shall be entitled to recover from the Contractor all reasonable costs incurred for such litigation, including staff time, court costs, attorney fees, and all other related expenses incurred in such litigation.

5.2. Termination for Convenience. Either party shall have the right at any time upon 90 days written notice to the other to terminate and cancel this Contract, without cause, for convenience. In such event final payment to the Contractor shall be limited to services provided by the Contractor as of the effective date of said termination.

5.3. Non-appropriation. This Contract shall be terminated upon the failure of the City Council of City to appropriate funds for this Contract in any term of said Contract.

5.4. Documents, reports, and data to be provided to City. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the Contractor related to this Contract shall, at the option of the City, become the property of the City, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials; provided, that the Contractor shall not be relieved of liability to the City for any damages sustained by the City by virtue of any breach of the Contract by the Contractor.

6. City's Right to Proceed. In the event this Contract is terminated, the City may take over the

work and prosecute the same to completion, by contract or otherwise, and Contractor and its sureties shall be liable to the City for any costs over the amount of this Contract thereby occasioned by the City. In any such case, the City may take possession of, and utilize in completing the work, such materials, appliances and structures as may be on the work site and are necessary for completion of the work. The foregoing provisions are in addition to, and not in limitation of, the rights of the City under any other provisions of the contract, city ordinances, and state and federal laws.

7. Confidentiality. Any reports, data, or similar information given to, prepared or assembled by the Contractor under this Contract shall be considered the property of the City and shall not be made available to any individual or organization by the Contractor without prior written approval of the City.

8. Conflict of Interest. Contractor certifies that no member or officer of its firm or organization is an officer or employee of the City of Nixa, Missouri, or any of its boards or agencies, and further that no officer or employee of the City has any financial interest in this contract which would violate any applicable federal regulations or the provisions of RSMo Section 105.450 et seq or the provisions of Nixa City Charter Section 13.1.

9. Assignment. The Contractor shall not assign any interest in this Contract and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the City, provided, however, that claims for money due or to become due to the Contractor from the City under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished in writing promptly to the City and the bond surety. Any such assignment is expressly subject to all rights and remedies of the City under this Contract, including the right to change or delete activities from the Contract or to terminate the same as provided herein, and no such assignment shall require the City to give any notice to any such assignee of any actions which the City may take under this Contract.

10. Nondiscrimination. The Contractor agrees in the performance of this contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, status as a protected veteran or status as a qualified individual with a disability, or political opinion or affiliation, against any employee of Contractor or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder. The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a) and 41 C.F.R. § 60-741.5(a), if applicable.

10.1. This Contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

10.2. This Contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime Contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

11. Occupational License. The Contractor shall obtain and maintain an occupational license or business registration with the City of Nixa, Missouri, if required by city code and any required state or federal requirement. The cost for this occupational license shall be borne by the Contractor.

12. Insurance Requirements. Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall secure and maintain at its own cost and expense, throughout the

duration of this Contract and until the work is completed and accepted by the City, insurance of such types and in such amounts as may be necessary to protect it and the interests of the City against all hazards or risks of loss as hereunder specified or which may arise out of the performance of this Contract. The form and limits of such insurance, together with the underwriter thereof in each case, are subject to approval by the City. Regardless of such approval, it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times during the term of this Contract. Failure of the Contractor to maintain coverage shall not relieve it of any contractual responsibility or obligation or liability in general or under this Contract.

The certificates of insurance, including evidence of the required endorsements hereunder or the policies, shall be provided to the City within 10 days of execution of this Contract. All insurance policies shall require that the insurance company in question provide 30 days written notice prior to modification or cancellation of such insurance. Such notices shall be mailed, certified mail, return receipt requested, to the address for the City listed at the top of this Contract.

The required minimum coverage for the insurance referred to herein shall be as set out below:

12.1. Workers' Compensation – Statutory coverage per RSMo. 287.010 et seq.
Employer's Liability – \$1,000,000.00

12.2. Commercial General Liability Insurance, including coverage for Premises, Operations, Products and Completed Operations, Contractual Liability, Broad Form Property Damage, Independent Contractors, Explosion, Collapse, and Underground Property Damage and blasting, if blasting is required. Such coverage shall apply to bodily injury and property damage on an "Occurrence Form Basis" with limits of at least \$1,000,000.00 for all claims arising out of a single accident or occurrence and at least \$1,000,00.00 with respect to injuries and/or death of any one person in a single occurrence and an amount not less than at least \$1,000,000 for all claims to property arising out of a single occurrence and at least \$100,000 to any one owner with respect to damages to property. Contractor agrees that the proceeds of such insurance policy shall first be used to pay any award, damages, costs, and/or attorneys' fees incurred by or assessed against City, its employees, officers and agents, before payment of any award, damages, costs or attorney's fees of Contractor, its employees, officers or agents. Contractor agrees to cause its insurer to name City as an additional insured on such insurance policy, including the City as an additional insured for coverage under its products-completed operations hazard, and said policy shall be primary and noncontributory.

12.3. Automobile Liability Insurance covering bodily injury and property damage for owned, non-owned and hired vehicles, with limits of at \$1,000,000.00 for all claims arising out of a single accident or occurrence and at least \$1,000,000.00 with respect to injuries and/or death of any one person in a single accident or occurrence.

12.4. Professional Liability Insurance in the amount of \$3,000,000.00 for each claim.

12.5. Umbrella Liability Insurance in the amount of \$3,000,000.00 for each occurrence and aggregate.

12.6. Subcontracts. In case any or all of the performance of this Contract is sublet, the Contractor shall require the subcontractor to procure and maintain all insurance required in subparagraphs (a), (b) and (c) hereof and in like amounts. Contractor shall require any and all subcontractors with whom it enters into a contract to perform work on this project to protect the City through insurance against applicable hazards or risks and shall, upon request of the City,

provide evidence of such insurance.

12.7. Notice. The Contractor and/or subcontractor shall furnish to the City prior to beginning the work contemplated by this Contract, the policy as specified in subparagraph (d), and satisfactory proof of bearing all the insurance required by this Contract, with the provision that policies shall not be canceled, modified or non-renewed without 30 days written notice to the City.

12.8. Legislative or Judicial Changes. In the event the scope or extent of the City's tort liability as a governmental entity as described in Section 537.600 through 537.650 RSMo is broadened or increased during the term of this Contract by legislative or judicial action, the City may require Contractor, upon 10 days written notice, to execute a contract addendum whereby the Contractor agrees to provide, at a price not exceeding Contractor's actual increased premium cost, additional liability insurance coverage as the City may require to protect the City from increased tort liability exposure as the result of such legislative or judicial action. Any such additional insurance coverage shall be evidenced by an appropriate certificate of insurance and shall take effect within the time set forth in the addendum.

13. Contractor's responsibility for subcontractors. The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons it directly employs. Contractor shall cause appropriate provisions to be inserted in all subcontracts relating to this Contract, to bind all subcontractors to Contractor by all the terms herein set forth, and insofar as applicable to the work of subcontractors and to give Contractor the same power regarding termination of any subcontract as the City may exercise over Contractor under any provisions of this contract. Nothing contained in this contract shall create any contractual relation between the subcontractor and the City.

14. General Independent Contractor Clause. This Contract does not create an employee/employer relationship between the parties. It is the parties' intention that the Contractor shall be an independent contractor and not the City's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act, minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Missouri revenue and taxation laws, Missouri workers' compensation, and unemployment insurance laws. The Contractor shall retain sole and absolute discretion as to the judgment and manner and means of carrying out the Contractor's activities and responsibilities hereunder. The Contractor agrees that it is a separate and independent enterprise from the public employer, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Contract shall not be construed as creating any joint employment relationship between the Contractor and the City, and the City shall not be liable for any obligation incurred by the Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

15. Liability and Indemnity.

15.1. In no event shall the City be liable to the Contractor for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this contract. The maximum liability of the City shall be limited to the amount of money to be paid or received by the Contractor under this contract.

15.2. The Contractor shall defend, indemnify and save harmless the City, its elected or

appointed officials, agents and employees from and against any and all liability, suits, damages, costs (including attorney fees), losses, outlays and expenses from claims in any manner caused by, or allegedly caused by, or arising out of, or connected with, this contract, or the work or any subcontract thereunder (the Contractor hereby assuming full responsibility for relations with subcontractors), including, but not limited to, claims for personal injuries, death, property damage, or for damages from the award of this contract to Contractor, notwithstanding any possible negligence, whether sole or concurrent, on the part of the City, its officials, agents and employees.

15.3. The Contractor shall indemnify and hold the City harmless from all wages or overtime compensation due any employees in rendering services pursuant to this Contract or any subcontract, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, the Missouri Prevailing Wage Law or any other federal or state law.

15.4. The indemnification obligations of Contractor hereunder shall not be limited by any limitations as to the amount or type of damages, compensation or benefits payable by or for the Contractor, under any federal or state law, to any person asserting the claim against City, its elected or appointed officials, agents, and employees, for which indemnification is sought.

15.5. The indemnification obligations herein shall not negate, abridge or reduce in any way any additional indemnification rights of the City, its elected or appointed officials, agents and employees, which are otherwise available under statute, or in law or equity.

15.6. Contractor affirms that it has had the opportunity to recover the costs of the liability insurance required in this Contract in its contract price. Contractor's obligation under this Contract to defend, indemnify, and hold harmless any person from that person's own negligence or wrongdoing is limited to the coverage and limits of the applicable insurance required of the Contractor under this Contract.

15.7. The Contractor shall indemnify and hold the City harmless for any penalties, fines, fees or costs, including costs of defense, which are charged or assessed by any Federal, state or local agency including, but not limited to, Environmental Protection Agency or Department of Natural Resources.

16. Contract Documents. The entire Contract of the parties shall consist of the following documents:

This Contract
Scope of Work (Exhibit A)

The above listed documents are attached hereto and incorporated by their reference as though fully set forth herein. No modification, amendment, or waiver of any of the provisions of this Contract shall be effective unless in writing specifically referring hereto and signed by both parties. In the event of a conflict between terms, the terms of this Contract shall control over the terms of the exhibits.

17. Nonresident/Foreign Contractors. The Contractor shall procure and maintain during the life of this Contract:

17.1. If the Contractor is a foreign corporation, a certificate of authority to transact business in the State of Missouri from the Secretary of State, unless exempt pursuant to the provisions of

17.2. A certificate from the Missouri Director of Revenue evidencing compliance with the transient employer financial assurance law, unless exempt pursuant to the provisions of Section 285.230 RSMo.

18. Notices. All notices required or permitted hereinunder and required to be in writing may be given by Electronic Mail or by first class mail addressed to City and Contractor at the addresses shown above. The date of delivery of any notice given by mail shall be the date falling on the second full day after the day of its mailing. The date of delivery of notice by Electronic Mail transmission shall be deemed to be the date transmission occurs, except where the transmission is not completed by 5:00 p.m. on a regular business day at the terminal of the receiving party, in which case the date of delivery shall be deemed to fall on the next regular business day for the receiving party.

19. Right to Audit. Contractor agrees to furnish sufficient supporting details as may be required by the City to support any charges or invoices submitted to the City for payment under this Contract. Contractor shall make available for the City's inspection all records covering or relating to charges submitted to the City for payment. Contractor shall make appropriate adjustments in the event that discrepancies are found. The City shall have the right to audit the Contractor's records pertaining to the Services for a period of three (3) years after final payment.

20. Compliance with Laws. Contractor agrees to comply with all applicable federal, state and local laws or rules and regulations applicable to the provision of services and products hereunder. Contractor affirmatively states that payment of all local, state, and federal taxes and assessments owed by Contractor is current.

21. City Benefits. The Contractor shall not be entitled to any of the benefits established for the employees of the City nor be covered by the Worker's Compensation Program of the City.

22. Jurisdiction. This Contract and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this Contract be litigated, venue shall be proper only in the Circuit Court of Christian County, Missouri.

23. Affidavit for Contracts Over \$5,000.00. That pursuant to Missouri Revised Statute Sections 285.525 through 285.550, if this contract exceeds the amount of \$5,000.00 and Contractor is associated with a business entity, Contractor shall provide an acceptable notarized affidavit stating that the associated business entity is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the contracted services, and that said business entity does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Additionally, Contractor must provide documentation for said business entity evidencing current enrollment in a federal work authorization program.

24. Affidavit for Compliance with Anti-Discrimination against Israel Act. Pursuant to Section 34.600 RSMo, if this Contract exceeds the amount of \$100,000 for Contractors with ten or more employees, Contractor shall provide an acceptable notarized affidavit stating that the associated business is not currently engaged in and shall not for the duration of the contract, engage in a boycott of goods or services from the State of Israel; is not currently engaged in and shall not, for the duration of the contract, engage in a boycott of goods or services from companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or is not currently engaged in and shall not for the duration of this contract, engage in a boycott of goods or services from persons or entities doing business in the state of Israel.

25. City's Authorized Representative. The City Administrator of the City is designated as the City's authorized representative for purposes of this Contract. The City Administrator is charged by the City with carrying out the terms of this Contract on behalf of the City and providing whatever approvals are required by the City herein. Unless specifically provided to the contrary herein, approvals of City herein may be given by the City Administrator, or their authorized designee, without the need of any further action of the City Council.

[Remainder of page intentionally left blank. Signatures follow on next page.]

IN WITNESS WHEREOF, the parties have set their hands on the day and year herein stated.

THE CITY OF NIXA, MISSOURI

Jimmy Liles, City Administrator

Date: _____

ATTEST:

Rebekka Coffey, City Clerk

Approved as to form:

Nick Woodman, City Attorney

Director of Finance Certification:

I certify that this contract is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefore, and that the appropriate accounting entries have been made.

Jennifer Evans, Director of Finance

CONTRACTOR VERIFICATION

STATE OF MISSOURI)
) ss
COUNTY OF St. Louis)

On this 6th day of NOVEMBER, 2023, before me personally appeared TODD SWEENEY, for Navigate Building Solutions, LLC., known to me to be the person described in and who executed the above agreement and acknowledged to me that they executed the same as their free act and deed on behalf of said LLC.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid, the day and year first above written.

Michelle L. Dyer
Notary Public

My commission expires: 10-14-2026.



EXHIBIT A – SCOPE OF WORK

Owner: (hereinafter also referred to as Owner)

City of Nixa
715 W Mt. Vernon Street
Nixa, Missouri 65714

Owner's Representative (hereinafter also referred to as NAVIGATE):

Navigate Building Solutions, LLC
8419 Manchester Road
Brentwood, MO 63144

The Interlocal Purchasing System (TIPS):

NAVIGATE Vendor #8613, Contract #2301041

Project:

New Police Station

1.0 Scope of Work:

1.1. Consultant Procurement Services

1.1.1. Owner's Representative shall review information relevant to the Project, including predesign studies, preliminary site plans, current building program/utilization, Owner research, Project concepts, proposed building program, environmental investigation and remediation reports, building systems analysis reports, and applicable city/state regulations including health code.

1.1.2. Owner's Representative shall develop in collaboration with the Owner, a detailed Roles and Responsibility Matrix clearly defining all consultant and contractor tasks, who will perform these tasks and the proposed procurement strategy to be implemented.

1.1.3. Owner's Representative shall develop all required consultant procurement documents including Request for Qualifications/Proposals and administer consultant selection processes in accordance with State Statutes and Local Ordinances. This will include but not be limited to: design consultants, surveyors, special consultants, testing laboratories, etc.

1.1.4. Owner's Representative shall assist Owner in the compliance with the Owner's standard contracting protocol, including any women or minority enterprise program applicable to the Project, and similar applicable federal requirements, if any.

1.1.5. Owner's Representative shall assist the Owner's Legal Counsel in the development of contracts to be used for each consultant engagement in accordance with Local and State procurement protocols.

1.1.6. Owner's Representative shall assist with the negotiation of consultant contracts.

1.2. Preconstruction Phase: Design and Bidding Services

1.2.1. Owner's Representative shall provide leadership on matters relating to the planning, design, governmental approvals, and other activities necessary to prepare the project for bidding.

1.2.2. Owner's Representative shall maintain an organized filing system for Project documents and records.

1.2.3. Owner's Representative shall schedule and attend all preconstruction meetings including those with the Owner, Architect, Consultants, Vendors and Suppliers. Owner's Representative will monitor the

Architect and Engineers interface with public Agencies and Utility Companies to help ensure design compliance and timely project coordination.

1.2.4. Owner's Representative shall (1) coordinate the preparation by the Architect of a written and graphic description of the program for the Project, including room uses, sizes and adjacency requirements, in accordance with Owner's goals and objectives (the "Project Program"); (2) prepare and submit to Owner a preliminary estimated schedule for completion of the design and construction of the Project, the various major activities to be undertaken in connection with the Project, and the approximate timing of the commencement and completion of such activities, which Owner's Representative shall monitor and revise from time to time throughout the Term (the "Project Schedule"); (3) assist Owner in establishing a Project budget based on a preliminary estimate of Project costs, including without limitation Owner's internal costs, which Owner's Representative shall update with increased detail as the design of the Project progresses (the "Project Budget"); and (4) manage the Project Schedule and Project Budget to manage cash flow, maximize value, keep the work progressing in a logical manner, and avoid or mitigate interruptions of design and construction.

1.2.5. Owner's Representative shall provide recommendations to the Owner and Architect regarding construction feasibility, value engineering, availability of materials and labor, time requirements for installation and construction, and factors relating to costs, including costs of alternative designs or materials in a manner consistent with the Project Program, Budget and Schedule, and possible cost reductions and economies if and when necessary to reconcile the Project Budget, Program, and Schedule.

1.2.6. Owner's Representative shall (i) prepare and update detailed cost estimates for the estimated Project costs to be incurred by Owner in designing and constructing the Project (the "Project Costs Estimate"). These shall be prepared at the end of the Schematic and Design Development phases of the project. The Project Costs Estimate shall include separate line items for each cost category included in the Project cost; with line items for anticipated contracts and subcontracts, and (ii) evaluate pricing for alternative building and engineering systems. In addition, Owner's Representative shall, in consultation with the Architect and Contractor, provide value engineering services to analyze and make recommendations concerning the availability of materials and labor, time requirements for installation and construction, and other factors related to costs, including costs of alternative designs or materials, and possible cost reductions and economies. Owner's Representative shall provide value engineering recommendations to the Owner, but the final decision will, in every instance, be Owner's decision.

1.2.7. Owner's Representative shall consult with and advise the Owner concerning appropriate construction delivery methods, such as separate prime contractors and sequenced bid packages. If any portions of the work are to be separated into separate bid sections, Owner's Representative shall review the working drawings and make recommendations to the Architect to (i) coordinate the work of the separate bid portions, (ii) allocate the work to the separate bid portions, (iii) provide the proper coordination for phased construction, and (iv) advise Owner with respect to whether major portions of the work should be bid as separate prime contracts.

1.2.8. Owner's Representative shall review and comment on the drawings and specifications for the Project (the "Construction Documents"), as they are prepared by the Architect. Owner's Representative shall assist the Owner in the evaluation and recommendation of appropriate design alternatives in light of the Owner's Project Program and the Project Budget and Schedule.

1.2.9. Owner's Representative shall act as Owner's Representative in coordinating and assisting the Architect in the preparation of bid documents. Owner's Representative shall manage the bid process and execution of contracts in accordance with Owner's requirements.

1.2.10. Owner's Representative shall assist with pre-bid conferences to familiarize bidders with the bid documents and any special or unique systems, materials, or methods.

1.2.11. Owner's Representative shall review bids, prepare analyses and make recommendations to the Owner for an award of a contract for the Project.

1.2.12. Owner's Representative shall assist with the design, procurement and coordination of FF&E (Furniture, Fixtures, and Equipment) Information Technology, Security, Audio/Visual, Signage, Testing Services, Temporary Facilities and other Owner Directly Procured building systems not included in the Prime Contractor Bid Package.

1.3. Construction Phase Services

1.3.1. Owner's Representative, in general, shall have primary management responsibility for the Project and shall coordinate all Project matters during construction.

1.3.2. Owner's Representative shall provide recommendations regarding each Contractor's proposed mobilization schedule, temporary Project facilities, equipment, materials and services during construction and the assignment of responsibilities relating to the same.

1.3.3. Owner's Representative shall conduct pre-award conferences with the best and lowest respondent for a Project construction contract; advise Owner regarding the negotiation of business terms of each Project construction contract; advise Owner on the acceptability of Contractor for the Project.

1.3.4. After Owner awards each Project construction contract and before the Contractor commences work on the site, Owner's Representative shall assist Owner in the preparation of necessary site logistics plans, traffic flow diagrams and plans for the performance of the applicable work as a result of the review and coordination of the contractor's implementation plan, showing the use of designated roadways or street lights, the closing of any roadways, streets and/or sidewalks, and the re-routing of any traffic; and assist in obtaining necessary government approvals required to implement such traffic plans.

1.3.5. Owner's Representative shall furnish to the Owner timely reports containing: (a) the status of the Project; (b) a comparison of the Project budget to costs incurred through the date of the report; (c) a comparison of the Project schedule to the work actually completed through the date of the report; (d) any revision to the Project schedule or Project budget made during the time period covered by the report; (e) a summary of change orders made during the time period covered by the report; (f) a list of pending change orders and outstanding issues requiring action or approval by Owner; (g) the status of any governmental requirements and activities required to facilitate approval of the Project; and (h) any other reports concerning the Project as Owner may reasonably request.

1.3.6. Owner's Representative shall represent the Owner in its communications with the Architect, Contractor, and Consultant(s); schedule, attend and conduct progress meetings, regular on-site meetings to review construction progress and pay requests and to provide appropriate recommendations to the Owner concerning the Owner's decisions on construction matters, including, where necessary, alternative designs or materials; and coordinate, review and advise the Owner concerning, change orders, submittals, and requests for information.

1.3.7. Owner's Representative shall (i) assist and review the processing of change orders, (ii) advise Owner concerning the necessity for, the scope of and recommended cost of change orders, and (iii) negotiate, on Owner's behalf, change orders with Contractor. The final Project Budget and/or Project Schedule, as applicable, will be revised to reflect approved change orders.

1.3.8. Owner's Representative shall review applications for payment by the Architect and Contractor and make written recommendations to Owner concerning the payment.

1.3.9. Owner's Representative shall direct the Contractor (and others, where appropriate) to prepare and update a critical path schedule for completion of the applicable work. In the event of delays impacting the critical path schedule, Owner's Representative shall make recommendations to Owner for corrective action by Contractor and review Contractor's recommendations for corrective action.

1.3.10. Owner's Representative shall coordinate the Architect's review and approval of shop drawings, product data and other submittals by Contractor.

1.3.11. In conjunction with the Contractor who has prime contractual responsibility, the Owner's Representative shall additionally review and advise the Owner concerning the adequacy of the Contractor's personnel and equipment, and the availability of materials and supplies to meet the Contractor's schedules in relation to the Project Schedule.

1.3.12. Owner's Representative shall enforce the Contractor's contract to maintain a daily log containing the number of workers, equipment, work accomplished, daily weather, problems encountered and other relevant data as the Owner may require. Although Owner's Representative shall not guarantee the performance by Contractor, Owner's Representative shall recommend courses of action to the Owner when Owner or Owner's Representative becomes aware that requirements of any Project construction contract are not being fulfilled, or when Contractor falls behind in its schedule; shall communicate recommendations, as directed by the Owner, to Contractor on behalf of the Owner; shall monitor Contractor's performance of such recommendations; and shall report Contractor's progress to the Owner on at least a monthly basis.

1.3.13. Owner's Representative shall notify Owner in writing, with photos and supporting documentation if Owner's Representative becomes aware that the work of Contractor is not being performed in accordance with the requirements of the Contract Documents. As appropriate, Owner's Representative shall have authority, with written authorization from the Owner, to require additional inspection or testing of the work in accordance with the provisions of the Contract Documents, whether or not such work is covered, installed or completed. Owner's Representative shall review any and test reports and notify the Owner, the Architect and the Contractor, as appropriate, of deficiencies in the work of which Owner's Representative becomes aware and shall advise the Owner of projected consequences of such default and shall make recommendations to Owner with respect thereto. With the written authorization of the Owner, Owner's Representative shall reject work that does not conform to the requirements of the applicable Contract Documents.

1.3.14. Owner's Representative shall attend the on-site review of the Project to confirm substantial and final completion of the construction of the Project and notify Owner when Owner's Representative believes the work under a Project construction contract is substantially complete and that a punch list should be prepared.

1.3.15. Owner's Representative shall coordinate with the Architect in its review of the work to enable the Architect to determine the date of substantial completion. At the substantial completion by Contractor of the work, monitor the Architect in its inspection of the work and preparation of a detailed "punch list" specifying any items which require completion, installation, correction or repair. Owner's Representative will consult with Owner and/or Architect in connection with recommendations for the rejection and replacement of nonconforming work, as appropriate.

1.3.16. Owner's Representative shall obtain from Contractor record drawings or if required by the applicable Project construction contract, "as-built" drawings, as construction completes.

1.3.17. Together with the Architect and Owner, Owner's Representative shall monitor and observe the testing and start-up of utilities, systems and equipment for the Project and review test reports.

1.3.18. Owner's Representative shall complete the final close-out of the Project by (i) obtaining, or causing the Contractor to obtain, government approvals required for the legal use and occupancy of the Project, (ii) obtaining warranties, guarantees, bonds, insurance certificates, installation manuals, and other items required pursuant to the Project construction contracts, (iii) obtaining affidavits, waivers, and releases the Contractors are required to provide pursuant to the Project construction contracts to achieve final completion of the Project, and/or (iv) representing Owner at meetings and/or inspections scheduled by Owner and held to resolve problems relating to design, physical condition or operation of the Project to seek enforcement of warranties.

1.4 Additional Services

1.4.1. Additional Services required to perform a mutually agreed upon scope of work for this project or other projects with the Owner.

1.4.2. Additional Services required due to a material change in the Project's scope of work.

1.4.3. Additional Services required to analyze claims (including claims for extra compensation) asserted by the Contractors and the Architect and/or resolving any and back charge claims that the Owner may assert against any Architect or Contractors, including assistance with any legal proceedings instituted by Owner and/or any Architect or Contractor.

2.0 PROJECT SCHEDULE

2.1 The Preconstruction Phase Duration will commence upon execution of this agreement and continue through project bidding. This will include the completion of the Services Defined in Articles 1.1 through 1.2 of this Agreement.

2.2 The Construction Phase Duration will commence upon the execution, by the Owner, of the first Prime Contract for Construction and will conclude one month after the issuance of Final Completion to the Contractor. This includes one month for Project Closeout after final completion and the services defined in Article 1.3 of this Agreement.

3.0 OWNER'S RESPONSIBILITIES

3.1 The Owner shall identify a single representative authorized to act on the Owner's behalf with respect to the Project.

3.2 NAVIGATE is not a licensed design professional, attorney, insurance representative, or construction contractor. As such, Owner shall retain all professional design consultants, legal support and construction contractors required for the Project. In the role of Owner Representative, NAVIGATE does not assume any responsibility for design errors/omissions, preliminary Project estimates or work performed by the design professionals, legal support and/or contractors contracted by the Owner.

3.3 The Owner shall furnish tests, inspections, commissioning and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

3.4 The Owner shall furnish all legal and accounting services, including auditing services that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

3.5 When NAVIGATE is requested to perform construction phase services, any construction contracts issued by the Owner for the Project shall include 1) an indemnity provision in favor of and protecting the Owner and NAVIGATE; 2) a provision requiring that the Owner and NAVIGATE be named as additional insured on the general liability, auto liability, pollution liability and excess liability insurance policies carried by the Contractors.

3.6 NAVIGATE makes no representations, warranties or promises of any kind with regard to whether or not the Project is eligible for receipt of incentives, grants, reimbursements or any other kind of monetary relief or assistance from any federal, state, local or other governmental agency. Navigate shall be paid for its services regardless of whether the Owner receives any such assistance from governmental agencies.

8.0 MISCELLANEOUS PROVISIONS

8.1 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or NAVIGATE.

8.2 Unless otherwise required in this Agreement, NAVIGATE shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

8.3 NAVIGATE shall from time to time provide estimates of the Project costs. Any such estimate shall be viewed as a projected cost and not a guaranteed cost.

8.4 NAVIGATE shall have the right to include photographic or artistic representations of the design of the Project among NAVIGATE's promotional and professional materials.

8.5 NAVIGATE shall not be responsible for the construction means, methods, techniques, sequences or procedures of the contractors, subcontractors or anyone else working on the Project. Other than for NAVIGATE's own employees, NAVIGATE shall not be responsible for construction job site safety and health and is not administering, monitoring or enforcing any safety programs for the Project.

9.0 COMPENSATION

9.1 Fee Preconstruction Phase Services (Article 1.1. through Article 1.2): Owner's Representative shall be paid a Fee of One Hundred and Sixty-Five Thousand and Five Hundred Dollars (\$165,500) Dollars.

9.2 Fee for Construction Phase Services (Article 1.3): Owner's Representative shall be compensated a Fee of Sixteen Thousand and Three Hundred Dollars (\$16,300) per month.

9.3 Additional Services: Owner's Representative shall be paid, if authorized in writing by the Owner, in accordance with Article 1.4 and a mutually agreed upon scope of work and compensation.

9.3 Reimbursable Expenses

9.3.1 All home office profit, overhead and direct personal expenses are included in the rates. No additional expenses will be charged with the exception of Owner directed and approved out-of-town travel and/or third-party consultants contracted by NAVIGATE at the request of the Owner.

9.4 Payments to NAVIGATE

9.4.1 Unless otherwise agreed, payments for services shall be made monthly based on the percent of services completed. Payments are due and payable upon presentation of NAVIGATE's invoice. Amounts unpaid Forty-Five (45) days after the invoice date shall bear interest at the legal rate prevailing from time to time in the State of Missouri.

9.4.2 The Owner shall not withhold amounts from NAVIGATE's compensation to impose a penalty or liquidated damages on NAVIGATE.