

PROPOSAL DOCUMENTS MANUAL

CONSTRUCTION MANAGER AS CONSTRUCTOR

Facility – Missouri Psychiatric Center – Infrastructure
and ED Observation Renovation
Project Number CP230481

ISSUED FOR PROPOSALS: December 13, 2022

AT
UNIVERSITY OF MISSOURI – COLUMBIA
Columbia, Missouri

FOR:

THE CURATORS OF THE UNIVERSITY OF MISSOURI

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REQUEST FOR PROPOSAL

CONSTRUCTION MANAGER AS CONSTRUCTOR

Project Number CP230481

Missouri Psychiatric Center – Infrastructure and ED Observation Renovation

The Curators of the University of Missouri (the “Owner”) has received your response to its Request for Qualifications and your organization is hereby requested to submit a proposal for the Work as more fully described in the Agreement between Owner and Construction Manager as Constructor for the Project Number CP230481 Missouri Psychiatric Center – Infrastructure and ED Observation Renovation. Proposals will be received by Owner at Room L100 (Front Reception Area), General Services Building, University of Missouri, Columbia, MO 65211), at 1:30 pm CT on December 23, 2022. All Proposals duly received will be opened by the campus contract manager and all fees and costs will be tabulated. The apparent successful proposer will be announced within seven (7) days or the proposal tabulation sheet will be provided.

All Proposals must be in accordance with the Proposal Documents contained in this Proposal Documents Manual, which Proposal Documents are incorporated herein by reference and form a part of this Request for Proposal.

Proposals will be received on the basis set forth in the Proposal Documents.

Each Proposal shall be accompanied by a Bid Bond issued by a surety licensed to do business in the State of Missouri in the amount of \$1,550,000 Dollars.

No Proposer may withdraw its Proposal within one hundred twenty (120) days after the actual date of the opening of the Proposals. Owner reserves the right to reject any or all Proposals, and to waive any informalities or irregularities therein.

University of Missouri

CONSTRUCTION MANAGER AS CONSTRUCTOR

Project Number CP230481 Project Title Missouri Psychiatric Center – Infrastructure and ED Observation Renovation

INSTRUCTIONS TO PROPOSERS

ARTICLE 1. DEFINED TERMS.

1.01 Terms used in these Instructions to Proposers which are defined in the University of Missouri General Conditions of the Contract for Construction (Current Edition) (“General Conditions”) or the Agreement defined below have the meanings assigned to them in the General Conditions or Agreement. Other terms used in the Proposal Requirements and not defined elsewhere have the following meanings which are applicable to both the singular and plural thereof:

- A.** “Agreement” – The form of Agreement Between Owner and Construction Manager as Constructor and Provisions of the Agreement included in the Proposal Documents Manual (“Proposal Documents Manual”).
- B.** “Amendment” – The form of Amendment Between Owner and Construction Manager as Constructor modifying the “Agreement” for Preconstruction services, or establishing the Guaranteed Maximum Price for work described in the GMP Documents.
- C.** “Architect” – When the term "Architect" is used herein, it shall refer to the Architect or the Engineer specified and defined in the Proposal Documents or its duly authorized representative.
- D.** “Owner” – The Curators of the University of Missouri. The Owner may act through its Board of Curators or any duly authorized committee or representative thereof.
- E.** “Proposal” – The offer of a Proposer submitted on the prescribed form contained in the Proposal Documents Manual setting forth the sums for the items set forth on the Proposal Form.
- F.** “Proposal Documents” – The Proposal Requirements and the other documents included in the Proposal Documents Manual.
- G.** “Proposal Requirements” – The Request for Proposals, these Instructions to Proposers and the Proposal Form and required attachments as set forth herein.
- H.** “Proposal Security” – Bid Bond or Certified Check furnished by the Proposer and made payable to the Curators of the University of Missouri for the amount set forth in the Request for Proposal.
- I.** “Proposer” – The entity who submits a Proposal for the Work described herein.
- J.** “Successful Proposer” – The Proposer submitting the lowest responsive aggregate amounts for the fees and costs described herein.

ARTICLE 2. GENERAL

The Project scope and budget is set forth in The Project Description attached hereto as **Exhibit A**. The Owner seeks proposals on the following basis: (a) a lump sum bid for the General Conditions Amount described in the Agreement; (b) a percentage of the Cost of the Work bid for the Construction Phase Fee described in the Agreement; (c) cost of performance and payment bond; and (e) cost of insurance required by Article 11 of the General Conditions of the Contract for Construction. Preconstruction Services shall not be bid as part of the initial Step 2 proposal process. Preconstruction Services scope and cost shall be negotiated with the apparent successful proposer prior to award of the contract. If Preconstruction Services negotiations are successful and scope and associated cost are agreed upon, the applicable preconstruction fee and services will be included and executed as a component of the Agreement Between the Owner and Construction Manager as Constructor. Payment applications for Preconstruction Services shall be invoiced on the basis agreed to during Preconstruction Services negotiations.

- 2.01** When GMP Design Documents are completed by Architect, the Construction Manager shall submit the GMP Documents, described in the Agreement. The Contract Sum for the Construction Phase Services and Work shall be the sum of the Cost of the Work, the General Conditions Amount and the Construction Phase Fee as described in the Agreement, subject to the Guaranteed Maximum Price described in the Agreement. The parties shall execute the Amendment to establish the Guaranteed Maximum Price upon acceptance and approval of the GMP Documents by the Owner.
- 2.02** The Construction Manager shall publicly advertise for competitive bids or proposals for the performance of all major elements of the Work other than minor Work that may be included in the General Conditions Amount. The Construction Manager shall utilize the owner's designated reproduction company to advertise, post, and reproduce bidding documents, if required.
- 2.03** The Construction Manager nor a Related Party, as described in the Agreement herein, shall not perform any of the major elements of the Work other than minor Work that may be included in the General Conditions Amount unless authorize by the Owner.
- 2.04** The contents of the bids or proposals received by Construction Manager for any major element of the Work shall not be disclosed to a person not employed by the Construction Manager, the Owner or the Architect, except as set forth herein. The contents of any bid or proposal for any major elements of the Work shall be made public only after the award of the Subcontract for such Work or within seven (7) days after the date of final selection of bids or proposal for such Work, whichever is later.
- 2.05** If a person or entity that is awarded a Subcontract fails to execute a Subcontract after being selected in accordance with the required procedures, or a Subcontractor defaults in the performance of a Subcontract, the Construction Manager itself may, without advertising, select a replacement Subcontractor to fulfill the requirements of the Contract Documents for such Work. Such action requires the written approval of the Owner.

ARTICLE 3. SELECTION CRITERIA.

- 3.01** The Owner is utilizing a two (2) step process in selecting a Construction Manager. In Step One, the Owner received qualifications in response to a Request for Qualifications and assigned points to the responding organizations in accordance with the process set forth in the Step One Request for Qualifications.
- 3.02** The Proposers, based upon the process set forth in the Step One Request for Qualifications, are selected to submit a Proposal in accordance with the Proposal Documents.
- 3.03** The selection of the Construction Manager will be based upon a 2500-point system. A 1000-point system has been established to evaluate and rank the responses to the qualifications criteria set forth in the Request for Qualifications. The responses to the Owner's Request for Qualifications will be reviewed by the Owner's evaluation committee and assigned points based on the content of the response. Thirty (30) bonus points will be awarded to a SDVE proposer. The 30 bonus points will be added to the SDVE's qualifications score as established by the Owner's evaluation committee. The 30 bonus points are available only to an SDVE firm submitting a proposal directly to the Owner.
- 3.04** A 1,500 point system has been established to evaluate the aggregate amount of (a) the General Conditions Amount; (b) an estimate of the Construction Phase Fee determined by applying the percentage amount for the Construction Phase Fee contained in the Proposal to the Construction Budget given in **Exhibit A**; (c) cost of Performance Bond and Payment Bond determined by applying a percentage amount for the bonds to the Construction Budget given in Exhibit A; and (d) cost of insurance required by Article 11 of the General Conditions, or as modified by the Special Conditions of these Contract Documents. The Construction Phase Fee to be paid to the Construction Manager shall be determined in accordance with the Contract Documents and shall not be affected by the estimate determined herein. The Proposer submitting the lowest aggregate amounts for the fees and costs described herein shall receive 1,500 points and the other proposers shall be awarded a portion of the 1,500 total points by applying the percentage resulting by dividing the lowest aggregate Proposal by the aggregate amount of the applicable Proposal, to the 1,500 points. Accordingly, forty-percent

(40%) of the evaluation shall be based upon the qualifications of the Proposers and sixty percent (60%) of the evaluation is based upon the aggregate amounts of costs and fees described herein.

- 3.05** The organization with the highest point total will be the Proposer that offers the best value to the Owner and will be the apparent Successful Proposer.

ARTICLE 4. COPIES OF PROPOSAL DOCUMENTS.

- 4.01** Complete sets of Proposal Documents must be used in preparing Proposals; neither the Owner nor Architect assumes any responsibility for errors or misrepresentations resulting from the use of incomplete sets of Proposal Documents.
- 4.02** The Owner and Architect, in making copies of Proposal Documents available on the above terms, do so only for the purpose of obtaining Proposals on the Work and do not confer a license or grant for any other use. All Proposal Documents are the property of Owner.

ARTICLE 5. EXAMINATION OF PROPOSAL DOCUMENTS AND SITE.

- 5.01** It is the responsibility of each Proposer, before submitting a Proposal, to (a) thoroughly examine the Proposal Documents, (b) visit the site to become familiar with local conditions that may affect cost, progress, performance, or furnishing of the Services or Work, (c) consider federal, state, and local Laws and Regulations that may affect cost, progress, performance, or furnishing of the Services or Work; and (d) notify the Owner of all conflicts, errors, or discrepancies discovered by Proposer in the Proposal Documents.
- 5.02** On reasonable notice, the Owner will provide each Proposer access to the site to conduct such examinations, inspections and studies as each Proposer deems necessary for submission of a Proposal. Each Proposer wishing to inspect the site and any existing facilities shall contact:

Pam Eugster
The University of Missouri Columbia
Campus Facilities
816-522-8126

- 5.03** The submission of a Proposal will constitute an incontrovertible representation by Proposer that Proposer has complied with the provisions of Section 5 of the Instructions to Proposers.

ARTICLE 6. INTERPRETATIONS

- 6.01** All questions about the meaning or intent of the Proposal Documents are to be directed to the Owner. Questions concerning the Proposal Documents may be directed to:

Jim Heckemeyer
The University of Missouri
Campus Facilities
573-289-7103

ARTICLE 7. PROPOSAL SECURITY.

- 7.01** Each Proposal shall be accompanied by a Proposal security, in the form of a Bid Bond, certified check, or cashier's check, acceptable to and payable without condition to The Curators of the University of Missouri, in the amount as set forth in the Request for Proposal. The Bid Bond shall be executed by the Proposer and a responsible surety licensed in the State of Missouri with a Best's rating of no less than A-/XI. Bid Bonds shall be executed on the form included in the Proposal Documents.
- 7.02** The Proposal Security of the Successful Proposer will be retained until such Proposer has satisfied the following requirements: (a) executed the Agreement within ten (10) days after receipt of the unsigned agreements; (b) provided the Owner with the certificate of insurance required by Construction Manager during the Preconstruction Phase as required by Article 10 of the Agreement within ten (10) days after receipt of the unsigned agreements; (c) executed Amendment establishing the GMP as required by the Contract Documents; (d) provided Owner with the Performance Bond and Payment Bond for the execution of an Early Release Order or the GMP Amendment in accordance with the requirements of the Contract Documents; and (e) provided the

Owner with the evidence that it has procured the required insurance for the Construction Phase in accordance with the requirements of the Contract Documents. If the Successful Proposer fails to satisfy any of the requirements set forth herein the Proposal Security shall be forfeited.

ARTICLE 8. CONTRACT TIME.

- 8.01** The Contract Time concerning the dates the Work shall be completed is defined in Article 4 of the Provisions of the Agreement.

ARTICLE 9. SUPPLIER DIVERSITY.

- 9.01** The successful Proposer shall be obligated to comply with the Supplier Diversity participation goals for this Project. At the time of Proposer's submission of the Proposal to the Owner, the Proposer shall comply with this Article 9 for all diverse subcontractors that are applicable to the submission of the price proposal and represent a percentage of Supplier Diversity participation in said Proposal.
- 9.02** In accordance with the Supplier Diversity provisions below, each Proposer shall submit the information and documents required by such provisions.
- 9.03** Supplier Diversity Percent Goal Computation
- A.** The total dollar value of the work granted to a diverse firm by the successful Proposer is counted towards the applicable goal of the entire Work covered by the Guaranteed Maximum Price ("GMP") and the applicable goal of each of the following: (i) the Work covered by each bid or proposal awarded under Section 2.9 of the CMR Provisions, (ii) the Work, services and other items comprising the General Conditions Amount. For purposes of this Section 9.03, the term "Proposer" shall include, with respect to each bid and proposal identified above that is separately subject to the Supplier Diversity goal, the contractor or other entity which is awarded such bid or proposal under Section 2.9 of the CMR Provisions.
 - B.** The Proposer may count toward the Supplier Diversity goal only expenditures to diverse firms that perform a commercially useful function in the work of a contract. A diverse firm is considered to perform a commercially useful function when it is responsible for executing a distinct element of the work and carrying out its responsibilities by actually performing, managing and supervising the work involved. A Proposer that is a certified diverse firm may count as 100% of the contract towards the Supplier Diversity goal. For projects with separate Supplier Diversity goals, a MBE firm bidding as the prime Proposer is expected to obtain the required WBE/Veteran/Service Disabled Veteran/DBE participation and a WBE or Veteran or Service Disabled Veteran or DBE firm bidding as the prime Proposer is expected to obtain the required MBE participation.
 - C.** The Proposer may count toward its Supplier Diversity goal expenditures for materials and supplies obtained from diverse suppliers and manufacturers, provided the diverse firm assumes the actual and contractual responsibility for the provision of the materials and supplies.
 - D.** The Proposer may count its entire expenditure to a diverse manufacturer. A manufacturer shall be defined as an individual or firm that produces goods from raw materials or substantially alters them before resale.
 - E.** The Proposer may count its entire expenditure to diverse suppliers that are not manufacturers provided the diverse supplier performs a commercially useful function as defined above in the supply process.
 - F.** The Proposer may count 25% of its entire expenditures to diverse firms that do not meet the definition of a subcontractor, a manufacturer, nor a supplier. Such diverse firms may arrange for, expedite, or procure portions of the work but are not actively engaged in the business of performing, manufacturing, or supplying that work.
 - G.** The Proposer may count toward the Supplier Diversity goal that portion of the total dollar value of the work awarded to a certified joint venture equal to the percentage of the ownership and control of the diverse partner in the joint venture.
 - H.** On projects with separate Supplier Diversity goals, the Owner may allow MBE participation provided in excess of the MBE goal to be counted towards the WBE/Veteran/Service Disabled Veteran/DBE goal.
- 9.04** Certification by Proposer of Diverse firms

- A. The Proposer shall submit with its Proposal the information requested in the "Supplier Diversity Compliance Evaluation Form" for every diverse firm the Proposer intends to award a portion of the Work, services and other items comprising the Preconstruction Phase Fee, General Conditions Amount, or the Construction Phase Fee. Additionally, the Proposer shall require, as a condition to bidding for any part of the Work under Section 2.9 of the CMR Provisions that all bidders or proposers submit the information requested in the "Supplier Diversity Compliance Evaluation Form" for every diverse firm that such bidder or proposer intends to award a portion of such Work.
- B. Diverse firms are defined in Article 1 of the General Conditions of the Contract for Construction included in the contract documents, and as those businesses certified as disadvantaged by an approved agency. The Proposer is responsible for obtaining information regarding the certification status of a firm. A list of certified firms may be obtained by contacting the agencies listed in the proposal form document "Supplier Diversity Certifying Agencies". Any firm listed as disadvantaged by any of the identified agencies will be classified as a diverse firm by the Owner.
- C. Proposers are urged to encourage their prospective diverse contractors, subcontractors, joint venture participants, team partners, and suppliers who are not currently certified to obtain certification from one of the approved agencies.

9.05 Supplier Diversity Good Faith Effort

The Proposer is required to make a good faith effort to locate and contract with diverse firms as indicated in Paragraph 8 of the Proposal Form and promote the inclusion of sub-subcontractor participation among non-diverse subcontractors. Following contract award and during the preconstruction phase, the successful proposer shall submit their proposed Good Faith Effort plan for the Owner's approval. At a minimum, the plan shall include the following strategies:

- A. Outreach meetings scheduled and conducted by the successful proposer to inform potential subcontractors, sub-subcontractors, suppliers and diverse firms of contracting and subcontracting opportunities and responsibilities associated with Supplier Diversity participation. A summary of The Proposer's efforts to notify diverse and non-diverse firms of Outreach meetings. Diverse firms attending Outreach meetings shall be asked to provide company contact information and the scope of Work they are interested in for inclusion in future notices.
- B. The Proposer's emphasis on potential subcontractor's good faith effort strategies during the pre-qualification of subcontractors (if applicable).
- C. The Proposer's strategies to ensure potential subcontractors are actively seeking diversity during the advertisement phase for each bid package.
- D. The Proposer's advertisements in general circulation trade association, and diverse (minority) focused media concerning subcontracting opportunities with each bid package advertised for public bid.
- E. The Proposer's written notice to specific diverse firms that their services were being solicited in sufficient time to allow for their effective participation. Such written notice shall include The Proposer's contact person with contact information and a summary of the anticipated bid packages and their anticipated advertisement dates. The written notice shall direct interested diverse firms to provide their contact information and the scope of Work they are interested in for inclusion in future notices.
- F. A written summary of the proposer's efforts to provide potential, non-diverse subcontractors with a list of interested diverse firms, their area of interest and their contact information with each bid package.
- G. A written summary of the Proposer's follow-up attempts to the initial solicitation(s) to determine with certainty whether diverse firms were interested.
- H. The Proposer's efforts to divide the work into packages suitable for subcontracting to diverse firms.
- I. The Proposer's efforts to provide interested diverse firms with sufficiently detailed information about the drawings, specific actions and requirements of the contract, and clear scopes of work.

- J. The Proposer's efforts to solicit for specific sub-Proposals from diverse firms in good faith. Documentation should include names, addresses, and telephone numbers of firms contacted a description of all information provided the diverse firms, and an explanation as to why agreements were not reached.
- K. The Proposer's efforts to locate diverse firms not on the directory list and assist diverse firms in becoming certified as such.
- L. Other Proposer's initiatives to encourage and develop participation by diverse firms.
- M. The Proposer's strategies in requiring potential subcontractors to make a Good Faith Effort in securing diversity participation.

ARTICLE 10. PREFERENCE FOR MISSOURI PRODUCTS.

- 10.01 The Curators of the University of Missouri have adopted a policy which is binding upon all employees and departments of the University of Missouri, and which by contract, shall be binding upon independent contractors and subcontractors with the University of Missouri whereby all other things being equal, and when the same can be secured without additional cost over foreign products, or products of other states, a preference shall be granted in all construction, repair and purchase contracts, to all products, commodities, materials, supplies and articles mined, grown, produced and manufactured in marketable quantity and quality in the State of Missouri, and to all firms, corporations or individuals doing business ide as Missouri firms, corporations or individuals. Each Proposer submitting a Proposal agrees to comply with, and be bound by the foregoing policy.

ARTICLE 11. PROPOSAL FORM.

- 11.01 The Proposal Form is included in the Proposal Documents. Proposal Forms must be completed in ink or typewritten and include all required attachments.
- 11.02 Proposals by corporations must be executed in the corporate name by the president or vice-president (or other corporate officer accompanied by evidence of authority to sign), and the corporate seal shall be affixed and attested by the secretary or an assistant secretary. The state of incorporation shall be shown below the corporate name. Proposals by partnerships must be executed in the partnership name and signed by a partner (accompanied by evidence of authority to sign) and the official address of the partnership must be shown below the signature. Proposals by joint ventures shall be signed by each participant in the joint venture or by an authorized agent of each participant. Proposals by limited liability companies shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm must be shown below the signature. All names shall be typed or printed in ink below the signatures. The address and telephone number for communications regarding the Proposal shall be shown.
- 11.03 All blank spaces in the Proposal Form shall be filled. A Proposal price shall be indicated for each item listed therein. Proposals received without all such items completed will be considered nonresponsive. No alterations in Proposals, or in the printed forms thereof, by erasures, interpolations, or otherwise will be acceptable.

ARTICLE 12. BASIS OF PROPOSAL.

- 12.01 Proposers shall submit a Proposal on the basis set forth in the Proposal Form.

The Proposal shall include all federal sales, excise, and similar taxes, which may be lawfully assessed in connection with their performance of work and purchase of materials to be incorporated in the work. City & State taxes shall not be included as defined within Article 3.16 of the General Conditions for Construction Contract included in the contract documents.

ARTICLE 13. SUBMISSION OF PROPOSALS.

- 13.01 Proposals shall be submitted at the time and place indicated in the Request for Proposals. Proposals shall be enclosed in an opaque sealed envelope or wrapping addressed to the Owner as indicated in the Request for Proposals.
- 13.02 Proposals shall be marked with the name and address of the Proposer and shall be accompanied by the Bid Security, Proposer's Affidavit, and other required documents. If the Proposal is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it.

- 13.03** The Proposer's Affidavit enclosed in the envelope following the Title Page shall be properly completed and attached to the outside of the Proposal envelope. A Proposal will not be read unless accompanied by a properly executed and notarized Proposer's Affidavit. Each Proposal envelope shall be identified on the outside with the words "Proposal" and the Project identified. Proposals received after the time and date for receipt of Proposals will be returned unopened.
- 13.04** Proposer shall assume full responsibility for the timely delivery at the location designated for receipt of Proposals. Oral, telephone, telegraph, or facsimile Proposals are invalid and will not receive consideration. No Proposer may submit more than one (1) Proposal. Multiple Proposals under different names will not be accepted from one (1) firm or association.
- 13.05** Proposer shall submit the Supplier Diversity Compliance Form for any firm providing services as a subcontractor or supplier as part of the Proposers pricing proposal in accordance with Article 9 of these Instructions.

ARTICLE 14. MODIFICATION AND WITHDRAWAL OF PROPOSALS.

- 14.01** The Proposer may withdraw their Proposal at any time before the scheduled closing time for receipt of Proposals, but no Proposer may withdraw their Proposal after the scheduled closing time for receipt of Proposals. Only telegrams, letters and other written requests for modifications or correction of previously submitted Proposals, contained in a sealed envelope which is plainly marked "Modification of Proposal on (name of project on cover sheet)," which are addressed in the same manner as Proposals, and are received by Owner before the scheduled closing time for receipt of Proposals will be accepted and Proposals corrected in accordance with such written requests.

ARTICLE 15. OPENING OF PROPOSALS.

- 15.01** Owner shall receive, open the sealed proposals, and record the fees and costs listed for each proposal deemed responsive. The content of the sealed proposals shall not be made public until a successful proposer is identified.

ARTICLE 16. PROPOSALS TO REMAIN SUBJECT TO ACCEPTANCE.

- 16.01** All Proposals will remain subject to acceptance for one hundred twenty (120) days after the day of opening of the Proposals, but the Owner may, in its sole discretion, release any Proposal and return the Proposal Security prior to that date.

ARTICLE 17. AWARD OF AGREEMENT.

- 17.01** The Owner reserves the right to reject any and all Proposals, including, without limitation, the right to reject any or all Proposals which in the Owner's discretion are nonconforming, nonresponsive, unbalanced, or conditional Proposals.
- 17.02** The Owner also reserves the right to waive all informalities.
- 17.03** In evaluating Proposals, the Owner may conduct such investigations, including but not limited to interviews, as the Owner deems necessary to assist in the evaluation of any Proposer and to establish the responsibility, qualifications, personnel availability, and financial ability of Proposers, and other persons and organizations to perform and furnish the Preconstruction Phase Services and Work in accordance with the Agreement to the Owner's satisfaction within the prescribed time. As requested by the Owner, each Proposer shall provide the Owner with a detailed breakdown of its Proposal, including the amount of the General Conditions in the form requested by the Owner.
- 17.04** If the Agreement is to be awarded, it will be awarded to a responsible Proposer submitting the Proposal that the best value as described herein as determined by the Owner.
- 17.05** By submitting a Proposal, Proposer agrees that any protest, controversy, dispute or claim arising from the Owner's Request for Proposals, the Proposer's submission of a Proposal, the Owner's rejection of any Proposal and/or the Owner's award of an Agreement on the Project identified above shall be subject to the same dispute resolution requirements as are set forth in the Agreement, which are incorporated herein by reference.

ARTICLE 18. CONTRACT SECURITY.

18.01 The Contract Documents (General Conditions – Article 11) set forth the Owner’s requirements as to Performance Bonds and Payment Bonds. Prior to the Construction Phase executed by an Early Release Order or the GMP Amendment, the Construction Manager must provide the required Performance Bond and Payment Bond as set forth in the Contract Documents.

ARTICLE 19. EXECUTION OF AGREEMENT.

19.01 The Owner will prepare two unsigned originals of the Agreement Between Owner and Construction Manager as Constructor for execution by the successful proposer. The successful proposer shall execute both originals and return them to the Owner for the Owner’s execution. The Owner will execute both originals and return one executed original to the Construction Manager.

University of Missouri

CONSTRUCTION MANAGER AS CONSTRUCTOR

Project Number CP230481

Missouri Psychiatric Center – Infrastructure and ED Observation Renovation

PROPOSAL FORM

THIS PROPOSAL IS SUBMITTED TO:

The Curators of the University of Missouri

By

Firm _____

(hereinafter called "Proposer") a corporation* organized and existing under laws of the State of _____,
a partnership* consisting of _____,
an individual* trading as _____,
a joint venture* consisting of _____,

1. The undersigned Proposer proposes and agrees, if this Proposal is accepted, to enter into the Agreement Between Owner and Construction Manager as Constructor (the "Agreement") with the Owner in the form included in the Proposal Documents to perform and furnish all Preconstruction Phase Services and all Work as specified or indicated in the Agreement within the specified time, and for the amount indicated in this Proposal and in accordance with the other terms and conditions of the Agreement and the Contract Documents.
2. Proposer accepts all of the terms and conditions of the Request for Proposals and Instructions to Proposers, including, without limitation, those dealing with the disposition of Bid Security. This Proposal will remain subject to acceptance and cannot be withdrawn or revoked for one hundred twenty (120) days after the day of Proposal opening. Proposer will sign and deliver the required number of counterparts of the Agreement and other documents required by the Proposal Documents within ten (10) days after receipt of the unsigned Agreement between Owner and Construction Manager as Constructor.
3. In submitting this Proposal, Proposer represents that:
 - a. Proposer has examined copies of all the Proposal Documents, including the Addenda.
 - b. Proposer acknowledges receipt of the following Addenda:

Addendum No. _____, Dated: _____;
Addendum No. _____, Dated: _____;
Addendum No. _____, Dated: _____;
Addendum No. _____, Dated: _____.
 - c. Proposer has visited the site and become familiar with and satisfied itself as to the general, local, and site conditions that may affect cost, progress, performance, and furnishing of the Preconstruction Phase services and the Work required by the Contract Documents.
 - d. Proposer is familiar with and has satisfied itself as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Preconstruction Phase services and the Work.
 - e. Proposer has correlated the information known to Proposer, information and observations obtained from visits to the site with the requirements of the Proposal Documents and the Contract Documents.

- f. This Proposal is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; Proposer has not directly or indirectly induced or solicited any other Proposer to submit a false or sham Proposal; Proposer has not solicited or induced any person, firm, or corporation to refrain from submitting a Proposal; and Proposer has not sought by collusion to obtain for itself any advantage over any other Proposer or over the Owner.
 - g. By submitting a Proposal, Proposer agrees that any protest, controversy, dispute or claim arising from the Owner's Request for Proposal, the Proposer's submission of a Proposal, the Owner rejection of any Proposal and/or the Owner award of a contract on the Project identified above shall be subject to the same dispute resolution requirements as are set forth in the Contract Documents.
 - h. Proposer and all agents, employees and representatives of Proposer have not engaged in the conduct described in the Proposer's Affidavit.
 - i. Proposer has reviewed those provisions of the Instructions to Proposers, the Agreement, the CMR Provisions and the General Conditions of the Contract pertaining to sales and use tax exemptions and taken those provisions into consideration in the preparation of this Proposal. Proposer will not seek any additional sums based in whole or in part on the Proposer's failure to consider the impact of, or failure to obtain any, sales or use tax exemption referred to in those provisions.
 - j. Proposer has had an opportunity to examine the site of the Work and has carefully studied the Proposal Documents and Contract Documents, and Proposer has carefully prepared the Proposal upon such basis. Proposer has carefully examined and checked this Proposal and the costs for all materials, equipment and labor required by the Contract Documents and the amount or amounts set forth in this Proposal is, or are, correct and no mistake or error has occurred in this Proposal or in the Proposer's computations upon which this Proposal is based. Proposer shall make no claim for reformation, modification, rescission or correction of this Proposal after the scheduled time for receipt of Proposal.
4. Proposer submits the following proposal for the following items defined in the Agreement and the CMR Provisions:
- a. General Conditions Amount: _____ Dollars (\$_____) (lump sum). *(Attach a completed Breakdown of Cost Components that makeup the Construction Manager's General Conditions)*
 - b. Construction Phase Fee: _____ percent (____%) of the Cost of the Work as defined in the Agreement
 - c. Cost of Performance Bond and Payment Bond: _____ Dollars (\$_____) (lump sum) based on the construction budget listed in Exhibit A.
(Attach documentation from surety or broker evidencing rate upon which the cost is based)
 - d. Cost of Insurance required by Article 11 of the General Conditions of the Contract for Construction, or as modified by the Special Conditions: _____ Dollars (\$_____) (lump sum) *(Attach documentation from the insurance companies or brokers evidencing the rates upon which the cost is based and attach documentation concerning how any insurance costs were allocated to this Project)*
5. Communications concerning this Proposal shall be sent to Proposer at the following address:
- Name: _____
- Address: _____
- Phone No. _____
- Facsimile No.: _____
- E-mail address: _____

6. The terms used but not defined in this Proposal shall have the meanings indicated in the Agreement or the General Conditions.
7. The undersigned Proposer has completed and attached the following to this Proposal: Breakdown of Components Comprising the General Conditions Amount; Proposer's Affidavit; Supplier Diversity Compliance Evaluation Form as set forth in Paragraph 8 below; Bond information as set forth in Paragraph 4.d above; Insurance information as set forth in Paragraph 4.e above; and Proposal Security.
8. Supplier Diversity Participation
 - a. Supplier Diversity participation goals for the entire Work covered by the Guaranteed Maximum Price (GMP) are as follows: Minority Business Enterprise (MBE) of ten percent (10%); Service-Disabled Veteran Enterprise (SDVE) of three percent (3%) and Women/Veteran//Disadvantaged Business Enterprises (WBE/Veterans /DBE) ten percent (10%) **The Owner must write out goal in words (numbers)]** of the GMP.
 - b. These participation goals shall also apply separately to the following: (i) the Work covered by each bid or proposal awarded under Section 2.9 of the CMR Provisions, and (ii) the Work, services and other items comprising the General Conditions Amount in its entirety. The undersigned Proposer shall submit with the Proposal the documents and information required by the Supplier Diversity provisions set forth in Article 9 of the Instructions to Proposers for diversity participation related to the Preconstruction Phase Fee, the General Conditions Amount and the Construction Phase Fee, if applicable.
9. The undersigned Proposer hereby certifies that neither this Proposal nor the computations on which it is based include any amount of money, estimates, or allowance representing wages, moneys, or expenses, however designated, proposed to be paid to persons who are not to be required to furnish materials or actually perform services upon or as a part of the proposed Project.

Attachments:

- 1) Breakdown of Components Comprising the General Conditions Amount;
- 2) Proposer's Affidavit;
- 3) Supplier Diversity Compliance Evaluation Form as set forth in Paragraph 8 of the Proposal Form;
- 4) Bond Information set forth in Paragraph 4.d of the Proposal Form;
- 5) Insurance Information set forth in Paragraph 4.e of the Proposal Form; and
- 6) Proposal Security.

SUBMITTED on this _____ day of _____, 20____.

Federal Employer Identification Number _____

If an Individual

(signature of individual)

doing business as _____

Business address: _____

Phone No.: _____

If a Partnership or Joint Venture

(Partnership or Joint Venture Name)

(signature of all general partners or joint venturers)

doing business as _____

Business address: _____

Phone No.: _____

If a Corporation

(corporation name)

(state of incorporation)

By _____
(signature of authorized person)

(title)

Business address: _____

Phone No.: _____

If a Limited Liability Company

(limited liability company name)

(state of incorporation)

By _____
(signature of authorized person)

(title)

Business address: _____

Phone No.: _____

BID BOND

Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

PROPOSER (Name & Address):

SURETY (Name & Address of Principal Place of Business):

OWNER

The Curators of the University of Missouri

PROJECT DESCRIPTION

Project Number CP230481

**Missouri Psychiatric Center – Infrastructure and
ED Observation Renovation**

BOND

Date:

Amount:

Surety and Proposer, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent or representative.

PROPOSER AS PRINCIPAL

Company: _____ (Corp. Seal)

SURETY

Company: _____ (Corp. Seal)

Signature: _____

Name and Title: _____

Signature: _____

Name and Title: _____

(Attach certified Power of Attorney)

NOW THEREFORE, Bidder and Surety jointly and severally agree to bind themselves, their heirs, executors, administrators, successors and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of the Bond and subject to the following terms and conditions:

1. Default of Proposer shall occur upon any of the following occurrences: (a) the failure of Proposer to deliver within the time required by the Proposal Documents the executed Agreement required by the Proposal Documents and any other documents required by the Proposal Documents, including the required insurance certificate; (b) the failure of Proposer to execute the Amendment to establish the GMP as required by the Contract Documents; (c) the failure of the Proposer to deliver the Performance Bond and the Payment Bond and other required documents for the Construction Phase; (d) the failure of Proposer to provide evidence that it has procured the insurance required for the Construction Phase as required by the Contract Documents.

2. This obligation shall be null and void if:

- a. Owner accepts Proposer's Proposal and Proposer delivers within the time required by the Proposal Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Proposal Documents and any other documents required by the Proposal Documents; Proposer executes the GMP Amendment in accordance with the Contract Documents and delivers the Performance Bond and Payment Bond; and Proposer delivers evidence that it has procured the insurance required for the Construction Phase as required by the Contract Documents
- b. All Proposals are rejected by Owner, or
- c. Owner fails to issue an Agreement to Bidder within the time specified in the Proposal Documents (or any extension thereof agreed to in writing by Bidder).

3. Payment under this Bond will be due and payable upon default of Proposer and within ten (10) calendar days after receipt by Proposer and Surety of written notice of default from Owner.

4. Notice required hereunder shall be in writing and sent via U.S. Mail or hand delivered to both Proposer and Surety at their respective addresses shown on the face of this Bond and shall be deemed to be effective upon receipt by the party concerned.

5. Surety waives notice of and any and all defenses based on or arising out of any time extension to issue the Agreement agreed to in writing by Owner and Proposer.

6. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent or representative who executed this Bond on behalf of Surety to execute, seal and deliver such Bond and bind the Surety thereby.

7. This Bond is intended to conform to all applicable laws. Any applicable requirement of any applicable law that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of the Bond conflicts with any applicable provision of any applicable law, then the provisions of said laws shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.

Address of Owner:
The Curators of the University
of Missouri

Address of Proposer:

Address of Surety:

ADDITIONAL PAYMENT AFFIDAVIT

CONSTRUCTION MANAGER AS CONSTRUCTOR

Project Number CP230481

Missouri Psychiatric Center – Infrastructure and ED Observation Renovation

APPLICATION FOR PAYMENT NO. _____

In addition to all other representations and warranties provided by Construction Manager in submitting the Application for Payment identified above, the Construction Manager represents and warrants to the Owner:

1. No amount set forth in the Application for Payment identified above which is to be paid to a Subcontractor is for any item covered by the General Conditions Amount that results in a duplication of payment for any items covered by the General Conditions Amount (“Duplication of Payment”).
2. Construction Manager has not and will not include in the Scope of Work of any Subcontractor any item covered by the General Conditions Amount that would result in a Duplication of Payment.
3. In the event of any Duplication of Payment, the Construction Manager shall immediately pay the Owner the amount of any Duplication of Payment.

The undersigned represents and warrants that he or she has the authority to execute this Affidavit on behalf of the Construction Manager.

“Construction Manager”

BY: _____
(authorized signature)

TITLE: _____

DATE: _____

STATE OF _____)
) SS
COUNTY OF _____)

The undersigned personally appeared before me, is personally known to me to be the _____ of the above-named Construction Manager, and after being duly sworn, stated that: he/she was and is duly authorized by the above-named Construction Manager to make the statements, undertakings, warranties, and representations contained in the above and foregoing Additional Payment Affidavit; the statements made therein are true and correct; and, he/she executed the same for the purposes and consideration therein expressed.

Subscribed and sworn before me this _____ day of _____, 20__.

Notary Public

My Commission Expires: _____

CHANGE DIRECTIVE

No. _____
Date of Issuance: _____

PROJECT:

ARCHITECT:

TO CONSTRUCTION MANAGER:

OWNER:

The Curators of the University of Missouri

You are hereby directed to make the following change(s) in the Agreement Between Owner and Construction Manager as Constructor and the Contract Documents described therein for the Project:

Description:

Attachments:

PROPOSED ADJUSTMENTS

1. The proposed basis of adjustment to the Contract Sum is:

- ☐ Lump Sum (increase) (decrease) of \$ _____.
- ☐ Unit Price of \$ _____ per _____.
- ☐ as provided in Section 6.4.7 of the Agreement.
- ☐ as follows:

2. The Contract Time is proposed to (be adjusted) (remain unchanged). The proposed adjustment, if any, is an increase (decrease) as follows:

Substantial Completion: _____ days;
Final Completion: _____ days.

When signed by Owner and received by the Construction Manager, this document becomes effective IMMEDIATELY as a Construction Change Directive and the Construction Manager shall proceed with the change(s) described above.

AUTHORIZED BY:

“OWNER”

The Curators of the University of Missouri

Signature by the Construction Manager indicates the Construction Manager's agreement with the proposed adjustments in Contract Sum and Contract Time set forth in this Construction Change Directive.

“CONSTRUCTION MANAGER”

BY: _____
(Authorized Signature)

Name

Street Address

City, State, Zip Code

DATE: _____

BY: _____
(Authorized Signature)

DATE: _____

SUPPLIER DIVERSITY COMPLIANCE EVALUATION FORM

This form shall be completed by Bidders and submitted with the Bidder's Statement of Qualifications form for each diverse firm who will function as a subcontractor on the contract.

The undersigned submits the following data with respect to this firm's assurance to meet the goal for Supplier Diversity participation.

- I. Project: _____
- II. Name of General Contractor: _____
- III. Name of Diverse Firm: _____
Address: _____
Phone No.: _____ E-mail.: _____
Status (check one) MBE _____ WBE _____ Veteran _____ Service Disabled Veteran _____ DBE _____
- IV. Describe the subcontract work to be performed. (List Base Bid work and any Alternate work separately):
Base Bid: _____

- V. Dollar amount of contract to be subcontracted to the Diverse firm:
Base Bid: _____
Alternate(s), (Identify separately): _____

- VI. Is the proposed subcontractor listed in the Directory of M/W/DBE Vendors and/or the Directory of Veterans maintained by the State of Missouri?
Yes _____ No _____

VII. Is the proposed subcontractor certified as a diverse supplier by any of the following: federal government agencies, state agencies, State of Missouri city or county government agencies, Minority and/or WBE certifying agencies?

Yes _____

No _____

If yes, please provide details and attach a copy of the certification.

VIII. Does the proposed subcontractor have a signed document from their attorney certifying the Supplier as a Diverse and meeting the 51% owned and committed requirement?

Yes _____

No _____

If yes, please attach letter.

Signature:

Name:

Title:

Date:

APPLICATION FOR WAIVER

This form shall be completed and submitted with the Bidder's Statement of Qualifications. Firms wishing to be considered for award are required to demonstrate that a good faith effort has been made to include diverse suppliers. This form will be used to evaluate the extent to which a good faith effort has been made. The undersigned submits the following data with respect to the firm's efforts to meet the goal for Supplier Diversity Participation.

1. List pre-bid conferences your firm attended where Supplier Diversity requirements were discussed.

2. Identify advertising efforts undertaken by your firm which were intended to recruit potential diverse subcontractors for various aspects of this project. Provide names of newspapers, dates of advertisements and copies of ads that were run.

3. Note specific efforts to contact in writing those diverse suppliers capable of and likely to participate as subcontractors for this project.

4. Describe steps taken by your firm to divide work into areas in which diverse suppliers would be capable of performing.

5. What efforts were taken to negotiate with prospective diverse suppliers for specific sub-bids? Include the names, addresses, and telephone numbers of diverse suppliers contacted, a description of the information given to diverse suppliers regarding plans and specifications for the assigned work, and a statement as to why additional agreements were not made with diverse suppliers.

6. List reasons for rejecting a diverse supplier which has been contacted.

7. Describe the follow-up contacts with diverse suppliers made by your firm after the initial solicitation.

8. Describe the efforts made by your firm to provide interested diverse suppliers with sufficiently detailed information about the plans, specifications and requirements of the contract.

9. Describe your firm's efforts to locate diverse suppliers.

Based on the above stated good faith efforts made to include supplier diversity, the bidder hereby requests that the original supplier diversity percentage goal be waived and that the percentage goal for this project be set at _____ percent.

The undersigned hereby certifies, having read the answers contained in the foregoing Application for Waiver, that they are true and correct to the best of his/her knowledge, information and belief.

Signature_____

Name_____

Title_____

Company_____

Date_____

AFFIDAVIT

"The undersigned swears that the foregoing statements are true and correct and include all material information necessary to identify and explain the operation of _____ (name of firm) as well as the ownership thereof. Further, the undersigned agrees to provide through the prime contractor or directly to the Contracting Officer current, complete and accurate information regarding actual work performed on the project, the payment therefore and any proposed changes, if any, of the project, the foregoing arrangements and to permit the audit and examination of books, records and files of the named firm. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under federal or state laws concerning false statements."

Note - If, after filing this information and before the work of this firm is completed on the contract covered by this regulation, there is any significant change in the information submitted, you must inform the Director of Facilities Planning and Development of the change either through the prime contractor or directly.

Signature _____

Name _____

Title _____

Date _____

Corporate Seal (where appropriate)

Date _____

State of _____

County of _____

On this _____ day of _____, 20____,
before me appeared (name) _____ to me personally known, who, being
duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (name of firm) _____
_____ to execute the affidavit and did so as his or her own free act and deed.

(Seal)

Notary Public _____

Commission expires _____

AFFIDAVIT FOR AFFIRMATIVE ACTION

State of Missouri)
)
County of) ss.

_____ first being duly sworn on his/her oath
states: that he/she is the (sole proprietor, partner, or officer) of _____
_____ a (sole proprietorship, partnership, corporation), and as such (sole proprietor, partner, or officer) is
duly authorized to make this affidavit on behalf of said (sole proprietorship, partnership, corporation); that under the contract
known as " _____ "
Project No. _____ less than 50 persons in the aggregate will be employed and therefore, the applicable Affirmative
Action requirements as set forth in the "Nondiscrimination in Employment Equal Opportunity," Supplemental Special
Conditions, and Article 13 in the General Conditions do not apply.

Subscribed and sworn before me this _____ day of _____, 20 _____.

My commission expires: _____ . 20 _____.

CERTIFYING SUPPLIER DIVERSITY AGENCIES

Diverse firms are defined in General Conditions Articles 1.1.7 and those businesses must be certified as disadvantaged by an approved agency. The Bidder is responsible for obtaining information regarding the certification status of a firm. A list of certified firms may be obtained by contacting the agencies listed below. Any firm listed as disadvantaged by any of the following agencies will be classified as a diverse firm by the Owner.

St. Louis Development Corporation
1015 Locust
St. Louis, MO 63101
314/622-3400; 314/622-3413 (Fax)
CONTACT: Minority Business Development Manager

Metro
707 North First Street
St. Louis, MO 63102-2595
314/982-1400; 314/982-1558 (Fax)
CONTACT: Disadvantaged Business Enterprise
Coordinator

St. Louis Minority Business Council
308 North 21st St., 7th Floor
St. Louis, MO 63101
314/241-1143; 314/241-1073 (Fax)
CONTACT: Executive Director

U.S. Small Business Administration - St. Louis, MO
8(a) Contractors, Minority Small Business
1222 Spruce Street, Suite 10.103
St. Louis, MO 63101
314/539-6600; 202/481-6565 (Fax)
CONTACT: Business Opportunity Specialist

Lambert St. Louis International Airport
11495 Navaid
Bridgeton, MO 63044
314/551-5000; 314/551-5013 (Fax)
CONTACT: Program Specialist

City of Kansas City, Missouri
Human Relations Department, MBE/WBE Division
4th Floor, City Hall
414 E. 12th Street
Kansas City, MO 64106
816/513-1836; 816/513-1805 (Fax)
CONTACT: Minority Business Specialist

Mid America Minority Development Council
7777 Admiral Boulevard
Kansas City, MO 64106
816/221-4200; 816/221-4212 (Fax)
CONTACT: info@midstatesmsdc.org

U.S. Small Business Administration - Kansas City, MO
8(a) Contractors, Minority Small Business
1000 Walnut, Suite 500
Kansas City, MO 64106
816/426-4900; 816/426-4939 (Fax)
CONTACT: Business Opportunity Specialist

Missouri Department of Transportation
Division of Construction
P.O. Box 270
Jefferson City, MO 65102
573/751-6801; 573/526-5640-6555 (Fax)
CONTACT: Disadvantaged Business Enterprise
Coordinator

Illinois Department of Transportation
MBE/WBE Certification Section
2300 Dirksen Parkway
Springfield, IL 62764
217/782-5490; 217/785-1524 (Fax)
CONTACT: Certification Manager

State of Missouri-Office of Administration
Office of Supplier & Workforce Diversity
P.O. Box 809
Jefferson City, MO 65102
573/751-8130; 573/522-8078 (Fax)
CONTACT: MBE/WBE Certification Coordinator
<https://oeo.mo.gov/>

State of Missouri-Office of Administration
Division of Purchasing
301 West High Street, Room 630
Jefferson City, MO 65101
573/751-2387; 573/526-9815 (Fax)
CONTACT: Administrator
<https://oa.mo.gov/purchasing/vendor-information/missouri-service-disabled-veteran-business-enterprise-sdve-information>

Minority Newspapers

Dos Mundos Bilingual Newspaper
902A Southwest Blvd.
Kansas City, MO 64108
816-221-4747
www.dosmundos.com

Kansas City Hispanic News
2918 Southwest Blvd.
Kansas City, MO 64108
816/472-5246
www.kchispanicnews.com

The Kansas City Globe
615 E. 29th Street
Kansas City, MO 64109
816-531-5253
www.thekcglobe.com/about_us.php

St. Louis American
4144 Lindell
St. Louis, MO 63108
314-533-8000
www.stlamERICAN.com

St. Louis Chinese American News
1766 Burns Ave, Suite 201
St. Louis, MO 63132
314-432-3858
www.scanews.com

St. Louis Business Journal
815 Olive St., Suite 100
St. Louis, MO 63101
314-421-6200
www.bizjournal.com/stlouis

Kansas City Business Journal
1100 Main Street, Suite 210
Kansas City, MO 64105
816-421-5900
www.bizjournals.com/kansascity

AFFIDAVIT OF SUPPLIER DIVERSITY PARTICIPATION

The apparent low Bidder shall complete and submit this form within 48 hours of bid opening for each Diverse firm that will participate on the contract.

1. Diverse Firm: _____
- Contact Name: _____
- Address: _____
- _____
- Phone No.: _____ E-mail.: _____
- Status (check one) MBE ☐ Certified as (circle one): 1/Black American 2/Hispanic American 3/Native American
4/Asian American
- WBE ☐ Veteran ☐ Service Disabled Veteran ☐ DBE ☐

2. Is the proposed Diverse firm certified by an approved agency [see IFB article 15]?
- Yes ☐ Certification Number: _____
- Agency: _____ [attach copy of certification authorization from agency]

3. Diverse firm scope work and dollar amount of participation (List Base Bid and Alternate work separately):

	Scope of Work	Dollar Amount
Base Bid		
Alternate # 1		
Alternate # 2		
Alternate # 3		
Alternate # 4		
Alternate # 5		
Alternate # 6		

The undersigned certifies that the information contained herein is true and correct to the best of their knowledge, information and belief.

Contractor:	_____	Diverse Firm:	_____
Signature:	_____	Signature:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

END OF SUPPLIER DIVERSITY COMPLIANCE FORMS

University of Missouri
CONSTRUCTION MANAGER AS CONSTRUCTOR
Project Number CP230481
Missouri Psychiatric Center – Infrastructure and ED Observation Renovation

PROPOSER'S AFFIDAVIT

Each Proposer submitting a Proposal on this Project shall complete the Affidavit and submit it with the Proposal Form.

STATE OF _____)
) ss:
COUNTY OF _____)

I, _____, representing _____,
(hereinafter the "Proposer"), upon oath depose and state that the Proposer nor anyone in its employment has employed any person to solicit or procure the Agreement Between Owner and Construction Manager as Constructor (the "Agreement") nor will it make any payment or agreement for payment of any compensation in connection with the procurement of the Agreement.

I further depose and state that no part of the Preconstruction Phase Fee or the Construction Phase Fee will be paid to any person, corporation, firm, association, or other organization for soliciting the Agreement, other than the payment of their normal compensation to persons regularly employed by the Proposer whose services in connection with the construction of the public building or project were in the regular course of their duties for the Proposer.

I further depose and state that such Proposal is genuine and not collusive or sham; that said Proposer has not colluded, conspired, connived, or agreed, directly or indirectly, with any proposer or person, to put in a sham bid or to refrain from submitting a proposal, and has not in any manner, directly or indirectly, sought by agreement, or collusion, or communication, or conference with any person to fix the proposal price of affiant or of any other proposer, and that all statements in said Proposal are true.

I further depose and state that Proposer will comply with the Supplier Diversity provisions for the Project.

I further depose and state that Proposer is in compliance with the provisions of RS Mo. §292.675 relating to OSHA construction safety training of its employees, and Proposer will comply with the provisions of RS Mo. §292.675.

I further depose and state that Proposer is enrolled and participates in a federal work authorization program for all employees providing the type of services and work set forth in the Agreement. I further depose and state that Proposer does not knowingly employ any person who is an unauthorized alien in connection with the type of services and Work set forth in the Agreement. Proof of Proposer's participation in a federal work authorization program is attached hereto. I further depose and state that all Subcontractors shall affirmatively state by affidavit and in each Subcontract that the Subcontractor is not in violation of the provisions of RS Mo. §285.530 and shall not be in violation of the provisions of RS Mo. §285.530.

I further depose and state that neither the Proposer, nor any person who is an agent, employee or representative of the Proposer, has offered, given or agreed to give any employee or former employee of the Owner, any compensation, guaranty, benefit or offer of employment in connection with any decision, approval, disapproval, recommendation, relating to the award of the Agreement.

The undersigned further warrants that he or she has the authority to execute this affidavit on behalf of the Proposer.

Signature

On this ____ day of _____, 20____, before me, a notary public, personally appeared _____, to me known to be the person who executed the within Proposer's Affidavit, and acknowledged to me that he/she executed the same for the purposes therein stated.

Notary Public

My Commission expires: _____

AGREEMENT

AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AS CONSTRUCTOR

THIS AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AS CONSTRUCTOR (this “**Agreement**”) is made and entered into this ____ day of _____, 20____, by and between The Curators of the University of Missouri, a public corporation of the State of Missouri (the “**Owner**”), and _____, a _____ organized and existing under the laws of the State of _____ with a business address of _____ (the “**Construction Manager**”).

RECITALS

- A. **WHEREAS**, Construction Manager is an organization with extensive experience in furnishing and providing construction services necessary to successfully complete projects of the type and scope of the Project generally described throughout the Proposal Documents Manual for Project Number _____ (the “**Proposal Documents Manual**”), the contents of which Construction Manager has received and reviewed prior to the date of this Agreement set forth above (the “**Project**”).
- B. **WHEREAS**, Construction Manager is ready, willing and able to perform its obligations as set forth in this Agreement.
- C. **WHEREAS**, Owner desires Construction Manager to perform the Services and the Work in accordance with the Contract Documents listed below.
- D. **WHEREAS**, the term “**Architect**” as used in the Contract Documents shall mean _____, with a business address of _____.

NOW, THEREFORE, in consideration of the foregoing, the agreements, covenants and payments hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's skill and judgment in furthering the interests of the Owner. The Construction Manager shall furnish construction administration, management and supervision services and use the Construction Manager's best efforts to perform and furnish the Services and the Work in an expeditious, economical, timely and safe manner consistent with the interests of the Owner in accordance with this Agreement and other Contract Documents.
2. The Contract Documents consist of:
 - .1 This Agreement,
 - .2 The University of Missouri’s CMR Provisions for Agreement between Owner and Construction Manager as Constructor (Current edition) and all Exhibits attached thereto this Agreement which consist of:

Exhibit A, General Project Description

Exhibit B, Initial Construction Schedule

Exhibit C, Preconstruction Schedule of Values

Exhibit D, Fee Matrix defining Items Included, General Conditions Amount, Construction Phase Fee and the Cost of Work.

Form of Amendment and Exhibits

- .3 Construction Manager's Proposal for the Project submitted pursuant to the Project Documents Manual, Qualifications Submittal, and the documents that accompanied such Proposal;
- .4 The University of Missouri's General Conditions of the Contract for Construction (Current Edition) (the "**General Conditions**"). The term "Contractor" as used in the General Conditions shall mean the Construction Manager. The term "Contract Documents" as used in the General Conditions shall mean the Contract Documents set forth in Section 2 of this Agreement and any executed Early Release Order in the form attached to the CMR Provisions. The term "Construction Contract" and "Contract for Construction" as used in the General Conditions shall collectively mean this Agreement, the CMR Provisions, Early Release Orders, and the executed Amendment in the form attached to the CMR Provisions. For the Preconstruction Phase, the General Conditions shall apply only as specifically provided in the CMR Provisions;
- .5 Amendment to this Agreement and the CMR Provisions executed by the Owner and Construction Manager pursuant to Section 2.8 of this Agreement and the drawings, specifications, addenda and other documents referred to there "**Amendment.**"
- .6 The Bonds and Insurance as described in Article 10, 11, 12 and 13 of the Provisions of this Agreement;
- .7 Modifications issued after execution of this Agreement. A "**Modification**" is (a) a written amendment to this Agreement or the Contract Documents signed by both parties; (b) a Change Order; (c) Change Directive; or (d) written orders for minor changes in the Work issued pursuant to Section 6 of this Agreement. Modifications shall become Contract Documents upon their execution or issuance.

Approved Shop Drawings and submittals and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only the items listed in this Section 2 are Contract Documents.

3. This Agreement, together with the other Contract Documents herein above mentioned, form the entire contract between the Owner and Construction Manager for the Services and the Work of the Project (the "Contract"). The terms, provisions and conditions of the Contract Documents are incorporated into, and are as fully a part of, the Contract as if attached hereto or herein repeated. Construction Manager hereby represents to Owner that it has received, read and understand all of the terms, provisions and conditions of the Contract, to the extent such terms, provisions and conditions have been established as of the date of this Agreement set forth above. If any provision of another Contract Document, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.
4. Any capitalized terms used but not defined in this Agreement shall have the meanings indicated in the CMR Provisions. If any provision of the General Conditions conflicts with or is inconsistent with the CMR Provisions, the CMR Provisions shall govern.
5. The Preconstruction Phase Fee shall be the stipulated sum of _____ Dollars (\$_____).
6. The General Conditions Amount shall be the stipulated sum of _____ Dollars (\$_____).
7. The Construction Phase Fee shall be _____ Percent _____.(%).

No member or officer of the Board of Curators of the University incurs or assumes any individual or personal liability by the execution of this Agreement or Amendment, or by reason of the default of the Owner in the performance of any of the terms hereof or the Contract Documents. All such liability of members or officers of the Board of Curators of the University of Missouri as such is hereby released by Contractor as a condition of and consideration for the execution of this Agreement.

Project No: CP230481

Project Name: Missouri Psychiatric Center – Infrastructure and ED Observation Renovation

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed pursuant to due and legal action authorizing same to be done, the date first above written.

**CURATORS OF THE UNIVERSITY
OF MISSOURI**

“Owner”

[TYPE IN FIRM NAME]

“Construction Manager”

By: _____

Beth Asbury
Assistant Vice President, Facilities Planning &
Development
University of Missouri System

Date: _____

By: _____

Printed Name: _____

Title: _____

Date: _____

{Construction Manager’s Corporate Seal, as applicable}

PROVISIONS OF THE AGREEMENT
BETWEEN THE OWNER AND CONSTRUCTION MANAGER AS CONSTRUCTOR

ARTICLE 1
GENERAL PROVISIONS

- 1.1 As used in the Contract Documents, the following terms shall have the meanings indicated below which are applicable to both the singular and the plural thereof:
- .1 “**Successful Proposer**” shall mean a Proposal or bid that Owner determines is the lowest responsive proposal as described herein.
 - .2 “**Qualifications Submittal**” shall mean the Successful Proposer’s response to the Owner’s Request for Qualifications.
 - .3 “**Construction Documents**” mean drawings, specifications and other documents in which the requirements for the Work are set forth in detail.
 - .4 “**Design Development Documents**” shall mean drawings, specifications and other documents which describe the size and character of the Project, including architectural, structural, mechanical and electrical systems and materials and such other elements as may be appropriate.
 - .5 “**Related Party**” shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with Construction Manager; any entity in which any stockholder in, or management employee of, Construction Manager owns any interest in excess of ten percent (10%) in the aggregate; or any person or entity which has the right to control the business or affairs of Construction Manager. The term “**Related Party**” includes any member of the immediate family of any person identified herein.
 - .6 “**Subcontract**” shall mean a written agreement between the Construction Manager and a third party whereby a third party is to furnish or provide a portion of the Work on the Project. Subcontract shall include written agreements between Construction Manager and a Subcontractor or a manufacturer, fabricator, supplier or vendor to furnish material or equipment that is to be part of the Work or necessary for the Work.
 - .7 “**Schematic Design Documents**” mean drawings and other documents which establish the general scope, conceptual design and the scale and relationship of the concepts of the Project.
- 1.2 Construction Manager shall cooperate with the Owner, Architect, and any and all other consultants engaged by the Owner performing services for the Project and shall coordinate the Preconstruction Phase Services and the Work with the Architect and such other consultants.
- 1.3 Construction Manager shall provide all management and administration services necessary or required to properly perform the Preconstruction Phase Services and to provide and furnish the Work, including consultations with the Owner, and such Services and Work shall include research, conferences, and presentations.
- 1.4 Any review of the Construction Manager’s Services and Work hereunder by the Owner shall not waive, release or relieve the Construction Manager of its obligation to properly perform and provide the Services and Work hereunder.
- 1.5 Construction Manager shall be primarily responsible for coordinating the distribution and assembly of information needed to perform the Preconstruction Phase Services and provide the Work, including but not limited to the collection of any information from the Owner.

- 1.6 Construction Manager shall correct, at its own cost and expense, any errors or deficiencies in the Services performed under this Agreement. The acceptance of any Services by the Owner shall not relieve Construction Manager of the responsibility for compliance with the terms of the Contract Documents or subsequent correction of such errors or deficiencies unless, and only to the extent, the Owner has knowingly waived such correction requirements in writing.

ARTICLE 2

CONSTRUCTION MANAGER'S RESPONSIBILITIES

2.1 General.

- 2.1.1 The Construction Manager shall perform the Preconstruction Phase Services as negotiated and agreed upon with the Owner and described herein and the Construction Manager shall perform the Work as set forth in the Contract Documents including Early Release Orders and the Amendment executed by the Owner and the Construction Manager during the Construction Phase. The Construction Manager acknowledges and agrees that the Construction Phase may commence before the Preconstruction Phase is completed, and in such case both Phases will proceed concurrently. The Services to be provided under Sections 2.2 through 2.9, inclusive, and the applicable sections of Article 1, shall constitute Preconstruction Phase Services.

2.2 Program and Evaluation.

- 2.2.1 The Construction Manager shall review and comment upon the program for the Project throughout the development of the program. The Construction Manager shall visit the site with representatives of Architect and the Owner in connection with Construction Manager's review of the program for the Project.
- 2.2.2 When the Project requirements have been sufficiently identified, the Owner will provide Construction Manager a Construction Cost Budget. Any Construction Cost Budget developed before the execution of this Agreement is set forth in **Exhibit A** attached hereto. The term "**Construction Costs**" shall mean the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Architect. The Construction Costs shall include the cost, at current market rates, of labor and materials to be furnished by the Owner, as disclosed to the Construction Manager by the Owner in writing. Construction Costs do not include the compensation to be paid to the Architect and Architects' Consultants, the cost of land, rights-of-way, financing or other similar costs which are the responsibility of the Owner.

2.3 Consultation

- 2.3.1 Throughout the development of the design of the Project, the Construction Manager with the Architect shall jointly schedule and attend regular meetings with the Owner. The Construction Manager shall consult with the Owner and Architect regarding site use and improvements and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies. In the review of the drawings and specifications for the Project prepared by the Architect through their development, it is not the Construction Manager's primary responsibility to ascertain that such drawings and specifications are in accordance with any applicable federal, state or local laws, statutes, ordinances, building codes, rules, regulations or interpretations thereof ("**Laws**"). However, if the Construction Manager recognizes that portions of the drawings and specifications are at variance with Laws, the Construction Manager shall promptly notify Architect and the Owner in writing.
- 2.3.2 Based upon the Construction Cost Budget, the Construction Manager shall provide an evaluation of the program and Construction Cost Budget, each in terms of the other.
- 2.3.3 The regular meeting described in Section 2.3.1 shall serve as a forum for the exchange of information concerning the Project and review of the design progress. Construction Manager shall review minutes of these meetings prepared by Architect and shall provide comments to such minutes.

- 2.3.4** The Construction Manager shall assist in the Architect’s investigation and assessment of the existing facilities and the existing conditions at the site of the Project.
- 2.3.5** The Construction Manager shall develop and manage a construction management plan so that the Work is coordinated and done in a manner so as to avoid interference with any existing facilities. The Construction Manager shall also develop safety, security and other requirements for the Project to protect the public, workers, the Owner, and the property of the Owner, from risks and hazards as a result of the continued use of the existing facilities during the construction of the Project.
- 2.3.6** The Construction Manager shall initiate meetings with the Architect to explore methods in which the environmental performance and sustainability of the Work for the Project might be improved and the environmental impact reduced. The Construction Manager shall, in conjunction with the Architect, evaluate the selection of products and materials and/or the adoption of construction or architecting methods, techniques and processes which result in or involve:
- reductions in waste;
 - reductions in energy consumption;
 - reductions in water consumption;
 - reductions in CO₂ emissions;
 - reductions in materials from non-renewable sources;
 - reductions in commercial vehicle movements;
 - maintenance or optimization of biodiversity;
 - maintenance or optimization of ecologically valuable habitat; and
 - improvements in whole life performance.

The Construction Manager shall recommend those methods, products, materials, techniques and processes it believes would be beneficial for the Owner and the Project. However, such recommended methods, products, techniques and processes shall not be utilized unless approved in writing by the Owner and incorporated into the Contract Documents. The methods, products, materials, techniques and processes approved in writing by the Owner are hereinafter referred to as the “Sustainability Measures.”

2.4 Construction Schedule

- 2.4.1** When Project requirements have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a schedule for construction, of the Project for the Architect’s review and the Owner’s approval (the “**Construction Schedule**”) which shall update and refine the Initial Construction Schedule described below. The schedule shall conform to the phasing and completion dates set forth in the initial schedule attached hereto as **Exhibit B** (the “**Initial Construction Schedule**”). The Construction Manager shall coordinate and integrate the Construction Schedule with the services and activities of the Owner, Architect and Construction Manager. As design proceeds, the Initial Construction Schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, the Owner’s occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If the Construction Schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect so that the Owner’s occupancy requirements can be satisfied.
- 2.4.2** After GMP Design Documents as defined in Section 2.8 of this Agreement have been prepared by the Architect, the Construction Manager shall submit the GMP Documents to the Owner, including the detailed Construction Schedule. The construction schedule submitted with the GMP Documents shall be in a detailed format satisfactory to the Owner and Architect which shall also: (1) provide a graphic representation of all activities and events that will occur during performance of the Work; (2) identify each phase of construction and occupancy; and (3) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as “**Milestone**

Dates”). If the Owner or Architect has a reasonable objection to the Construction Schedule submitted by Construction Manager, the construction schedule shall be promptly revised by the Construction Manager in accordance with the recommendations of the Owner and Architect and re-submitted for approval.

- 2.4.3** All schedules prepared by Construction Manager, including the Construction Schedule, shall incorporate the construction management plan set forth in Section 2.3.5 of this Agreement.

2.5 Phased Construction

- 2.5.1** The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

2.6 Cost Management

- 2.6.1** The Construction Manager shall conduct a construction market survey to provide current information regarding the general availability of local construction services, labor, material and equipment costs and the economic factors related to the construction of the Project.

- 2.6.2** When the program and Project requirements have been sufficiently identified and the Architect has prepared other basic design criteria, the Construction Manager shall prepare an estimate of Construction Costs utilizing appropriate and sound estimating techniques. The Construction Manager shall review with the Architect and the Owner any difference between the Construction Cost Budget and such estimate, identify reasons for any difference and recommend means to eliminate the difference. The Owner may have the Architect’s team develop its own construction cost estimate. Estimates shall be organized by major building component or system, such as the CSI UniFormat. Prior to the preparation of the first estimate by the CM, the Owner, A/E and CM will jointly determine the appropriate estimating format to facilitate efficient comparison and reconciliation of the estimates of both parties. The application of contingency amounts, allowances, unit prices and other prospective costs will be reviewed to avoid inefficient estimate reconciliation. The project team (Owner, A/E, and CM) will resolve any significant differences among the estimates before proceeding to the next design phase. Resolving these issues may include changes in project scope as the team works to develop and refine the construction cost budget that meets or exceeds the owner’s project requirements. The Construction Manager shall prepare a report describing the agreed upon means to eliminate any difference and distribute such report to the Architect and the Owner.

- 2.6.3** When Schematic Design Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare a more detailed estimate with supporting data. During preparation of the Design Development Documents and other design documents, the Construction Manager shall update and refine this estimate at appropriate intervals. The Construction Manager shall review with the Architect and the Owner any difference between the Construction Cost Budget and such estimate, identify revisions for any difference and recommend means to eliminate the difference. The Construction Manager shall prepare a report describing the agreed upon means to eliminate the difference and distribute such report to the Architect and the Owner. All such estimates shall include a line item for the anticipated contingency amount, recommended allowances and other prospective costs that may be incurred at establishment of the GMP, recognizing that these line item numbers will be refined as the process progresses.

- 2.6.4** When GMP Design Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall submit to the Owner the GMP Documents described in Section 2.8 of this Agreement.

2.7 Long-Lead Time Items

- 2.7.1** The Construction Manager shall recommend to the Architect and the Owner a schedule for procurement of long-lead-time items which constitute part of the Work as required to meet the Owner’s occupancy and

schedule requirements for the Project. If the Owner elects at its sole discretion to procure such long lead items, then, upon the Owner's acceptance of the Construction Manager's GMP Documents described in Section 2.8 of this Agreement, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead-time items.

2.8 GMP Documents

2.8.1 Within thirty (30) days after the Owner has requested that the Construction Manager submit the GMP Documents described below, and the Owner has submitted drawings, specifications and other design documents prepared by the Architect ("**GMP Design Documents**"), the Construction Manager shall submit the following to the Owner:

- .1** a proposed Guaranteed Maximum Price, which shall be the sum of the Cost of the Work defined in Article 7 of this Agreement, the General Conditions Amount defined in Section 6.1 of this Agreement and the Construction Phase Fee defined in Section 6 of this Agreement. The Construction Manager shall provide an itemized statement of the Guaranteed Maximum Price organized by trade categories, general condition categories, allowances, contingencies, base bid quantities with unit prices for more or less as applicable, alternates and other items that comprise the Guaranteed Maximum Price;
- .2** a Schedule of Values for all work that has been subcontracted or will be subcontracted and is a portion of this Amendment allocating the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Phase Fee may be shown as a single item. The Schedule of Values should be prepared in such form as prescribed by the Owner and supported by such data to substantiate its accuracy as the Architect and Owner may require. If the Architect or Owner has an objection to the Schedule of Values, the Construction Manager shall revise the Schedule of Values to satisfy such objection ("**Construction Schedule of Values**").
- .3** the GMP Design Documents that define the Scope of Work including Drawings, Specifications, and Other Documents (Exhibit 2).
- .4** the detailed Construction Schedule (Exhibit 3) developed pursuant to Section 2.4 of this Agreement. The Date of Substantial Completion shall not exceed the completion date set forth in **Exhibit B** attached hereto, without the written approval of the Owner.
- .5** Supplier Diversity Participation Information: This shall include:
 - a.** the current participation for any Early Release Order Work;
 - b.** the strategies to be used to make a good faith effort to locate and contract with diverse firms as described in Article 9 of the Information to Proposers. These strategies shall also include the efforts as presented in the Construction Manager's Qualifications Package.

(Collectively referred to as "**GMP Documents**")

2.8.2 Construction Manager recognizes and agrees that after Construction Manager's submission of the GMP Documents, approval and acceptance of the GMP Documents by the Owner and the Owner's execution of the Amendment, the Construction Manager shall obtain bids for the Construction Phase Work as more fully set forth below, unless the Construction Manager is authorized to obtain bids before acceptance of the GMP Documents by Owner.

2.8.3 The Guaranteed Maximum Price shall include Construction Manager's contingency, a sum established by Construction Manager and approved by the Owner to cover Costs of the Work, but not the basis for a Change Order (the "Contingency"). The Contingency shall be set forth in the Amendment. The Contingency is intended to be used to only cover certain costs for risks to the Construction Manager that could not have been reasonably quantified in the establishment of the Guaranteed Maximum Price such as gaps between the scope

of Work between Subcontractors; and design omissions which a prudent Construction Manager could not have reasonably detected during the discharge of his Pre-Construction Services. The Contingency shall not be utilized to cover costs due to the fault or negligence of Construction Manager. The Contingency shall not be used to cover overages in subcontractor bid pricing. Nothing contained herein shall be construed as a method or means to increase the Guaranteed Maximum Price. Construction Manager may use the contingency to cover costs consistent with this Section 2.8.3. The Construction Manager shall provide prior notice to the Owner when applying the Contingency funds. The Construction Manager shall not be entitled to use the contingency for individual expenditures over five thousand dollars (\$5,000) without the prior written approval of the Owner. Construction Manager shall not be entitled to use either the contingency or any allowance for expenses incurred directly by the Construction Manager and not on behalf of a subcontractor or material supplier without the prior written approval of the Owner. The owner's representative has the right to deny use of the Contingency for items not within the definition given above. The Construction Manager will also conduct monthly meetings with the Owner's Representative to review all expenditures and remaining Contingency funds.

- 2.8.4** Buy-Out Savings is defined as the positive difference between the sum total of all self-performed work secured by the Construction Manager in accordance with article 2.9.7 and subcontract obligations between the Construction Manager and the Construction Manager's subcontractors, and the sum total of the corresponding GMP line items. Buy-Out Savings will remain in an Allowance category of the same name (Buy-Out Savings Allowance) and may be used at the discretion of the owner to procure pending alternates not included in the GMP described in Exhibit 1 of the Amendment. Acceptance of pending alternates shall be approved and authorized by the owner utilizing the same process as owner authorized use of the Construction Manager's contingency and allowances. The balance remaining in the Buy-Out Savings Allowance after acceptance of pending alternates will remain in the Buy-Out Savings Allowance line item for discretionary use by the owner. The Construction Manager shall not use these funds without the written consent of the Owner. All funds remaining in this Allowance line item shall be returned to the Owner at project closeout.
- 2.8.5** All allowances proposed by the Construction Manager to be included in the Guaranteed Maximum Price, either held by the Construction Manager or included in subcontractor bid packages, must be approved by the Owner prior to their inclusion. All such allowances shall be used only for the purpose approved by the Owner and only with the written approval of the Owner. If there are residual funds remaining following the conclusion of the work completed with allowance funds, on a line-item basis, those funds shall revert to the Buy-Out Savings Allowance. Allowance funds set aside for one purpose cannot be used to supplement allowance funds allocated for any other purpose without the written approval of the Owner. The portion refunded to the Owner shall include the Construction Phase Fee. In the event an allowance amount is insufficient to cover the intended scope, and with no delay in the prosecution of the Work, the Construction Manager shall notify the Owner in writing detailing the reason for the overage. If the overage is not the result of negligent acts of the Construction Manager, the Owner will determine the amount, if any, and the source of additional funding.
- 2.8.6** Base bid quantities with unit prices for more or less may be included in applicable bid packages with Owner approval of the types, quantities and unit price structure. Pertinent scopes include but are not limited to rock removal, including general excavation, trench rock and drilled piers, removal and replacement of unsuitable soils, removal of asbestos and placement of lean concrete. All such base bid quantities shall be itemized in the Amendment.
- 2.8.7** The Construction manager shall submit a detailed report to the Owner with each monthly pay request itemizing all contingency expenditures, allowance expenditures, allowance transfers to contingency or buy-out savings and anticipated uses of contingency foreseeable at the time.
- 2.8.8** In submitting the proposed Guaranteed Maximum Price, Construction Manager shall provide supporting documents which shall include the detailed estimate of the Cost of the Work developed pursuant to Section 2.6 of this Agreement, a breakdown of the General Conditions Amount, and the amount of the Contingency included in the Guaranteed Maximum Price as described in Section 2.8 of this Agreement.

- 2.8.9 The Construction Manager shall meet with the Owner and the Architect to review the GMP Documents and the supporting documents. In the event that the Owner or the Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager and the Construction Manager shall make appropriate adjustments in the GMP Documents.
- 2.8.10 Upon acceptance of the GMP Documents by the Owner, the Guaranteed Maximum Price shall be set forth in the form “Amendment” provided in the Proposal Documents Manual, which shall attach and incorporate the Construction Schedule, and Construction Manager and the Owner shall execute the Amendment.
- 2.8.11 Construction Manager recognizes and acknowledges that the GMP Documents shall be submitted before all Construction Documents are completed by the Architect. In submitting the GMP Documents, Construction Manager shall take into account the level of completeness of the GMP Design Documents and Construction Manager shall exercise its best skill and efforts to make: (i) appropriate judgments and inferences in connection with the requirements of the GMP Design Documents; and (ii) all inquiries of the Architect to clarify the GMP Design Documents as necessary to develop accurate and binding GMP Documents.
- 2.8.12 As Construction Documents are developed by the Architect for purposes of obtaining bids for the various portions of the Work, a copy shall be furnished to the Construction Manager for its review. Construction Manager shall not be permitted to claim any adjustment to the “Amendment” in connection with the completion of the Construction Documents except for Scope Changes. A “**Scope Change**” is defined as Work described in the Construction Documents that is not reasonably inferable from either the GMP Design Documents or any other previously furnished Contract Documents by a reasonably prudent and careful contractor and is: (i) materially inconsistent with the GMP Design Documents; or (ii) a material change in the quantity, quality, programmatic requirements or other substantial deviation in the GMP Design Documents. Construction Manager acknowledges and agrees that the Construction Documents are not intended to change the scope, quality, quantity, function or design intent of information set forth in the GMP Design Documents and not all differences between the GMP Design Documents and the Construction Documents, or information first appearing in the Construction Documents, constitute Scope Changes, but rather are scope detailing. After reviewing the Construction Documents provided by the Architect, the Construction Manager shall notify the Owner in writing of any item in the Construction Documents that, in Construction Manager’s opinion, represents a Scope Change, setting forth in detail, estimated cost and the reasons the Construction Manager contends that information or requirements of the Construction Documents represent a Scope Change (such a notice referred to as a “**Scope Verification Request**”). Failure of the Construction Manager to provide a Scope Verification Request within thirty (30) calendar days after the date of receipt of the Construction Documents for such portions of the Work to be bid by the Construction Manager shall mean that the Construction Documents are consistent with the GMP Design Documents; no Scope or Schedule Changes exist; and the “Amendment” shall remain unchanged.
- 2.8.13 If Construction Manager timely submits to the Owner a Scope Verification Request, then the Owner shall have the following options:
- .1 Within fifteen (15) calendar days after receipt of a Scope Verification Request, the Owner may direct the Architect to redesign that aspect of the Construction Documents to bring the alleged Scope Verification design into original scope compliance. The Construction Manager shall cooperate with the Owner and Architect during the redesign effort and shall make recommendations appropriate to correct such portions of the Construction Documents. The Architect shall then submit to the Construction Manager and the Owner the revised Construction Documents; or
 - .2 If, upon review of a Scope Verification Request, the Owner believes that the portion of the Work described therein does not constitute a Scope Change, the Owner shall so advise the Contractor within fifteen (15) calendar days of receipt of such Scope Verification Request. The Owner and the Construction Manager will attempt to resolve their disagreement and identify elements of the Scope Verification Request that can be revised. If such disagreement is not resolved, the Work described in the Scope Verification Request shall be identified in a schedule (the “**Disputed Work Schedule**”) to be prepared and periodically updated by the Owner. Whenever possible, the Owner and the Construction Manager shall resolve items set forth in the Disputed Work Schedule, confirming such

resolution in a written memorandum signed by both parties. An appropriate Change Order, if necessary, will then be issued. All items remaining in the Disputed Work Schedule shall be performed by the Construction Manager as required by the Construction Documents. Such disputes shall be resolved in accordance with the Contract Documents. If the Owner does not respond to a Scope Verification Request, the Scope Verification Request shall be deemed disputed by the Owner. Regardless of any disputes between the Construction Manager and the Owner, the Construction Manager shall be responsible for providing all of the Work in accordance with the Construction Documents provided by the Architect and the Contract Documents.

- .3 If, upon review of a Scope Verification Request, the Owner agrees with the Construction Manager's request for an increase in the GMP, an appropriate Change Order will be executed. The Construction Manager shall be entitled to claim the fee percentage plus the two-percent allowed for bonds and insurance as applied to the Cost of Work.
- 2.8.14 Prior to the Construction Phase executed by an Early Release Order or Amendment, the Construction Manager shall procure and furnish to the Owner a performance bond and a payment bond in the form provided by the Owner that satisfy the requirements of the General Conditions (the "**Bonds**"). If an Early Release Order(ERO) is executed prior to the execution of the Amendment, the original performance and payment bonds issued at the time of the ERO execution will be increased utilizing a Rider prepared by the Owner and executed by the Construction Manager and surety. The Construction Manager shall furnish the Owner a certificate of insurance evidencing it has procured the insurance coverages required for the Construction Phase.
- 2.8.15 Prior to proceeding with the work executed by an Early Release Order or Amendment, the Owner will execute a Notice to Proceed in accordance with Article 9 of the General Conditions. The Construction Manager is required to submit one (1) signed copy of the instruments defined in Article 9. of the General Conditions prior to the first payment.
- 2.9 **Bidding and Award Services**
- 2.9.1 The Construction Manager shall publicly advertise for competitive bids or proposals for the performance of all major elements of the Work other than minor Work that may be included in the General Conditions Amount (the "**Construction Work**"). Article 5.1.1 of the General Conditions is hereby deleted and the award of Subcontracts shall be made pursuant to Section 2.9 of this Agreement.
- 2.9.2 The Construction Manager shall develop bidding criteria, bidding schedules and bidding information for the Construction Work and shall develop bidders' interest in the Project. Upon request by the Owner, the Construction Manager shall provide a list of bidders invited to bid with a corresponding list of those indicating their intent to bid. This list shall indicate whether the bidder is a certified MBE/WBE/DBE/Veteran/Service Disabled Veteran. The Construction Manager shall develop the invitation to bid, instructions to bidders, qualification criteria, the bid form, subcontract and contract documents with Subcontractors, including any addenda issued prior to receipt of bids for the Construction Work. The Construction Manager shall only utilize bidding documents for the Construction Work approved by the Owner in writing. The Construction Manager shall include necessary provisions of the Owner's form of Instructions to Proposers, General Conditions and other applicable terms of this agreement in the bidding documents. This includes the Supplier Diversity Forms and Affidavit provided in the Proposal Documents Manual.
- 2.9.3 The Construction Manager, with the assistance of the Architect, shall conduct Prebid conferences with prospective Bidders to familiarize bidders with the project scope of work, bidding documents for the Construction Work, the Contract Documents, and any special requirements of the Contract Documents including site impact elements such as crane use, man and material hoist use, material access to the building, designated laydown areas, materials management, site logistics/ingress/egress, potential schedule impacts, requirements for applicable, special requirements for site/building and requirements for general clean-up (sub-by-sub clean up or composite crews). The Construction Manager shall obtain responses from the Architect to all questions at Prebid conferences and review Addenda prepared by the Architect to incorporate

those responses. The Construction Manager shall prepare a record of the questions and answers discussed at the Prebid conferences, which shall be used by the Architect to prepare Addenda. All pre-bid records shall be submitted to the Owner's Representative for review and record purposes.

- 2.9.4** The Construction Manager shall assemble the Contract Documents into appropriate packages for the Owner's approval and shall distribute the packages to prospective bidders, the Architect, the Owner and other appropriate persons. The Construction Manager shall review any Addenda and provide a copy to each person of record holding Drawings and Specifications. The Construction Manager shall not impose any conditions, requirements or criteria in the bidding documents that requires potential bidders to be a party to any labor agreement, or to pay wages other than those required in the applicable Annual Wage Order included at the time of bid.
- 2.9.5** If the Construction Manager intends to pre-qualify subcontractors, the Construction Manager, during the preconstruction phase, shall review their intended prequalification process and criteria with the Owner. The Owner will either approve the process or require modifications there to. The Construction Manager shall comply with the Owner's modification requirements.
- 2.9.6** The Construction Manager and any Related Party may not submit a bid or proposal for portions of the Construction Work.
- 2.9.7** The Construction Manager shall coordinate the bid opening process with representatives of the Architect and the Owner. The Owner shall reserve the location of the sealed bid opening and be present at the bid opening for transparency and audit purposes. At said time and place, all bids duly received will be publicly opened and the name of the Bidders will be read aloud. Subsequent to the opening of the bids and recording/logging of the respondents by-name and categories of work at the bid opening, copies of the bids and all supporting documents will be shared with representatives of the Construction Manager, Architect and Owner. The Construction Manager will provide a bid tabulation sheet and a proper post-bid process shall be conducted including, review of all bids received for responsiveness, qualifications and responsibility of bidders for Construction Work and deliver a written recommendation of the Construction Manager to the Owner about the award of, or rejection of, any bid or bids in accordance with applicable Law. The CMR shall clearly show the bidders level of participation and/or all supporting documentation with the Application for Waiver demonstrating their "Good Faith Effort" per Article 9 of our Information to Proposers. In making the recommendation, the Construction Manager shall recommend the award to the bidder that provides the Best Value to Owner. The contents of the bids or proposals received by Construction Manager for any element of the Work shall not be disclosed to a person not employed by the Construction Manager, the Owner or the Architect. The contents of any bid or proposal for any element of the Work shall be made public only after the award of such Work or within seven (7) days after the date of final selection of bids or proposals for such Work, whichever is later.
- 2.9.8** The Construction Work shall only be awarded to the bidder that the Owner, in its sole and absolute discretion, has approved as offering the Best Value to the Owner. The Construction Manager shall not accept any bid or proposal that the Owner, in its sole and absolute discretion, has determined does not offer the Best Value to the Owner for the Work. The Construction Manager nor a Related Party or Affiliate company shall not perform any of the Work.
- 2.9.9** All services performed or provided to and material and equipment supplied to Construction Manager by a Subcontractor or supplier will be pursuant to an appropriate Subcontract between Construction Manager and the Subcontractor or supplier which specifically binds the Subcontractor or supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner. Each Subcontract shall preserve and protect the rights of Owner under the Contract Documents with respect to the Work to be performed by each Subcontractor and supplier so that subcontracting thereof will not prejudice such rights.
- 2.9.10** In addition to all other requirements of the Contract Documents, all agreements with Subcontractors, including Subcontracts, must expressly provide that (1) the particular Subcontractor or supplier's services are in partial satisfaction of the Construction Manager's obligations to the Owner; (2) the Construction Manager is entering into the particular agreement in order to provide the Owner with the Work which is

designed in accordance with the Contract Documents; (3) Subcontractors shall have the same obligations to perform the Work as does the Construction Manager; (4) the Owner shall not be liable to the Subcontractors for the payment of any amounts for services performed, materials supplied and equipment made available by the Subcontractors in the performance of any of the Work, and Subcontractors shall only be entitled to receive payment for any such services, materials and equipment from the Construction Manager; and (5) the terms and provisions of the Contract Documents are incorporated by reference. The Owner shall not be required to pay any amounts for any services, materials or equipment which are provided under any agreement Owner. with Subcontractors which does not contain provisions required under this Agreement, including but not limited to, those provisions in this Section 2.9.9. Upon the Owner's request, the Construction Manager shall provide to the Owner full and complete copies of any agreement with any Subcontractor or supplier, including Subcontracts.

2.9.11 Subcontracts and other agreements entered into by the Construction Manager for a portion of the Work shall conform to the applicable payment provisions and limitations of the Contract Documents and shall not be awarded on the basis of cost-plus-a-fee without the prior written consent of the Owner. If a Subcontract or other agreement is awarded on a cost-plus-a-fee basis as permitted herein, the Construction Manager shall provide in such Subcontract or other agreement for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner has with regard to the Construction Manager as provided in the Contract Documents.

2.9.12 The Construction Manager as Constructor shall subcontract with diverse firms at values no less than the amount pledged in the subcontractor's Proposal Form and/or the amount accepted by the Owner. All supplier diversity participation documentation (i.e. Supplier Diversity Compliance Evaluation Form (s) and other forms shall be submitted for each scope of work or bid package. All of the requirements listed in Article 9 (Supplier Diversity) of the Instructions to Proposers apply to subcontractors during this phase. The Owner reserves the right to request additional information regarding Supplier Diversity participation and supporting documentation from the recommended bidder. This includes documentation of all efforts to comply with the good faith effort. The bidder shall respond in writing to the Owner within 24-hours (1 work day) of a request. The Owner reserves the right to request additional information after the bidder has responded to prior 24 hour requests. This information may include follow up and/or clarification of the information previously submitted. Payments for that scope of work or bid package will not be executed until all documents to determine Supplier Diversity participation and/or good faith effort has been provided as requested.

2.10 Construction Phase

2.10.1 The Construction Phase shall commence on the date of the "Amendment" establishing the Guaranteed Maximum Price, or the first Early Release Order in the form attached hereto as (the "Early Release Order"). In the event Owner directs the Construction Manager in writing to proceed with certain specified Construction Work before the approval and acceptance of the GMP Documents, Construction Manager shall perform the services set forth in Section 2.9 for such specified Construction Work. Upon the Owner's approval of the bid or proposal for such specified Construction Work pursuant to Section 2.9 of this Agreement, the Owner shall complete the Early Release Order in the form attached hereto, and Construction Manager shall proceed with such specified Construction Work. When the GMP Documents are approved and accepted by the Owner, the amount of all Early Release Orders shall be incorporated in the "Amendment" establishing the Guaranteed Maximum Price, and the "Amendment" shall supersede all Early Release Orders. In the event the Owner and Construction Manager cannot agree upon the terms of Amendment, the Owner may terminate all outstanding Early Release Orders in the manner set forth in Section 14.3 of the General Conditions, and the Construction Manager shall only be entitled to the amounts set forth in Section 14.3.3 of the General Conditions in the event of such termination.

2.10.2 It shall be a condition precedent to the Construction Manager's right to receive any amounts for any Work during the Construction Phase that the Owner has executed an Early Release Order, or that the Owner and Construction Manager have executed the GMP Amendment.

2.10.3 The Construction Manager shall provide and furnish the Work described in the Contract Documents in a safe, expeditious, orderly and workmanlike manner.

- 2.10.4** The Construction Manager shall schedule and conduct weekly meetings at which the Architect and the Owner and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.
- 2.10.5** The Construction Manager shall provide monthly written reports to the Architect and the Owner on the progress of the entire Work, which shall include such information as safety reports, Construction Schedule updates, change order log, progress photographs, quality control reports, submittal log, Request for Information log, close-out commissioning schedule and other information reasonably requested by the Owner. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data. The log shall be available to the Architect and the Owner. The Construction Manager shall provide periodic reports as requested by the Owner regarding the status of the implementation of the Sustainability Measures, including but not limited to quantity surveys of recycled materials utilized for the Project.
- 2.10.6** The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Architect and the Owner at regular intervals.
- 2.10.7** Construction Manager shall provide a ten (10) hour Occupational Safety and Health Administration (“OSHA”) construction safety program for all employees who will be on-site during the Work. The construction safety program shall include a course in construction safety and health approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations which is at least as stringent as an approved OSHA program as set forth in RS Mo. §292.675. The Construction Manager shall require all on-site employees who have not previously completed the OSHA safety program as set forth in RS Mo. §292.675 to complete the program within sixty (60) days after the commencement of the Work. The Construction Manager acknowledges and agrees that any of Construction Manager’s employees found on the Project site without documentation of the successful completion of an OSHA construction safety program as set forth in RS Mo. §292.675 shall be required to produce such documentation within twenty (20) days or be subject to removal from the Project. The Construction Manager shall require all Subcontractors to comply with the requirements set forth in this Section 2.10.7 and the requirements set forth in RS Mo. §292.675. The Construction Manager acknowledges and agrees that the Construction Manager shall be subject to the penalties set forth in RS Mo. §292.675 in the event the Construction Manager or a Subcontractor fails to comply with the requirements of this Section 2.10.7. The Owner shall have the right to withhold and retain from amounts otherwise due to Construction Manager under the Contract Documents all sums due and owing as a result of any violation of the provisions of this Section 2.10.7 or RS Mo. 292.675.
- 2.10.8** At all times during the performance of any services or Work hereunder, the Construction Manager shall participate in a federal work authorization program concerning all employees providing any services or the Work. The Construction Manager shall provide proof of its participation in such federal work authorization program from time to time as requested by the Owner. The Construction Manager shall require that all Subcontractors shall affirmatively state by affidavit and in each Subcontract that the Subcontractor is not in violation of the provisions of RS Mo. §285.530 and shall not be in violation of the provisions of RS Mo. §285.530.
- 2.10.9** Construction Manager shall provide a qualified competent person or persons (within the CMR company), separate from the Superintendent Team or Project Management Team, to act as the CMR contractor’s Quality Control Manager or CQM. The CQM will report to a CMR company Executive or Director. The CQM is responsible for planning, scheduling, coordinating, conducting, documenting and verifying all quality management, control and commissioning activities as required. The CQM will execute the following, but not limited to, review all project submittals and shop drawings, coordinate same between all trades, conduct pre-installation and installation meetings and organize, schedule, conduct, and distribute meeting minutes and other documentation required.

- 2.10.10** Construction Manager shall provide monthly updates detailing the status of minority participation during the construction phase.
- 2.10.11** Construction Waste Management - The Construction Manager shall have as a goal the diversion of fifty percent (50%) of construction waste from deposit in a sanitary landfill. The goal is to recycle and/or salvage 50% of non-hazardous construction and demolition. The Construction Manager shall maintain records of the actual destinations for material by type and quantity and shall provide the Owner with a written report monthly.
- 2.10.12** The Owner may, at its sole discretion, provide electronic data files of the plans and specifications to the Contractor for their convenience and use in progressing the Work and the preparation of shop drawings or other submittal requirements required for construction of the referenced project. The electronic data files shall reflect “blue line” (Construction Documents + Bid Addenda) only. If provided, these files will be transmitted subject to the following terms and conditions:
- .1 The Owner makes no representation as to the compatibility of these files with the Contractor’s hardware or software.
 - .2 Data contained on these electronic files shall not be used by the Contractor or anyone else for any purpose other than as a convenience in progressing the Work or in the preparation of shop drawings or other required submittals for the referenced project. Any other use or reuse by the Contractor or by others will be at their own sole risk and without liability or legal exposure to Owner. The Contractor agrees to make no claim and hereby waive, to the fullest extent permitted by law, any claim or cause of action of any nature against the Owner and its consultants, contractors, agents, employees, and representatives that may arise out of or in connection with the use of the electronic files transmitted.
 - .3 Furthermore, the Contractor shall, to the fullest extent permitted by law, indemnify and hold harmless the Owner and its consultants, contractors, agents, employees, and representatives, against all damages, liabilities or costs, including reasonable attorney’s fees and defense costs, arising out of or resulting from the use of these electronic files.
 - .4 These electronic files are not contract documents. Differences may exist between these electronic files and corresponding hard-copy construction documents. The Owner makes no representation regarding the accuracy or completeness of the electronic files you receive. In the event that a conflict arises between the signed or sealed hard-copy construction documents prepared by the Consultant and the electronic files, the signed and sealed hard-copy construction documents shall govern. The Contractor is responsible for determining if any conflict exists. By use of these electronic files, the Contractor is not relieved of their duty to fully comply with the contract documents.
 - .5 Because information presented on the electronic files can be modified, unintentionally or otherwise, the Owner reserves the right to remove all indications of ownership and/or involvement from each electronic display.
 - .6 Under no circumstances shall delivery of the electronic files be deemed a sale by the Owner and no warranties are made, either expressed or implied, of merchantability and fitness for any particular purpose. In no event shall the Owner be liable for any loss of profit, or any consequential damages as a result of use or reuse of these electronic files.

ARTICLE 3

OWNER’S RESPONSIBILITIES

- 3.1** The Owner will, with reasonable promptness, provide Construction Manager with available information regarding its proposed requirements for the Project.
- 3.2** The Owner shall establish and update the Construction Costs Budget for the Project during the Preconstruction Phase.
- 3.3** The Owner shall designate a representative authorized to serve as the Construction Manager’s primary communication contact with the Owner.

ARTICLE 4 **CONTRACT TIME**

- 4.1 The Construction Manager shall commence Preconstruction Phase Services promptly and shall proceed with and complete such Preconstruction Phase Services in accordance with the schedule set forth in **Exhibit C** attached hereto.
- 4.2 The Construction Manager shall commence the Construction Phase Services and Work on the date that the first Subcontract is awarded by the Construction Manager and Construction Manager shall proceed with the Work in accordance with the Construction Schedule attached to the Early Release Order or the Amendment establishing the Guaranteed Maximum Price. Construction Manager shall achieve Substantial Completion and Final Completion on or before the dates established for Substantial Completion and Final Completion in the Amendment.
- 4.3 The term “**Contract Time**” shall collectively mean the time requirements for Preconstruction Phase Services, the date Construction Manager is to achieve Substantial Completion, the date Construction Manager is to achieve Final Completion and the interim Milestone Dates set forth in the approved Construction Schedule. The Contract Time, including all interim Milestone Dates set forth in the Construction Schedule, is of the essence of this Agreement and the Contract Documents.
- 4.4 In addition to all other documents and information required by the Contract Documents, the Construction Manager, in support of any request for an extension of the Contract Time, must demonstrate to the satisfaction of the Owner that the critical path of the Construction Schedule was delayed as described in Article 8.2 of the General Conditions.
- 4.5 In the event that the Construction Manager is entitled to an adjustment in the Contract Sum pursuant to Section 8.2.4 of the General Conditions, the term “direct costs” shall be limited to the increase in those items set forth in **Exhibit D** attached to this Agreement that are applicable and does not include any other items. Such additional direct costs shall be supported by detailed substantiating data as the Owner may require.

ARTICLE 5 **COMPENSATION AND PAYMENTS FOR** **PRECONSTRUCTION PHASE SERVICES**

- 5.1 The Owner agrees to pay Construction Manager for the proper performance of Preconstruction Phase Services the sum stipulated in the Agreement (the “**Preconstruction Phase Fee**”). Any and all salaries, expenses, costs, charges, fees, overhead and profit related to Construction Manager’s performance of Preconstruction Phase Services are included in the Preconstruction Phase Fee. Construction Manager shall submit invoices for Preconstruction Phase Services rendered pursuant to this Agreement on a monthly basis as required herein. The period covered by each invoice shall be for the Preconstruction Phase Services rendered pursuant to this Agreement during the previous calendar month. The Schedule of Values attached hereto as **Exhibit C** allocates the entire Preconstruction Phase Fee among the various aspects of the Services (“**Preconstruction Schedule of Values**”). The Preconstruction Schedule of Values shall be used solely as a basis of the Owner’s review of Construction Manager’s invoices for Preconstruction Phase Services. The amount of each monthly invoice shall represent the value of Services actually and properly performed during the prior calendar month in accordance with the Preconstruction Schedule of Values, and shall be calculated as the percentage of each category of Preconstruction Phase Services reflected in the Preconstruction Schedule of Values actually and properly performed during the prior calendar month. The monthly invoices shall be in a form and in the detail acceptable to the Owner and such invoices shall be accompanied by such supporting data as may be required by the Owner. If the Preconstruction Schedule of Values which is attached hereto as **Exhibit C** is subsequently found to be improper, unbalanced or exhibits “front loading” of the value of Preconstruction Phase Services, sufficient funds shall be withheld from future invoices or Applications for Payment to ensure an adequate amount remains to complete Preconstruction Phase Services.
- 5.2 The Owner shall pay Construction Manager the amount of the Preconstruction Phase Fee due as reflected in a proper invoice within thirty (30) days from receipt and approval of a properly detailed and submitted invoice as required hereunder.

- 5.3 The Owner may withhold monies otherwise due Construction Manager upon reasonable evidence of Construction Manager's failure to perform in accordance with the terms and conditions of this Agreement and/or to satisfy any amounts payable to the Owner by Construction Manager under the terms of this Agreement. The Owner will provide written notice to Construction Manager of the reasons therefore and shall thereafter provide Construction Manager with a reasonable opportunity to cure. When all reasons supporting the Owner's withholding have been removed to the Owner's reasonable satisfaction, the Owner agrees to pay promptly any monies withheld that are otherwise due Construction Manager.

ARTICLE 6

COMPENSATION FOR CONSTRUCTION PHASE WORK

6.1 Contract Sum and Guaranteed Maximum Price

- 6.1.1 The Owner agrees to pay the Construction Manager for the proper performance of the Work during the Construction Phase the Contract Sum consisting of the Cost of the Work as defined in Article 7, the General Conditions Amount and the Construction Phase Fee. Any and all direct overhead for the Work, including, but not limited to, the salaries, expenses, costs, and charges set forth in **Exhibit D**, are included in the General Conditions Amount. The parties acknowledge that Construction Manager has submitted a proposal for the Construction Phase Fee as a percentage of the Cost of the Work. Construction Manager shall not include in the scope of the Work of any Subcontractor, any items covered by the General Conditions Amount that result in a duplication of payment for any item covered by the General Conditions Amount ("Duplication of Payment") and Construction Manager shall not pay any Duplication of Payment to a Subcontractor. With each Application for Payment, Construction Manager shall provide Owner an Affidavit verifying that it has complied with its obligations hereunder. In the event of any Duplication of Payment, Construction Manager shall immediately pay the Owner the amount of any Duplication of Payment.
- 6.1.2 At the time the Amendment establishing the GMP is entered into, the Construction Phase Fee shall be converted to a stipulated sum and shall be a sum equal to the percentage amount stipulated in line 2.7 of the Agreement between the Owner and Construction Manager as Constructor applied to either the estimated Cost of the Work or, the total of the subcontractor bids if buy-out is complete, plus the General Conditions amount. Any and all profit and indirect overhead for the Work, including, but not limited to, the salaries, costs, charges and items set forth in **Exhibit D** are included in the Construction Phase Fee. The Construction Phase Fee shall not be subject to change except as provided herein
- 6.1.3 The sum of the Cost of the Work, the General Conditions Amount and the Construction Phase Fee are guaranteed by the Construction Manager not to exceed the amount provided in the Amendment establishing the GMP, subject to additions and deductions by changes in the Work as provided in the Contract Documents, subject to the limitation set forth in Section 6.1.5 of this Agreement. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the "**Guaranteed Maximum Price**." Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.
- 6.1.4 The positive difference as of the date of Final Completion of the entire work between (i) the total aggregate sum of the Cost of the Work, the General Conditions Cost and the Construction Phase Fee; and (ii) the Guaranteed Maximum Price upon Final Completion of the entire Work shall be returned in its entirety to the benefit of the Owner.
- 6.1.5 The Guaranteed Maximum Price is subject to adjustment for Change Orders authorized in accordance with the Contract Documents. Regardless of any contrary provision contained in the Contract Documents, there shall be no change in the Construction Phase Fee, unless and until the aggregate amount of Change Orders exceed seven percent (7%) of the Guaranteed Maximum Price. This 7% fee holiday shall apply to all change orders in aggregate, including those written under Early Release Orders executed prior to establishment of the GMP and execution of the Amendment.

6.2 Changes in the Work

- 6.2.1** Changes in the Work may be accomplished after execution of this Agreement and GMP Amendment and without invalidating the Contract by Change Order, Change Directive, or order for a minor change in the Work, subject to the limitations stated in this Article 6 and Article 7 of the General Conditions.
- 6.2.2** A Change Order shall be based upon agreement between the Owner and Construction Manager; a Change Directive may be issued by Owner and may or may not be agreed to by Construction Manager; an order for a minor change in the Work may be issued by Owner as described below. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and Construction Manager shall proceed promptly, unless otherwise provided in the Change Order, Change Directive or order for a minor change in the Work.
- 6.2.3** Minor changes in the work, clarifications and responses to questions submitted formally by the Construction Manager may be ordered using a supplemental instruction or similar document generated by the Architect or the Owner. Contractor shall carry out such work in accordance with directions included in the instruction unless there is an impact to the Contract sum or Contract time. In the event there is a cost or time impact, Contractor Manager shall immediately notify the Owner's Representative for direction. All such minor changes shall be included in the final record drawings prepared by the Construction Manager.
- 6.2.4** Construction Manager hereby acknowledges that Owner's Representative is the only person who can order changes in the Work, and Construction Manager shall not comply with requested changes from any person other than Owner's Representative. If Construction Manager receives a request for changes from any person other than Owner's Representative, Construction Manager shall report such request to Owner's Representative for resolution. Any work completed by Construction Manager not authorized by Owner's Representative in a Change Order, Change Directive or an order for minor change in the Work shall be at Construction Manager's sole cost and expense and shall be deemed a waiver of all rights Construction Manager may have for any adjustment in the Contract Sum or Contract Time.
- 6.2.5** If requested by the Owner, Subcontractor shall obtain competitive bids for changes and Subcontractor shall deliver such bids to Construction Manager and Owner, who will then determine which bids to accept, if any. If any agreement by and between a Subcontractor and a Lower-Tier Subcontractor provides that the Lower-Tier Subcontractor is to be paid on the basis of the cost of the Work plus a fee as permitted herein, the Lower-Tier Subcontractor's cost of the Work and fee shall be determined in the same manner as Subcontractor's Cost of the Work and fee as provided for herein. All Lower-Tier Subcontracts shall be subject to all other provisions of the Contract Documents insofar as applicable.
- 6.2.6** When Owner and Construction Manager agree to adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

6.3 Minor Changes in the Work

- 6.3.1** Owner will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on Construction Manager. Construction Manager shall carry out such written orders promptly.

6.4 Other Change Matters

- 6.4.1** The amount of credit to be allowed by Construction Manager to Owner for any change which results in a net decrease in cost will be the amount of actual net decrease in cost. No deduction in Construction Manager's fee for overhead and profit shall apply.

- 6.4.2** Overtime, when specifically authorized in connection with a change and not as an Extraordinary Measure, shall be paid for by Owner on the basis of premium payment only, plus the cost of insurance and taxes based on the premium payment period. Overhead and profit will not be paid by Owner for overtime.
- 6.4.3** Percentage mark-ups for Change Orders as specified in Article 7 of the General Conditions for both adds and deducts, do not apply directly to the Construction Manager. In the event the Construction Manager self-performs some component of the Change Order scope as authorized in advance by the Owner, the Construction Manager shall be allowed to apply the construction phase fee percentage to the self-performed component only. Subcontractors performing change order work shall be subject to the markup percentages specified in Article 7 of the General Conditions. The Construction Manager shall be allowed to add two percent (2%) to the value of change orders to cover the costs of bonds, insurance and associated administrative costs.

ARTICLE 7

COST OF THE WORK FOR THE CONSTRUCTION PHASE

- 7.1** The term “**Cost of the Work**” shall mean the costs necessarily incurred by the Construction Manager in the proper performance of the Work for only the following items:
- .1** Payments made by Construction Manager to Subcontractors in accordance with the requirements of the Subcontracts;
 - .2** Premiums for providing the performance bond and payment bond required by this Agreement; and
 - .3** Premiums for Construction Manager providing insurance required by Article 11 that can be directly attributable to this Agreement.
- 7.2** Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured. Construction Manager shall not obtain for its own benefit any discounts, rebates or refunds in connection with the Work prior to providing Owner with ten (10) days prior written notice of the potential discount, rebate or refund and an opportunity to furnish funds necessary to obtain such discount, rebate or refund on behalf of Owner in accordance with the requirements of this Section. Amounts that accrue to Owner in accordance with the provisions of Section 7.2 of this Agreement shall be credited to Owner as a deduction from the Cost of Work.
- 7.3** Construction Manager or any affiliated person or entity which performs a portion of the Work shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement, and the accounting and control systems shall be satisfactory to Owner. Owner and its representatives shall be afforded access to, and shall be permitted to audit and copy, Construction Manager’s records, books, correspondence, instructions, receipts, contracts, purchase orders, vouchers, memoranda and other data relating to this Agreement. All records shall be maintained in accordance with generally accepted accounting procedures, consistently applied. Subcontractors retained by Construction Manager on a “cost-plus” basis shall have the same obligations to retain records and cooperate with audits as are required by the Construction Manager under this Section 7.3 and the Contract Documents. If any inspection by the Owner of the Construction Manager’s records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and any other data relating to the Contract Documents reveals an overcharge, the Construction Manager shall pay the Owner upon demand an amount equal to one hundred twenty percent (120%) of such overcharge, as reimbursement for said overcharge and the administrative expenses incurred in determining the overcharge.

ARTICLE 8
CONSTRUCTION PHASE PROGRESS PAYMENTS

- 8.1** Based upon Applications for Payment submitted to the Owner by the Construction Manager, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.
- 8.2** Each Application for Payment shall be based upon the most recent Construction Schedule of Values submitted by the Construction Manager in accordance with Article 9.3 of the General Conditions.
- 8.3** Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the Construction Schedule of Values.
- 8.4** Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
- .1** Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the Construction Schedule of Values less retainage of five percent (5%).
 - .2** Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing less retainage of five percent (5%).
 - .3** Add the General Conditions Amount, less retainage of five percent (5%). The General Conditions Amount shall be an amount which bears the same ratio to that fixed sum General Conditions Amount as the Cost of the Work in subsections .1 and .2 above bears to a reasonable estimate of the probable Cost of the Work.
 - .4** Add the Construction Phase Fee, less retainage of five percent (5%). The Construction Phase Fee shall be an amount which bears the same ratio to that fixed-sum Construction Phase Fee as the Cost of the Work subsections .1 and .2 above bears to a reasonable estimate of the probable Cost of the Work upon its completion.
 - .5** Subtract the aggregate of previous payments made by the Owner.
 - .6** Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 8.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner or its accountants in such documentation.
 - .7** Subtract amounts, if any, for which the Architect or the Owner have withheld or nullified a Certificate for Payment as provided in the General Conditions.
- 8.5** Except with the Owner prior written approval, payments to Subcontractors shall be subject to retention of not less than five percent (5%). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for each Construction Contract.
- 8.6** Except with the Owner prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

- 8.7** In addition to all other requirements of the Contract Documents, each Application for Payment shall be accompanied by the following:
- .1** Weekly employee payrolls for the Construction Manager and all Subcontractors. Each Application for Payment shall be accompanied by a certified copy of employee payrolls, submitted on a form approved by the Owner and covering the Work performed during the time covered by the Application for Payment. No payment will be due and no Application for Payment processed by the Owner until all pertinent payroll documents have been completed and approved;
 - .2** If required by the Owner, a current Construction Manager's receipt and partial release form and a sworn statement showing all Subcontractors and/or suppliers, the amount of each such subcontract, the amounts which have been paid to all Subcontractors and suppliers, the amount requested for any Subcontractor and supplier in the requested progress payment, and the amount to be paid to any Subcontractor or supplier from such progress payment, together with similar receipt and partial release forms and/or sworn statements from all such Subcontractors and suppliers; and
 - .3** All information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner or the Architect.
- 8.8** In addition to all other requirements of the Contract Documents, the Owner shall not be obligated to make any progress payments to Construction Manager unless and until Construction Manager provides the Owner and the Architect:
- All certificates of insurance required herein; an executed Amendment; and the Bonds.
- 8.8.1** Retainage shall be released as provided for in Section 9.9.3 of the General Conditions.

ARTICLE 9

CONSTRUCTION PHASE FINAL PAYMENT

- 9.1** Final payment, including retainage, shall be made by the Owner to the Construction Manager when (1) the Contract has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct nonconforming Work, as provided in Section 12.2.1 of the General Conditions, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Architect and the Owner; and (3) a final Certificate for Payment has been issued by the Architect; such final payment shall be made by the Owner not more than thirty (30) days after the issuance of the Architect's final Certificate for Payment.
- 9.2** The amount of the final payment shall be calculated as follows:
- .1** Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Phase Fee, but not more than the Guaranteed Maximum Price.
 - .2** Subtract amounts, if any, for which the Owner and/or the Architect withhold, in whole or in part, as provided in Section 9.6 of the General Conditions or other provisions of the Contract Documents.
 - .3** Subtract the aggregate of previous payments made by the Owner.
- If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.
- 9.3** The Owner will review and report in writing on the Construction Manager's final accounting within forty-five (45) days after delivery of the final accounting to the Owner and the Architect by the Construction Manager. Within seven (7) days from receipt of the Owner's report, the Architect shall certify the amount

of the Final Payment as substantiated by the Owner's report, provided the other conditions of this Article 9 have been met.

- 9.4** All records shall be maintained in accordance with generally accepted accounting procedures, consistently applied. If any inspection by the Owner of the Construction Manager's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and any other data relating to the Contract Documents reveals an unsubstantiated charge and/or overcharge, the Construction Manager shall pay the Owner upon demand an amount equal to one hundred twenty percent (120%) of such unsubstantiated charge and/or overcharge, as reimbursement for said unsubstantiated charge and/or overcharge and the administrative expenses incurred in determining the unsubstantiated charge and/or overcharge.

ARTICLE 10
INSURANCE REQUIRED OF CONSTRUCTION MANAGER
DURING THE PRECONSTRUCTION PHASE

10.1 General

- 10.1.1** The Construction Manager shall secure from the date of this Agreement and maintain for such periods of time set forth herein, including the Preconstruction Phase, insurance of such types and in such amounts specified in Article 11 of the General Conditions, to protect against the risks of loss described in the General Conditions, excluding Builder's Risk Insurance described in Article 11.6 of the General Conditions.

10.2 Professional Liability

- 10.2.1** Construction Manager shall, from the date of this Agreement and for a period of at least five (5) years from the date of Final Completion of the entire Work, maintain insurance for claims arising out of the negligent performance of Construction Manager's Preconstruction Phase Services. The liability limits under such policy shall not be less than One Million Dollars (\$1,000,000.00) per occurrence and One Million Dollars (\$1,000,000.00) aggregate.

ARTICLE 11
INSURANCE REQUIRED OF CONSTRUCTION MANAGER
DURING THE CONSTRUCTION PHASE

11.1 General

- 11.1.1** The Construction Manager shall secure from the commencement of the Construction Phase and for such periods of time as set forth below, insurance of such types and in such amounts specified below as set forth in the Contract Documents, including Article 11 of the General Conditions. The Construction Manager shall provide to the Owner a certificate of insurance and other documents evidencing such insurance as required by the Contract Documents prior to execution of an Early Release Order or GMP Amendment. The insurance coverage shall be as required by Article 11 of the General Conditions or as modified in the Special Conditions of the Proposal Documents Manual.

- 11.1.2** In the event the Construction Manager intends to either bond their subcontractors or purchase subcontractor default insurance, the Owner shall pay actual cost not exceeding 1% of the subcontract value. Any costs exceeding the 1% shall be paid by the Construction Manager.

ARTICLE 12
BONDS

- 12.1** Prior to the Construction Phase established by an Early Release Order or Amendment, the Construction Manager shall procure and furnish to the Owner the Bonds that satisfy the requirements of the General Conditions, including Section 11.7 of the General Conditions.

ARTICLE 13
PROPERTY INSURANCE DURING THE CONSTRUCTION PHASE

- 13.1** At all times during the Construction Phase, Construction Manager shall procure and maintain builder's risk insurance as set forth in Section 11.6 of the General Conditions, or as modified in the Special Conditions of the Proposal Documents Manual.

ARTICLE 14
INDEPENDENT CONTRACTOR

- 14.1** It is understood and agreed that Construction Manager is acting as an independent contractor in performance of Construction Manager's obligations hereunder. Nothing herein contained shall be construed as creating the relationship of principal and agent or employer and employee or a partnership between the Owner and Construction Manager. Neither the Construction Manager nor any of its employees is entitled to receive from the Owner any insurance coverage, pension, profit sharing, paid vacation, sick leave, disability or other benefits normally provided by the Owner to their officers, agents or employees.

ARTICLE 15
ASSIGNMENT

- 15.1** Construction Manager shall not assign this Agreement nor the proceeds hereof without the prior written consent of the Owner. Any attempt to assign this Agreement without the prior written consent of the Owner shall be void and confer no rights on any third party.

ARTICLE 16
DISPUTE RESOLUTION

- 16.1.1** Any controversy, claim or dispute arising out of or relating to the interpretation, construction, or performance of this Agreement, including, but not limited to, the Services of Contract Manager during the Preconstruction Phase shall be governed by the procedures set forth in Article 4 of the General Conditions.
- 16.2** Construction Manager shall continue with the performance of the Services hereunder during the pendency of any claim, dispute or controversy, or other proceeding to resolve such claim, dispute or controversy. The Owner shall continue to make payments of undisputed amounts to Construction Manager in accordance with the Contract Documents, but the Owner shall be under no obligation to make payments to Construction Manager of disputed amounts or for claims, disputes, or controversies during the pendency of any proceeding to resolve such claims, disputes or controversies.

ARTICLE 17
SUSPENSION DURING PRECONSTRUCTION PHASE

- 17.1** The Owner shall have the authority to suspend the Preconstruction Phase Services, in whole or in part, for such periods and for such reasons as it may deem necessary or desirable, in its sole discretion, including, without limitation:
- .1** to resolve coordination, technical or design matters;
 - .2** other conditions considered unfavorable for the scheduled prosecution of the Services; and/or
 - .3** other conditions considered adverse to the best interests of the Owner.

Any such suspension shall be in writing to Construction Manager. Construction Manager shall immediately comply with such orders of the Owner and shall not resume the Services hereunder until so ordered in writing by the Owner.

ARTICLE 18

TERMINATION OF AGREEMENT DURING PRECONSTRUCTION SERVICES

- 18.1** The Owner may, at any time and for any reason, including, without limitation, for its own convenience and at its sole discretion, cancel or terminate this Agreement in whole or in part during the Preconstruction Phase upon five (5) days written notice to Construction Manager without liability other than payment of the fees for the Preconstruction Services properly performed up to the date of termination based upon services provided. In no event shall Construction Manager be entitled to any other compensation from or recovery of any damages in connection with any termination hereunder, including, without limitation, consequential damages, lost opportunity costs, lost profits, impact damages or similar remuneration. The sole compensation that Construction Manager shall be entitled to because of any termination hereunder is limited to amounts for the value of the Preconstruction Services properly performed up to the date of termination based upon the Preconstruction Schedule of Values.
- 18.2** If the Construction Manager defaults by failing to substantially perform its obligations and responsibilities in accordance with the terms of this Agreement the Owner may give written notice to the Construction Manager (i) terminating this Agreement effective seven (7) days from the date of such written notice, or (ii) setting forth the nature of the default and requesting the Construction Manager initiate efforts to cure such default within seven (7) days from the date of the written notice requesting such efforts to cure. If the Construction Manager fails to initiate efforts to cure such default upon such written request of the Owner and diligently cure such default, the Owner may provide written notice to the Construction Manager of immediate termination of this Agreement. If this Agreement is terminated pursuant to this Section 22.2, the Owner shall pay Construction Manager the fees for the Preconstruction Services properly performed up to the date of termination based upon the Preconstruction Schedule of Values, less all costs, expenses and damages caused by the Construction Manager's default, including, but not limited to, attorneys' fees and expert's fees.
- 18.3** Upon receipt of any notice of termination, Construction Manager shall promptly (1) discontinue all affected Services (unless the notice directs otherwise), and (2) promptly deliver to the Owner all design documents and all sepias and copies of all completed or partially completed drawings, specifications, sketches, models, reports, calculations, tapes, charts, photographs, data, estimates, summaries and such other information and materials as may have been accumulated by Construction Manager in performing this Agreement, whether completed or in process.
- 18.4** If a court determines that termination of the Construction Manager pursuant to Section 22.2 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 19.1 and Construction Manager's remedy for wrongful termination is limited to the recovery of the payments permitted for termination for convenience as set forth in Section 19.1.
- 18.5** The rights and remedies of the Owner under this Section are non-exclusive and are in addition to all other remedies available to the Owner under this Agreement or by Law.

ARTICLE 19

TERMINATION DURING CONSTRUCTION PHASE

- 19.1** The Owner shall have the right to terminate this Agreement during the Construction Phase as provided in Article 14 of the General Conditions.

ARTICLE 20

MISCELLANEOUS

- 20.1** The Agreement and the Contract Documents are the exclusive statement of the agreement of the parties with respect to its subject matter and this Agreement and the Contract Documents supersede and replace all prior agreements, discussions and representations, whether written or oral, relating to the subject matter hereof. No amendment or modification of this Agreement shall be effective unless the same is in writing and signed by the parties.

- 20.2** Construction Manager and Owner agree to do all acts and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of this Agreement and the Contract Documents.
- 20.3** This Agreement and the Contract Documents shall be interpreted, construed, enforced and regulated under and by the laws of the State of Missouri. Whenever possible, each provision of this Agreement and the Contract Documents shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement or the Contract Documents, or a portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without invalidating or affecting the remaining provisions of this Agreement or the Contract Documents or valid portions of such provision, which are hereby deemed severable. Construction Manager and Owner further agree that in the event any provision of this Agreement or the Contract Documents, or a portion thereof, is prohibited by law or found invalid under any law, this Agreement or the Contract Documents shall be reformed to replace such prohibited or invalid provision or portion thereof with a valid and enforceable provision which comes as close as possible to expressing the intention of the prohibited or invalid provision.
- 20.4** Owner total liability to Construction Manager and anyone claiming by, through, or under Construction Manager for any Claim, cost, loss, expense or damage caused in part by the fault of Owner and in part by the fault of Construction Manager or any other entity or individual shall not exceed the percentage share that Owner's fault bears to the total fault of Owner, Construction Manager and all other entities and individuals as determined on the basis of comparative fault principles.
- 20.5** Construction Manager agrees that Owner shall not be liable to Construction Manager for any special, indirect, incidental, or consequential damage whatsoever, whether caused by Owner's negligence, fault, errors or omissions, strict liability, breach of contract, breach of warranty or other cause or causes whatsoever. Such special, indirect, incidental or consequential damages include, but are not limited to loss of profits, loss of savings or revenue, loss of anticipated profits, labor inefficiencies, idle equipment, home office overhead, and similar types of damages.
- 20.6** Nothing contained in this Contract or the Contract Documents shall create any contractual relationship with or cause of action in favor of a third party against the Owner.
- 20.7** Construction Manager's Personnel Chart, which lists by name, job category and responsibility the Construction Manager's primary employees who will work on the Project, as described in the Qualifications Submittal. The Construction Manager shall promptly inform the Owner in writing of any proposed replacements, the reasons therefore, and the names(s) and qualification(s) of proposed replacement(s). The Owner shall have the right to reject any proposed replacement.
- 20.8** The terms "hereof," "herein," and "hereunder" and words of similar import shall be construed to refer to this Contract as a whole, and not to any particular paragraph, section or provision unless expressly so stated.
- 20.9** No member or officer of the Board of Curators of the University of Missouri incurs or assumes any individual or personal liability by the execution of this Agreement or by reason of the default of the Owner in the performance of any of the terms hereof. All such liability of members or officers of the Board of Curators of the University of Missouri as such is hereby released by Construction Manager as a condition of and consideration for the execution of this Agreement.
- 20.10** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same Agreement.

AGREEMENT

EXHIBIT A – GENERAL PROJECT DESCRIPTION

The project generally consists of the demolition and remodel of approximately 5,800 SF of the 1st floor of Missouri Psychiatric Center, along with providing and installing new infrastructure equipment which will serve the remodeled area. (Note: The emergency power infrastructure work is sized to support the entire MPC building in the future.) The remodeled area will become a 16-bed ED/Obs unit consisting of 23-hour patient rooms, caregiver stations, and other support spaces, i.e., clean room, soil room, etc. The infrastructure equipment includes a new roof top unit, exterior ductwork from the roof to the first floor, new ground mounted emergency generator and fuel tank, and new transfer switches and main distribution gear located in the basement. Additionally, chilled water pumps are being replaced in the basement as well.

The work will be done in an occupied psychiatric facility and necessitate increased security and safety protocols for all working on the project. The project will be dividing into several phases on the first floor to accommodate shifting occupancies and allow continuous operation of the facility during construction.

The anticipated project schedule and phasing is shown on the following documents titled: *(Forthcoming in formal RFP)*

The total project budget is \$12,500,000 with an anticipated Guaranteed Maximum Price of \$6,079,260. The GMP is anticipated at 90% construction documents are issued around *(to be determined and included in the formal RFP)*

AGREEMENT
EXHIBIT B - INITIAL CONSTRUCTION SCHEDULE

Forthcoming with formal RFP
~~(See above schedule and floor plans)~~

DRAFT

Project No: CP230481

Project Name: Missouri Psychiatric Center – Infrastructure and ED Observation Renovation

AGREEMENT
EXHIBIT C - PRECONSTRUCTION SCHEDULE OF VALUES

(TO BE PROVIDED ON THIS FORM OR REFERENCE CONTRACTOR'S FORM AS AN ATTACHMENT)

DRAFT

END OF EXHIBIT C

AGREEMENT
EXHIBIT D - FEE MATRIX

PRE-CONSTRUCTION SERVICES	PRE CON	FEE	GEN COND	OWNER	COST OF WORK
Create and Implement Construction Management Plan	X				
Coordinate Document Flow Process/Communications with Project Team	X				
Prepare and Update Project Schedules for each Phase of Design	X				
Prepare Initial Cost Opinion and Control Estimates for each Design Phase	X				
Create Quality Management/Commissioning Program and Submit for Approval at Final Design	X				
Create and Implement Safety & Health Program	X				
Recording, Archiving, Distribution of Meeting Minutes & Comments	X				
Posting of Meeting Minutes & Comments to MU IT/Web Locations	X				
Constructability Analysis of Design & Construction Documents	X				
Cost Analysis Control of Design & Construction Documents	X				
Fully Integrate CM Services into Design Coordination Meetings	X				
Value Engineering of the Design Process & Project Documents	X				
Site & Material Logistics Planning	X				
Existing Conditions Investigation & Planning	X				
Coordinate Equipment Planning with Design Phase	X				
Prepare Life Cycle Analysis and contract cash flow schedule updated monthly	X				
Home Office Travel, Expenses, Per Diem, Subsistence, Insurance	X				
CONSTRUCTION SERVICES	PRE CON	FEE	GEN COND	OWNER	COST OF WORK
Prepare Bid Package Documents in Construction			X		
Project Superintendent/Project Management Safety Manager			X		
Project Management			X		
Any additional staffing necessary to supplement the project as necessary to manage claims, non-performing subcontractors and issues within responsibility of the CM			X		
Corporate Office Executive, Management & Support Services		X			
Corporate Executive & Legal Services		X			
Accounting/Purchasing		X			
Scheduling/Phasing/Expeditior			X		
Project Commissioning Coordination			X		
Support Owner Commissioning Engineer					X

Estimating/Cost Engineer, Drafting Detailer/Drawing Review			X		
Implement Approved Quality Management Plan			X		
Administrative Assistant Support			X		
MEP & FP Coordination			X		
BIM Modeling					X
Management of BIM model			X		
Coordinate Testing and Inspections for Project			X		
EEO Officer/MBE/WBE/DBE/Veteran Coordination			X		
Coordinate Owner Furnished and/or Owner Installed Items for Project			X		
Coordinate Owner Furnished and/or Contractor Installed Items for Project			X		
Coordinate Owner Occupancy and Move In Requirements			X		
TRAVEL & LODGING	PRE CON	FEE	GEN COND	OWNER	COST OF WORK
Off-Site Staff Travel Cost/Transportation			X		
On-Site Management Transportation			X		
On-Site Superintendents Transportation			X		
On-Site Project Staff: Moving Expenses/Subsistence Allowance			X		
QUALITY CONTROL	PRE CON	FEE	GEN COND	OWNER	COST OF WORK
Field Inspector (as stated in Quality Management Plan) & Office			X		
Special Inspection Consultants				X	
Concrete Testing				X	
Masonry Testing				X	
MEP & FP Inspections Coordinator				X	
Test & Balancing				X	
Special Testing & Inspections (as prescribed in Technical specifications)					X
Compaction Testing				X	
Welding Testing				X	
Soils Investigation				X	
Supplies & Materials for Field Office			X		
Project Photographs			X		
Warranty Inspections Coordination		X			
TEMPORARY FACILITIES	PRE CON	FEE	GEN COND	OWNER	COST OF WORK
Field Office or Trailer Rental			X		
Storage Trailer Rental			X		
Safety Equipment Hard Hats, Glasses, Harness, Nets, Barricades			X		
First Aid Supplies			X		
Hot Work Permits, Fire Extinguishers, Fire Watch			X		
Security Guard/Watchman Service			X		
Safety Handrails, Cables, Toe Boards					X
Temporary Stairs, Fencing, Enclosures					X

Project No: CP230481

Project Name: Missouri Psychiatric Center – Infrastructure and ED Observation Renovation

Temporary Partitions & Covered Walkways (include quantity takeoff)					X
Temporary Protection of Installed Equipment/ Assemblies					X
Project Signage					X

ON-SITE UTILITIES & SERVICES	PRE CON	FEE	GEN COND	OWNER	COST OF WORK
Telephone Service Installation			X		
Telephone Fax Internet Service & Expense			X		
Cellular Phone Service & Expense			X		
Cellular Phone Telephone Fax PC Equipment			X		
Teleconferencing Equipment Installation & Utilities			X		
Temporary Electrical Utility installations and Consumption for temporary offices or structures per Special Conditions rates			X		
Temporary Electrical Utility Installations & Consumption for the project per Special Conditions rates				X	
Permanent Electrical Utility Installations					X
Temporary chilled water, steam, gas, and other utility consumption for the project per Special Conditions rates					X
Temporary chilled water, steam, gas, and other utility consumption and installations for temporary offices or structures per Special Conditions rates			X		
Temporary Water Service & Expenses			X		
Field Ice & Water Service & Expenses					X
Temporary Sewer Service & Expense			X		
Temporary Toilets					X
Temporary Wiring/Lighting					X
Daily Cleanup, Debris Removal of Construction Site, Staging & Office Areas, and adjacent spaces to Construction Site, Staging & Office Spaces					X
Dump Permits & Fees					X
Debris Hauling & Removal					X
Trash Chute & Hoppers					X
Traffic Control & Flagging					X
Temporary Roads					X
Roadway/Sidewalk Cleaning, Maintenance & Dust Control					X
WEATHER PROTECTION	PRE CON	FEE	GEN COND	OWNER	COST OF WORK
Snow & Ice Removal Labor & Equipment					X
De-Watering Labor & Material					X
Weather Protection Enclosures Temporary Protection					X
Temporary Heating & Cooling Installation					X
Temporary Heating & Cooling Equipment					X
Temporary Heating & Cooling Service & Expense					X
Use of Permanent HVAC System (Warranty Extension)					X
Filter Change					X
Cleaning Cost					X
Maintenance Cost					X

Extended Warranty					X
REPRODUCTION, PRINTING & POSTAGE	PRE CON	FEE	GEN COND	OWNER	COST OF WORK
Feasibility & Cost Study Documents				X	
MEP & FP System Study Documents				X	
Design Documents				X	
Construction Documents & Issues					X
Bid Package Documents/Bidding Instructions				X	
Show Drawing Copying & Printing					X
As-Built Documentation Submission Hard Copy, Autocad			X		
Final As-Built Documents Issue Drafting & Printing			X		
Preparation & Distribution of Operations & Maintenance Manuals			X		
Postage & UPS/Fed Ex Costs			X		
Courier Expense			X		
Field Office Copier Equipment Purchase/Rental & Expense			X		
Special Forms			X		
PERMITS SERVICES & FEES	PRE CON	FEE	GEN COND	OWNER	COST OF WORK
Layout					X
Surveying & Staking					X
INSURANCE TAXES & BONDS	PRE CON	FEE	GEN COND	OWNER	COST OF WORK
Builders Risk Insurance					X
Performance & Payment Bonds					X
Errors & Omissions	X				
Auto Insurance					X
General Liability					X
Complete Operations Liability					X
Excess (Umbrella) Liability Coverage					X
Workman's Compensation					X
On-Site Staff FICA, Fed & State Unemployment Coverage			X		
OTHER COSTS	PRE CON	FEE	GEN COND	OWNER	COST OF WORK
Land Costs				X	
Title Development Cost				X	
Financing Interest Cost				X	
Project Taxes (As Required)					X
Preliminary Soils Investigation				X	
Owner Change Contingency				X	
Building Operation After Commissioning				X	
Building Maintenance After Commissioning				X	
User Group Moving Coordination and Moving Costs				X	
Design & Engineering Costs & Expenses				X	
CM General Overhead Cost		X			
Post Construction Warranty Administration for 1 Year			X		

END OF EXHIBIT D

Instructions for Preparation of Amendment

The Construction Manager shall prepare and submit the Amendment documents in accordance with the instructions enumerated below and in the format described. The Owner will review the documents and either execute the Amendment or request additional information from the Construction Manager. The Construction Manager shall provide the Owner with a minimum of two weeks to review the Amendment documents and two additional weeks for execution. Additional review time may be required if the Owner has questions regarding the content of the Amendment. If the Construction Manager has clarifications related to the Amendment, they must be submitted for Owner consideration at least two weeks prior to the formal submission of the Amendment. If the clarifications are approved by the Owner, they will be included in the Amendment under Tab 11, Exhibit 8, CMR Clarifications. No exceptions or exclusions to the contract documents will be considered. Failure of the Construction Manager to submit the documents in the proper form does not constitute an Owner delay. The Construction Manager shall submit the amendment and supporting documents in draft form for Owner review prior to the formal submission and as early in the process as possible to facilitate efficient processing of the formal amendment.

1. **Format** – Use forms provided. Separate documents with labeled, tabbed sections between each document type.
 - Tab 1. Amendment recitals and pricing (guaranteed maximum price, construction phase fee, contingency.
 - Tab 2. Exhibit 1. Summary of allowances including allowance name/type, bid package, amount and total of all allowances.
 - Tab 3. Exhibit 1. Accepted alternates included in GMP description and amount.
 - Tab 4. Exhibit 1. Pending alternates not included in GMP description and amount. Include expiration date of pricing for pending alternates.
 - Tab 5. Exhibit 2. GMP design documents
 - Tab 6. Exhibit 3. Construction schedule
 - Tab 7. Exhibit 4. Reports and Tests
 - Tab 8. Exhibit 5. Construction Schedule of Values depicted as itemized summary of cost of work items including general conditions, fee, early releases, bid packages, bonds, insurance and any other applicable cost components previously approved by the Owner. (Do not include detailed estimate)
 - Tab 9. Exhibit 6. Schedule of bid packages by scope title and anticipated advertisement dates. (include in Construction Schedule)
 - Tab 10. Exhibit 7. Design assist scopes to be performed by Construction Manager.
 - Tab 11. Exhibit 8. CMR Clarifications (if applicable)
2. **Allowances, Accepted Alternates, Pending Alternates, Unit Prices**
 The Exhibit 1. allowance summary shall include the information described in the Exhibit for all allowances, whether held by the Construction Manager or included in a subcontract, including subcontractor contingencies as applicable. The inclusion of allowances in the GMP must be approved in advance by the Owner, prior to submission of the GMP. Unit prices shall be associated with a specific base bid quantity included in a bid package and apply for more or less of the specified quantity actually used.
3. **Construction Schedule**
 The construction schedule shall be in Critical Path Method form and shall depict all activities and significant milestones, whether performed by the Construction Manager, the Owner or the Owner's agent. The schedule shall include all testing, adjusting and balancing activities, life safety and functional testing and commissioning, anticipated weather days and other activities required to achieve substantial completion and Owner occupancy. The construction schedule shall not include a narrative.
4. **Construction Schedule of Values**
 The Construction Manager shall include a Schedule of Values depicting the Cost of Work in itemized summary form including the information listed below. Show the general conditions and fee amount as a separate line item. If general conditions and fee have already been apportioned in a previously issued ERO include those amounts under the GC ERO heading. Do not include the detailed estimate.

5. General Requirements/Site Services:

The Owner recognizes certain work scopes are dependent on weather and other conditions that are variable or beyond the Construction Manager's control. These scopes are to be classified as Site Services and included in a "General Works" or similar bid package. Hourly rates will be bid for respective tasks and they will be completed on a time and material basis as required. The Construction Manager may authorize expenditures up to \$5,000 per task without Owner approval. Expenses expected to exceed \$5,000 per task require Owner approval. They are not to be performed by the Construction manager directly without Owner approval. The Construction Manager shall include allowances in the GMP approved by the Owner to cover the anticipated costs of these work scopes. If expenses actually incurred are less than the allowances, the Construction Manager will refund that value to the Owner. The allowance amounts shall be approximated by the Construction Manager as representative of the actual effort expected. The Owner will consider additional scopes to be included as allowances if a request is submitted by the Construction Manager prior to the submission of the Amendment. The site services shall be included as a line item per work task in the GMP

AMENDMENT

AMENDMENT NO. ____ TO AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AS CONSTRUCTOR

THIS AMENDMENT TO AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AS CONSTRUCTOR (this “Amendment”) is made and entered into this ____ day of _____, 20__ by and between the Curators of the University of Missouri., a public corporation organized and existing under the laws of the State of Missouri, (the “**Owner**”), and _____, a _____ organized and existing under the laws of the State of _____, with a business address of _____ (“**Construction Manager**”).

RECITALS

- I. **WHEREAS**, the Owner and Construction Manager entered into that certain Agreement Between Owner and Construction Manager as Constructor dated _____ (the “**Agreement**”) whereby Construction Manager agreed to provide Preconstruction Phase Services and provide the Work for the Project described in the Agreement.
- II. **WHEREAS**, pursuant to Section 2.8 of the Agreement, Construction Manager has submitted GMP Documents and any applicable revisions thereto;
- III. **WHEREAS**, Construction Manager and the Owner desire to enter into this Amendment to incorporate the approved GMP Documents into the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants hereunder set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner and Construction Manager, intending to be bound, do hereby agree as follows.

1. **Construction Phase Fee.** The Owner and Construction Manager agree that the Construction Phase Fee defined and determined as set forth in Section 5.1 of the Agreement is the lump sum of _____ Dollars (\$ _____).
2. **Guaranteed Maximum Price. The Owner and Construction Manager agree that the Guaranteed Maximum Price as defined in Section 6.1 of the Agreement is the sum of** _____ Dollars (\$ _____).
3. **Contingency.** The Guaranteed Maximum Price includes the Contingency as defined in Section 2.8.3 of the Agreement in the amount of _____ Dollars (\$ _____).
4. **Allowances.** The Guaranteed Maximum Price includes the allowances, if any, set forth in **Exhibit I** attached hereto (the “**Allowances**”). Construction Manager agrees that:
 - a. The Allowances include the cost to Construction Manager (less any trade discounts) of materials and equipment required by the Allowances to be delivered to the site of the Work, and all applicable taxes; and
 - b. Construction Manager’s costs for unloading and handling on the site of the Project, labor, installation costs, overhead, profit, and other expenses contemplated for the Allowances have been included in the Contract Sum and not in the Allowances, and no demand for additional payment on account of any of the foregoing will be valid.
5. **Alternates.** The Guaranteed Maximum Price includes the alternates, if any, set forth on **Exhibit 1** (“**Accepted Alternates**”) which are more fully described in the Contract Documents. The Guaranteed Maximum Price is not based upon the alternates if any, set forth on **Exhibit 1** designated as pending alternates (“**Pending Alternates**”) which are more fully described in the Contract

Documents. The Pending Alternates may later be accepted by Owner in writing; provided, however, that the Construction Manager shall furnish Owner with no less than twenty (20) days prior written notice of the date upon which any of the Pending Alternates which are not included in the Contract Sum as set forth in **Exhibit 1** must be accepted by Owner in order for Construction Manager to perform Work covered by such Pending Alternates for the price set forth in **Exhibit 1** and without adjustment to the Contract Time.

6. **Construction Schedule of Values.** The Construction Schedule of Values (if applicable) as defined in Paragraph 2.8.1.2 is attached hereto.
7. **GMP Design Documents.** The GMP Design Documents as described in Section 2.8 of the Agreement is listed on **Exhibit 2** attached hereto.
8. **Construction Schedule.** The Construction Schedule described and developed pursuant to Section 2.4 of the Agreement is attached hereto as **Exhibit 3**. Construction Manager shall comply with such Construction Schedule and shall achieve Substantial Completion and Final Completion in accordance with the Construction Schedule. Those completion dates and Milestone Dates set forth in the Construction Schedule are part of the Contract Time as defined in Section 4.3 of the Agreement.
9. **Unit Prices for Changes. In the event of changes involving any class of Work or items covered in Exhibit 1 attached hereto, if any, Construction Manager agrees to accept the amount of the established unit prices set forth in Exhibit 1 attached hereto.** Such unit prices set forth in **Exhibit 1** are considered complete and include: (a) all labor, fringe benefits, materials, tools, equipment, supplies, samples, shop drawings, layout, delivery, handling, storage, hoisting, distribution, protection, transportation, supervision, contributions, coordination, installation, compliance with all the requirements of any applicable governmental agency, overhead and profit; and (b) any other costs or expenses in connection with, or incidental to, the performance of the change to which said unit prices apply.
10. **Reports and Tests.** During the Preconstruction Phase of the Project, Construction Manager has been provided and has carefully studied the reports of explorations and tests of subsurface structures at or contiguous to the site of the Project, and any drawings and surveys of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site of the Project, and reports and drawings of Hazardous Materials listed on **Exhibit 4** attached hereto. These reports and tests are not Contract Documents.
11. **Representations of Construction Manager.** In order to induce the Owner to enter into this Amendment, Construction Manager makes the following representations:
 - (1) Construction Manager has examined and carefully studied the Contract Documents.
 - (2) Construction Manager has made numerous visits to the site and the Project during the Preconstruction Phase and has become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress and performance of the Work.
 - (3) Construction Manager has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning surface, subsurface and underground facilities at or contiguous to the site which may affect cost, progress or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by Construction Manager and safety precautions and programs incident thereto.

- (4) Construction Manager does not consider that any further examinations, investigations, explorations, tests, studies or data are necessary for the performance of the Work at the Contract Sum, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.
 - (5) Construction Manager is aware of the general nature of the Work to be performed by the Owner and others at the site of the Project that relates to the Work indicated in the Contract Documents.
 - (6) Construction Manager has correlated the information known to Construction Manager, information and observations obtained from visits to the site of the Project, reports and drawings listed in **Exhibit 4** hereto, and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
 - (7) Construction Manager has given Design Professional written notice of all conflicts, errors, ambiguities or discrepancies that Construction Manager has knowledge of in the Contract Documents, and the written resolution thereof by Architect is acceptable to Construction Manager.
 - (8) The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
12. **Terms.** Terms used in this Amendment defined in the Agreement or General Conditions shall have the meanings indicated in the Agreement or General Conditions, as applicable.
13. **Remaining Terms Unaffected.** Except as specifically amended herein, all remaining terms, conditions, covenants and agreements contained in the Agreement and Contract Documents remain in full force and effect, and the parties remain obligation to perform the same.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed pursuant to due and legal action authorizing the same to be done, the date first written above.

**CURATORS OF THE UNIVERSITY
OF MISSOURI**

“Owner”

“Construction Manager”

By: _____

Beth Asbury
Assistant Vice President, Facilities Planning &
Development
University of Missouri System

Date: _____

By: _____

Printed Name: _____

Title: _____

Date: _____

AMENDMENT

EXHIBIT 1 - ALLOWANCES, ACCEPTED AND PENDING ALTERNATES OR UNIT PRICES

1. The Allowances, if any, included in the Guaranteed Maximum Price described in Section 4 of the Amendment to the Agreement are as follows:

None

[OR]

[List Accepted Allowances included in the Guaranteed Maximum Price]

2. The Accepted Alternates, if any, included in the Guaranteed Maximum Price described in Section 5 of the Amendment to the Agreement, are as follows:

None

[OR]

[List Accepted Alternates included in the Guaranteed Maximum Price]

3. The Pending Alternates, if any, are as follows:

None

[OR]

[List Pending Alternates **not** included in the Guaranteed Maximum Price]

4. The Accepted Unit Prices, if any, included in the Guaranteed Maximum Price described in Section 9 of the Amendment to the Agreement are as follows:

None

[OR]

[List Accepted Unit Prices included in the Guaranteed Maximum Price]

5. The Pending Unit Prices, if any, included in the Guaranteed Maximum Price described in Section 9 of the Amendment to the Agreement, are as follows:

None

[OR]

[List Accepted Unit Prices included in the Guaranteed Maximum Price]

AMENDMENT**EXHIBIT 2 - GMP DESIGN DOCUMENTS****DRAWINGS AND SPECIFICATIONS**

- A. **Drawings.** The Drawings which are part of the Contract Documents are as follows:

Number	Title	Last Revision Date

- B. **Specifications.** The Specifications which are part of the Contract Documents are as follows:

Number	Title	Last Revision Date

- C. **Addenda.** The Addenda, if any, which are part of the Contract Documents are as follows:

None

[OR]

Addenda No.	Date	Pages

- D. **Other Documents.** Other documents, if any, which are part of the Contract Documents are as follows:

None

[OR]

[Specifically list other documents]

AMENDMENT

EXHIBIT 3 - CONSTRUCTION SCHEDULE

DRAFT

AMENDMENT

**EXHIBIT 4 - TECHNICAL REPORTS AND OTHER DOCUMENTS WHICH ARE NOT
CONTRACT DOCUMENTS**

The following technical reports and other documents, if any, are not Contract Documents:

None

[OR]

Author	Title	Date

AMENDMENT

**EXHIBIT 5 – CONSTRUCTION SCHEDULE OF VALUES (INCLUDE ERO’S, ACCEPTED
ALTERNATES AND SITE SERVICES ALLOWANCES)**

Cost Category

Description
Amount

ERO’s by No.

Cost of Work Estimates

General Conditions Total Less GC’s in ERO’s

CMR’s Construction Contingency

Allowances

Design Contingency (requires prior Owner approval)
Insurance

Bond

Sub Total

Construction Managers Fee Less Fee in ERO’s

Grand Total GMP

Project No: CP230481

Project Name: Missouri Psychiatric Center – Infrastructure and ED Observation Renovation

AMENDMENT

EXHIBIT 6 – SCHEDULE OF BID PACKAGES WITH ADVERTISEMENT DATES

DRAFT

Project No: CP230481

Project Name: Missouri Psychiatric Center – Infrastructure and ED Observation Renovation

AMENDMENT

EXHIBIT 7 – CLARIFICATIONS

DRAFT

EARLY RELEASE ORDER NO. _____

FROM: Curators of the University of Missouri TO: _____

“Construction Manager”

PROJECT: _____ DATE: _____

1. **Order.** Pursuant to Section 2.10.1 of the Agreement Between Owner and Construction Manager as Constructor and its Provisions (the “Agreement”), Owner hereby directs Construction Manager to proceed with the Construction Work set forth in the Drawings, Specifications and other documents identified on **Exhibit 1** attached hereto prior to the approval and acceptance of the GMP Documents (“Early Release Order Work”). The documents identified in ERO **Exhibit 1** attached hereto and the Contract Documents described in the Agreement are incorporated herein by this reference.
2. **Price.** Construction Manager shall be paid the sum of _____ Dollars (\$_____) for the performance of the Early Release Order Work. Owner shall make monthly progress payments on account of the price set forth herein based upon the percentage of completion of the Early Release Order Work in the prior month. Such progress payment shall be in the amount of the percentage of completion of the Early Release Order Work in the prior month applied against the price herein less five percent (5%) for retainage. Construction Manager shall submit Applications for Payment on account of the price as provided for herein in accordance with the requirements of the General Conditions including but not limited to Article 9 of the General Conditions.
3. **Schedule.** Construction Manager shall substantially complete the Early Release Order Work by [Month Day, 20__]. Time is of the essence to Construction Manager’s obligations to complete the Early Release Order Work within the time required herein.
4. **Terms.** The terms used herein which are defined in the Agreement or General Conditions shall have the meanings as set forth therein.
5. **Termination.** In the event the Owner terminates this Early Release Order as set forth in Section 2.10.1 of the Agreement, the Construction Manager shall only be entitled to the amounts set forth in Section 2.10.1 of the Agreement.

**CURATORS OF THE UNIVERSITY
OF MISSOURI**
“Owner”

[TYPE IN FIRM NAME]
“Construction Manager”

By: _____

Beth Asbury
Assistant Vice President, Facilities Planning &
Development
University of Missouri System

Date: _____

By: _____

Printed Name: _____

Title: _____

Date: _____

Corporate Seal

EARLY RELEASE ORDER**ERO EXHIBIT 1 - DRAWINGS AND SPECIFICATIONS**

- A. **Drawings.** The Drawings which are part of the Contract Documents are as follows:

Number	Title	Last Revision Date

- B. **Specifications.** The Specifications which are part of the Contract Documents are as follows:

Number	Title	Last Revision Date

- C. **Addenda.** The Addenda, if any, which are part of the Contract Documents are as follows:

Addenda No.	Date	Pages

- D. **Other Documents.** Other documents, if any, which are part of the Contract Documents are as follows:

END OF ERO EXHIBIT 1

SPECIAL CONDITIONS

1. ADDITIONAL CONSTRUCTION SCHEDULE REQUIREMENTS

1. General

- a) Time is of the essence for this contract.

The time frames spelled out in this contract are essential to the success of this project. The University understands that effective schedule management, in accordance with the General Conditions and these Special Conditions is necessary to insure to that the critical milestone and end dates spelled out in the contract are achieved.

- b) Related Documents

Drawings and general provisions of the Contract, including General Conditions' Article 3.17 shall apply to this Section.

- c) Stakeholders

A Stakeholder is anyone with a stake in the outcome of the Project, including the University, the University Department utilizing the facility, the Design Professionals, the Contractor and subcontractors.

- d) Weather

(1) Contractor acknowledges that there will be days in which work on the critical path of the project cannot be completed due to the weather, and that a certain number of these lost days are to be expected under normal weather conditions in Missouri.

(2) Rather than speculate as to what comprises "normal" weather at the location of the project, Contractor agrees that it will assume a total of 44 lost days due to weather over the course of a calendar year, and include same in its as planned schedule. For projects of less than a calendar year, lost weather days should be prorated for the months of construction in accordance with the following schedule.

(3) Anticipated weather days for allocation/proration only. For projects lasting 12 months or longer, the 44 days per year plus whatever additional months are included will constitute normal weather.

Jan – 5 days	Feb – 5 days	Mar – 4 days	Apr – 4 days
May – 3 days	Jun – 3 days	Jul – 2 days	Aug – 2 days
Sep – 3 days	Oct – 4 days	Nov – 4 days	Dec – 5 days

2. Scheduling Process

- a) The intent of this section is to ensure that a well-conceived plan, that addresses the milestone and completion dates spelled out in these documents, is developed with input from all stakeholders in the project. Input is limited to all reasonable requests that are consistent with the requirements of the contract documents, and do not prejudice the Construction Manager's ability to perform its work consistent with the contract documents.

Further, the plan must be documented in an understandable format that allows for each stakeholder in the project to understand the plan for the construction and/or renovation contained in the Project.

b) **Project Controlled Scheduling**

The content (Activity Descriptions, Durations, Predecessors and Successors) of the Project Schedule will be the responsibility of the Construction Manager. However, the University will provide the services of a Third-Party Scheduling Consultant (TPSC), at the University's expense, to analyze and review the CPM schedule program for the duration of the project. The Construction Manager shall provide the Owner and the TPSC the "live" data file of the CPM schedule in Primavera Project Planner (P3), Oracle P6, Phoenix Project Manager, or other industry standard CPM scheduling program approved by the University prior to Construction Manager's submission of the response to the RFP. Construction Manager will cooperate with the TPSC to agree to a minimum set of activity codes to be utilized for sorting and grouping the schedule.

c) **Scheduling Personnel**

The University believes that a capable, experienced construction CPM scheduling professional is critical to the success of the Project scheduling program. Construction Manager shall submit the resume of its proposed scheduling professional that will be responsible for the scheduling product on this Project, along with its plan for how much time this professional will commit to this Project on an ongoing basis. Because of the size and complexity of this Project, the scheduling professional must be an additional member of the Project team, not an additional duty of the superintendent, project manager or project engineer.

3. Schedule Development

a) Construction Manager shall include the TPSC in initial planning and scheduling meetings within its organization, to develop the initial schedule for obtaining subcontractor input.

b) Construction Manager shall develop its initial schedule, (herein after the GMP schedule) concurrent with its GMP estimate, utilizing any subcontractors involved in the development of the GMP as input for their respective portions of the GMP schedule. For aspects of the Project which no subcontractor is participating in the development of the GMP, the Construction Manager shall insert activities for all work necessary to construct the Project, based on its experience in constructing this type of project. This GMP schedule shall comply with all aspects of the RFP and the Agreement between the Construction Manager and the University. The GMP schedule shall include sufficient detail to identify the work required to construct the project and activities shall be coded to identify 1) phase of work, 2) area of work, 3) floor, 4) subcontractor and 5) type of work by craft (i.e. erect framing, hang drywall, tape drywall, etc.). The schedule should be broken down into definable areas as the Construction Manager intends to construct the Project, floor by floor at a minimum. The schedule should identify all major equipment procurement and installation as the Construction Manager anticipates constructing the Project at the time of the GMP submittal.

c) After acceptance of the GMP and associated GMP schedule, Construction Manager shall distribute the GMP schedule to all major subcontractors for their review, prior to meeting with each subcontractor to obtain its input and CONCURRENCE with the project schedule.

d) Upon all stakeholder's concurrence with the adjusted GMP project schedule, the Construction Manager shall issue it as a BASELINE Schedule, to be updated as the project progresses. The baseline schedule shall be issued within 60 days of the issuance of 100% construction documents.

4. Schedule Updates.

(a) The Construction Manager shall provide to the Owner and the TPSC schedule updates once a month, at a minimum. Actual Start and Finish dates should be recorded regularly during the month. Percent Complete, or Remaining Duration shall be updated as of the data date. This update shall be provided to the TPSC in electronic format, capable of being converted into Primavera P3.

- (b) In addition to inputting actual start and finish dates and remaining durations the update shall include:
 - (i) Correction of out of sequence progress, making adjustments as necessary and
 - (ii) The addition of any fragnets necessary to describe changes or other impacts to the project schedule

5. Schedule Narrative

The Construction Manager shall prepare a Narrative that describes progress for the month, describing all out of sequence progress and inserted fragnets explaining impacts to the schedule. If the Construction Manager believes that it is entitled to a time extension, the narrative shall include a detailed description of the impacts, what activities were affected and what steps were taken to mitigate the overall impact.

6. Progress Meetings

- (a) The Construction Manager shall review a four week look ahead schedule at each monthly progress meeting. Payments to the Contractor may be suspended if the progress schedule is not adequately updated to reflect actual conditions.
- (b) Submit progress schedules to subcontractors to permit coordinating their progress schedules to the general construction work. Include 4 week look ahead schedules to allow subs to focus on critical upcoming work.

7. Critical Path Method (CPM)

- a) This Section includes administrative and procedural requirements for the critical path method (CPM) of scheduling and reporting progress of the Work.
- b) Refer to the General and Special Conditions and the Agreement for definitions and specific dates of Contract Time.
- c) Critical Path Method (CPM): A method of planning and scheduling a construction project where activities are arranged based on activity relationships and network calculations determine when activities can be performed and the critical path of the Project.
- b) Critical Path: The longest continuous chain of activities through the network schedule that establishes the minimum overall project duration.
- c) Network Diagram: A graphic diagram of a network schedule, showing the activities and activity relationships.
- d) Activity: A discrete part of a project that can be identified for planning, scheduling, monitoring, and controlling, the construction project. Activities included in a construction schedule consume time and resources.
- e) Critical activities are activities on the critical path.
- f) Predecessor activity is an activity that must be completed before a given activity (successor activity) can be started.
- g) Milestone: A key or critical point in time for reference or measurement.
- h) Float or Slack Time: The measure of leeway in activity performance. Accumulative float time is not for the exclusive use or benefit of the Owner or Contractor, but is a project resource available to both parties as needed to meet contract milestones and the completion date.

- i) Total float is herein defined as the measure of leeway in starting or completing an activity without adversely affecting the planned project completion date.
- j) Weather: Adverse weather that is normal for the area must be taken into account in the Contractor's Project Schedule. See 1.d.3, above.
- k) Force Majeure Event: Any event that delays the project but is beyond the control and/or contractual responsibility of either party.
- l) Schedule shall include the following, in addition to Contractor's work:
 - (1) Phasing: Provide notations on the schedule to show how the sequence of the Work is affected by the following:
 - (a) Requirements for phased completion and milestone dates.
 - (b) Work by separate contractors.
 - (c) Work by the Owner.
 - (d) Coordination with existing construction.
 - (e) Limitations of continued occupancies.
 - (f) Uninterruptible services.
 - (g) Partial occupancy prior to Substantial Completion.
 - (h) Area Separations: Use Activity Codes to identify each major area of construction for each major portion of the Work. For the purposes of this Article, a "major area" is a story of construction, a separate building, or a similar significant construction element.
 - (2) Subcontractor: Use Activity Codes to identify each subcontractor's work activities.
 - (3) Type Work or Craft: Use Activity Codes to identify the type of work, or craft that will execute each activity.

8. Time Extension Requests

- a) Refer to General Conditions of the Contract for Construction, Article 4.7 Claims for Additional Time.
- b) Changes or Other Impacts to the Contractor's Work Plan
The Owner will consider and evaluate requests for time extensions due to changes or other events beyond the control of the Contractor on a monthly basis only, with the submission of the Contractor's updated schedule, in conjunction with the monthly application for payment. The Update must include:
 - (1) An activity depicting the event(s) impacting the Contractors work plan shall be added to the CPM schedule, using the actual start date of the impact, along with actually required predecessors and successors.
 - (2) After the addition of the impact activity(ies), the Contractor shall work with the TPSC to identify subsequent activities on the critical path, with finish to start relationships that can be realistically adjusted to overlap using good, standard construction practice.
- (c) If the adjustments above result in the completion date being brought back within the contract time period, no adjustment will be made in the contract time.

(d) If the adjustments above still result in a completion date beyond the contract completion date, the delay shall be deemed excusable and the contract completion date shall be extended by the number of days indicated by the analysis.

(e) Contractor agrees to continue to utilize its best efforts to make up the time caused by the delays. However, the Contractor is not expected to expend costs not contemplated in its contract, in making those efforts.

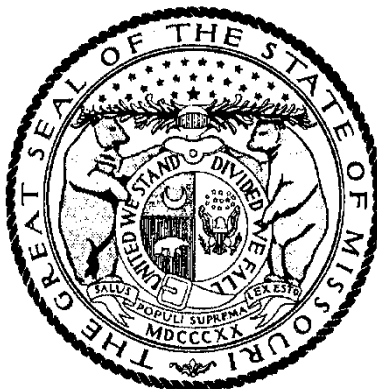
f) Questions of compensability of any delays shall be held until the actual completion of the project. If the actual substantial completion date of the project based on excusable delays, excluding weather delays, exceeds the original contract completion date, AND there are no delays that are the responsibility of the contractor to consider, the delays days shall be considered compensable. The actual costs, if any, of the Contractor's time sensitive jobsite supervision and general conditions costs, shall be quantified and a change order issued for these costs.

DRAFT

Missouri

Division of Labor Standards

WAGE AND HOUR SECTION



MICHAEL L. PARSON, Governor

Annual Wage Order No. 29

Section 010
BOONE COUNTY

In accordance with Section 290.262 RSMo 2000, within thirty (30) days after a certified copy of this Annual Wage Order has been filed with the Secretary of State as indicated below, any person who may be affected by this Annual Wage Order may object by filing an objection in triplicate with the Labor and Industrial Relations Commission, P.O. Box 599, Jefferson City, MO 65102-0599. Such objections must set forth in writing the specific grounds of objection. Each objection shall certify that a copy has been furnished to the Division of Labor Standards, P.O. Box 449, Jefferson City, MO 65102-0449 pursuant to 8 CSR 20-5.010(1). A certified copy of the Annual Wage Order has been filed with the Secretary of State of Missouri.

Original Signed by

Todd Smith, Director
Division of Labor Standards

Filed With Secretary of State: March 10, 2022

Last Date Objections May Be Filed: April 11, 2022

Prepared by Missouri Department of Labor and Industrial Relations

OCCUPATIONAL TITLE	**Prevailing Hourly Rate
Asbestos Worker	\$58.66
Boilermaker	\$30.87*
Bricklayer	\$51.43
Carpenter	\$48.35
Lather	
Linoleum Layer	
Millwright	
Pile Driver	
Cement Mason	\$41.91
Plasterer	
Communications Technician	\$55.88
Electrician (Inside Wireman)	\$55.87
Electrician Outside Lineman	\$75.58
Lineman Operator	
Lineman - Tree Trimmer	
Groundman	
Groundman - Tree Trimmer	
Elevator Constructor	\$30.87*
Glazier	\$47.32
Ironworker	\$62.10
Laborer	\$41.12
General Laborer	
First Semi-Skilled	
Second Semi-Skilled	
Mason	\$48.56
Marble Mason	
Marble Finisher	
Terrazzo Worker	
Terrazzo Finisher	
Tile Setter	
Tile Finisher	
Operating Engineer	\$60.81
Group I	
Group II	
Group III	
Group III-A	
Group IV	
Group V	
Painter	\$37.40
Plumber	\$67.36
Pipe Fitter	
Roofer	\$52.11
Sheet Metal Worker	\$53.28
Sprinkler Fitter	\$62.30
Truck Driver	\$30.87*
Truck Control Service Driver	
Group I	
Group II	
Group III	
Group IV	

*The Division of Labor Standards received fewer than 1,000 reportable hours for this occupational title. The public works contracting minimum wage is established for this occupational title using data provided by Missouri Economic Research and Information Center.

**The Prevailing Hourly Rate includes any applicable fringe benefit amounts for each occupational title as defined in Section 290.210 RSMo.

Heavy Construction Rates for
BOONE County

Section 010

OCCUPATIONAL TITLE	**Prevailing Hourly Rate
Carpenter	\$51.63
Millwright	
Pile Driver	
Electrician (Outside Lineman)	\$75.58
Lineman Operator	
Lineman - Tree Trimmer	
Groundman	
Groundman - Tree Trimmer	
Laborer	\$46.46
General Laborer	
Skilled Laborer	
Operating Engineer	\$58.48
Group I	
Group II	
Group III	
Group IV	
Truck Driver	\$30.87*
Truck Control Service Driver	
Group I	
Group II	
Group III	
Group IV	

Use Heavy Construction Rates on Highway and Heavy construction in accordance with the classifications of construction work established in 8 CSR 30-3.040(3).

Use Building Construction Rates on Building construction in accordance with the classifications of construction work established in 8 CSR 30-3.040(2).

If a worker is performing work on a heavy construction project within an occupational title that is not listed on the Heavy Construction Rate Sheet, use the rate for that occupational title as shown on the Building Construction Rate Sheet.

*The Division of Labor Standards received fewer than 1,000 reportable hours for this occupational title. The public works contracting minimum wage is established for this occupational title using data provided by Missouri Economic Research and Information Center.

**The Prevailing Hourly Rate includes any applicable fringe benefit amounts for each occupational title as defined in Section 290.210 RSMo.

OVERTIME and HOLIDAYS

OVERTIME

For all work performed on a Sunday or a holiday, not less than twice (2x) the prevailing hourly rate of wages for work of a similar character in the locality in which the work is performed or the public works contracting minimum wage, whichever is applicable, shall be paid to all workers employed by or on behalf of any public body engaged in the construction of public works, exclusive of maintenance work.

For all overtime work performed, not less than one and one-half (1½) the prevailing hourly rate of wages for work of a similar character in the locality in which the work is performed or the public works contracting minimum wage, whichever is applicable, shall be paid to all workers employed by or on behalf of any public body engaged in the construction of public works, exclusive of maintenance work or contractual obligation. For purposes of this subdivision, "**overtime work**" shall include work that exceeds ten hours in one day and work in excess of forty hours in one calendar week; and

A thirty-minute lunch period on each calendar day shall be allowed for each worker on a public works project, provided that such time shall not be considered as time worked.

HOLIDAYS

January first;
The last Monday in May;
July fourth;
The first Monday in September;
November eleventh;
The fourth Thursday in November; and
December twenty-fifth;

If any holiday falls on a Sunday, the following Monday shall be considered a holiday.

University of Missouri

General Conditions

of the

Contract

for

Construction

December 2021 Edition

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ARTICLE 1 GENERAL PROVISIONS

1.1 Basic Definitions

As used in the Contract Documents, the following terms shall have the meanings and refer to the parties designated in these definitions.

1.1.1 Owner

The Curators of the University of Missouri. The Owner may act through its Board of Curators or any duly authorized committee or representative thereof.

1.1.2 Contracting Officer

The Contracting Officer is the duly authorized representative of the Owner with the authority to execute contracts. Communications to the Contracting Officer shall be forwarded via the Owner's Representative.

1.1.3 Owner's Representative

The Owner's Representative is authorized by the Owner as the administrator of the Contract and will represent the Owner during the progress of the Work. Communications from the Architect to the Contractor and from the Contractor to the Architect shall be through the Owner's Representative, unless otherwise indicated in the Contract Documents.

1.1.4 Architect

When the term "Architect" is used herein, it shall refer to the Architect or the Engineer specified and defined in the Contract for Construction or its duly authorized representative. Communications to the Architect shall be forwarded to the address shown in the Contract for Construction.

1.1.5 Owner's Authorized Agent

When the term "Owner's Authorized Agent" is used herein, it shall refer to an employee or agency acting on the behalf of the Owner's Representative to perform duties related to code inspections, testing, operational systems check, certification or accreditation inspections, or other specialized work.

1.1.6 Contractor

The Contractor is the person or entity with whom the Owner has entered into the Contract for Construction. The term "Contractor" means the Contractor or the Contractor's authorized representative.

1.1.7 Subcontractor and Lower-tier Subcontractor

A Subcontractor is a person or organization who has a contract with the Contractor to perform any of the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or its authorized representative. The term "Subcontractor" also is applicable to those furnishing materials to be incorporated in the Work whether work performed is at the Owner's site or off site, or both. A lower-tier Subcontractor is a person or organization who has a contract with a Subcontractor or another lower-tier

Subcontractor to perform any of the Work at the site. Nothing contained in the Contract Documents shall create contractual relationships between the Owner or the Architect and any Subcontractor or lower-tier Subcontractor of any tier.

1.1.8 Supplier Diversity Definitions

Businesses that fall into the Supplier Diversity classification shall mean an approved certified business concern which is at least fifty-one percent (51%) owned and controlled by one (1) or more diverse suppliers as described below.

.1 Minority Business Enterprises (MBE)

Minority Business Enterprise [MBE] shall mean an approved certified business concern which is at least fifty-one percent (51%) owned and controlled by one (1) or more minorities as defined below or, in the case of any publicly-owned business, in which at least fifty-one percent (51%) of the stock of which is owned by one (1) or more minorities as defined below, and whose management and daily business operations are controlled by one (1) or more minorities as defined herein.

.1.1 "African Americans", which includes persons having origins in any of the black racial groups of Africa.

.1.2 "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

.1.3 "Native Americans", which includes persons of American Indian, Eskimo, Aleut, or Native Hawaiian origin.

.1.4 "Asian-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, or the Northern Marianas.

.1.5 "Asian-Indian Americans", which includes persons whose origins are from India, Pakistan, or Bangladesh.

.2 Women Business Enterprise (WBE)

Women Business Enterprise [WBE] shall mean an approved certified business concern which is at least fifty-one percent (51%) owned and controlled by one (1) or more women or, in the case of any publicly owned business, in which at least fifty-one percent (51%) of the stock of which is owned by one (1) or more women, and whose management and daily business operations are controlled by one (1) or more women.

.3 Veteran Owned Business

Veteran Owned Business shall mean an approved certified business concern which is at least fifty-one percent (51%) owned and controlled by one (1) or more Veterans or, in the case of any publicly owned business, in which at least fifty-one percent (51%) of the stock of which is owned by one (1) or more Veterans, and whose management and daily business operations are controlled by one (1) or more Veterans. Veterans must be certified by the appropriate federal agency responsible for veterans' affairs.

.4 Service-Disabled Veteran Enterprise (SDVE)
Service-Disabled Veteran Enterprise (SDVE) shall mean a business certified by the State of Missouri Office of Administration as a Service-Disabled Veteran Enterprise, which is at least fifty-one percent (51%) owned and controlled by one (1) or more Served-Disabled Veterans or, in the case of any publicly-owned business, in which at least fifty-one percent (51%) of the stock of which is owned by one (1) or more Service-Disabled Veterans, and whose management and daily business operations are controlled by one (1) or more Served-Disabled Veterans.

.5 Disadvantaged Business Enterprise (DBE)
A Disadvantaged Business Enterprise (DBE) is a for-profit small business concern where a socially and economically disadvantaged individual owns at least 51% interest and also controls management and daily business operations. These firms can and also be referred to as Small Disadvantaged Businesses (SDB). Eligibility requirements for certification are stated in 49 CFR (Code of Federal Regulations), part 26, Subpart D.

U.S. citizens that are African Americans, Hispanics, Native Americans, Asian-Pacific and Subcontinent Asian Americans, and women are presumed to be socially and economically disadvantaged. Also recognized as DBE's are Historically Black Colleges and Universities (HBCU) and small businesses located in Federal HUB Zones.

To be regarded as economically disadvantaged, an individual must have a personal net worth that does not exceed \$1.32 million. To be seen as a small business, a firm must meet Small Business Administration (SBA) size criteria (500 employees or less) and have average annual gross receipts not to exceed \$22.41 million. To be considered a DBE/SDB, a small business owned and controlled by socially and/or economically disadvantaged individuals must receive DBE certification from one of the recognized Missouri state agencies to be recognized in this classification.

1.1.9 Work

Work shall mean supervision, labor, equipment, tools, material, supplies, incidentals operations and activities required by the Contract Documents or reasonably inferable by Contractor therefrom as necessary to produce the results intended by the Contract Documents in a safe, expeditious, orderly, and workmanlike manner, and in the best manner known to each respective trade.

1.1.10 Approved

The terms "approved", "equal to", "directed", "required", "ordered", "designated", "acceptable", "compliant", "satisfactory", and similar words or phrases will be understood to have reference to action on the part of the Architect and/or the Owner's Representative.

1.1.11 Contract Documents

The Contract Documents consist of (1) the executed Contract for Construction, (2) these General Conditions of

the Contract for Construction, (3) any Supplemental Conditions or Special Conditions identified in the Contract for Construction, (4) the Specifications identified in the Contract for Construction, (5) the Drawings identified in the Contract for Construction, (6) Addenda issued prior to the receipt of bids, (7) Contractor's bid addressed to Owner, including Contractor's completed Qualification Statement, (8) Contractor's Performance Bond and Contractor's Payment Bond, (9) Notice to Proceed, (10) and any other exhibits and/or post bid adjustments identified in the Contract for Construction, (11) Advertisement for Bid, (12) Information for Bidders, and (13) Change Orders issued after execution of the Contract. All other documents and technical reports and information are not Contract Documents, including without limitation, Shop Drawings, and Submittals.

1.1.12 Contract

The Contract Documents form the Contract and are the exclusive statement of agreement between the parties. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior representations or agreements, either written or oral. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Owner and a Subcontractor or any lower-tier Subcontractor.

1.1.13 Change Order

The Contract may be amended or modified without invalidating the Contract, only by a Change Order, subject to the limitations in Article 7 and elsewhere in the Contract Documents. A Change Order is a written instrument signed by the Owner and the Contractor stating their agreement to a change in the Work, the amount of the adjustment to the Contract Sum, if any, and the extent of the adjustment to the Contract Time, if any. Agreement to any Change Order shall constitute a final settlement of all matters relating to the change in the work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments of the Contract sum, time and schedule.

1.1.14 Substantial Completion

The terms "Substantial Completion" or "substantially complete" as used herein shall be construed to mean the completion of the entire Work, including all submittals required under the Contract Documents, except minor items which in the opinion of the Architect, and/or the Owner's Representative will not interfere with the complete and satisfactory use of the facilities for the purposes intended.

1.1.15 Final Completion

The date when all punch list items are completed, including all closeout submittals and approval by the Architect is given to the Owner in writing.

1.1.16 Supplemental and Special Conditions

The terms "Supplemental Conditions" or "Special Conditions" shall mean the part of the Contract Documents

which amend, supplement, delete from, or add to these General Conditions.

1.1.17 Day

The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

1.1.18 Knowledge.

The terms "knowledge," "recognize" and "discover" their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows or should know, recognizes, or should recognize and discovers or should discover in exercising the care, skill, and diligence of a diligent and prudent contractor familiar with the work. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a diligent and prudent contractor familiar with the work.

1.1.19 Punch List

"Punch List" means the list of items, prepared in connection with the inspection(s) of the Project by the Owner's Representative or Architect in connection with Substantial Completion of the Work or a portion of the Work, which the Owner's Representative or Architect has designated as remaining to be performed, completed, or corrected before the Work will be accepted by the Owner.

1.1.20 Public Works Contracting Minimum Wage

The public works contracting minimum wage shall be equal to one hundred twenty percent of the average hourly wage in a particular locality, as determined by the Missouri economic research and information center within the department of economic development, or any successor agency.

1.1.21 Force Majeure

An event or circumstance that could not have been reasonably anticipated and is out of the control of both the Owner and the Contractor.

1.2 Specifications and Drawings

1.2.1 The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction system, standards and workmanship and performance of related services for the Work identified in the Contract for Construction. Specifications are separated into titled divisions for convenience of reference only. Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Such separation will not operate to make the Owner or the Architect an arbiter of labor disputes or work agreements.

1.2.2 The drawings herein referred to, consist of drawings prepared by the Architect and are enumerated in the Contract Documents.

1.2.3 Drawings are intended to show general arrangements, design, and dimensions of work and are partly diagrammatic. Dimensions shall not be determined by scale or rule. If figured dimensions are lacking, they shall be supplied by the Architect on the Contractor's written request to the Owner's Representative.

1.2.4 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complimentary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

1.2.5 In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall (1) provide the better quality or greater quantity of Work or (2) comply with the more stringent requirement; either or both in accordance with the Owner's Representative's interpretation. On the Drawings, given dimensions shall take precedence over scaled measurements and large-scale drawings over small scale drawings. Before ordering any materials or doing any Work, the Contractor and each Subcontractor shall verify measurements at the Work site and shall be responsible for the correctness of such measurements. Any difference which may be found shall be submitted to the Owner's Representative and Architect for resolution before proceeding with the Work. If a minor change in the Work is found necessary due to actual field conditions, the Contractor shall submit detailed drawings of such departure for the approval by the Owner's Representative and Architect before making the change.

1.2.6 Data in the Contract Documents concerning lot size, ground elevations, present obstructions on or near the site, locations and depths of sewers, conduits, pipes, wires, etc., position of sidewalks, curbs, pavements, etc., and nature of ground and subsurface conditions have been obtained from sources the Architect believes reliable, but the Architect and Owner do not represent or warrant that this information is accurate or complete. The Contractor shall verify such data to the extent possible through normal construction procedures, including but not limited to contacting utility owners and by prospecting.

1.2.7 Only work included in the Contract Documents is authorized, and the Contractor shall do no work other than that described therein.

1.2.8 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be

performed and correlated personal observations with requirements of the Contract Documents. Contractor represents that it has performed its own investigation and examination of the Work site and its surroundings and satisfied itself before entering into this Contract as to:

- .1 conditions bearing upon transportation, disposal, handling, and storage of materials;
- .2 the availability of labor, materials, equipment, water, electrical power, utilities and roads;
- .3 uncertainties of weather, river stages, flooding and similar characteristics of the site;
- .4 conditions bearing upon security and protection of material, equipment, and Work in progress;
- .5 the form and nature of the Work site, including the surface and sub-surface conditions;
- .6 the extent and nature of Work and materials necessary for the execution of the Work and the remedying of any defects therein; and
- .7 the means of access to the site and the accommodations it may require and, in general, shall be deemed to have obtained all information as to risks, contingencies and other circumstances.
- .8 the ability to complete work without disruption to normal campus activities, except as specifically allowed in the contract documents.

The Owner assumes no responsibility or liability for the physical condition or safety of the Work site or any improvements located on the Work site. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time concerning any failure by the Contractor or any Subcontractor to comply with the requirements of this Paragraph.

1.2.9 Drawings, specifications, and copies thereof furnished by the Owner are and shall remain the Owner's property. They are not to be used on another project and, with the exception of one contract set for each party to the Contract, shall be returned to the Owner's Representative on request, at the completion of the Work.

1.3 Required Provisions Deemed Inserted

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein, and the Contract shall be read and enforced as though it were included herein; and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the written application of either party the Contract shall forthwith be physically amended to make such insertion or correction.

ARTICLE 2 OWNER

2.1 Information and Services Required of Owner

2.1.1 Permits and fees are the responsibility of the Contractor under the Contract Documents, unless specifically stated in the contract documents that the Owner will secure and pay for specific necessary approvals, easements, assessments, and charges required for construction, use or occupancy of permanent structures, or for permanent changes in existing facilities.

2.1.2 When requested in writing by the Contractor, information or services under the Owner's control, which are reasonably necessary to perform the Work, will be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work.

2.2 Owner's Right to Stop the Work

2.2.1 If the Contractor fails to correct Work which is not in strict accordance with the requirements of the Contract Documents or fails to carry out Work in strict accordance with the Contract Documents, the Owner's Representative may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work will not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. Owner's lifting of Stop Work Order shall not prejudice Owner's right to enforce any provision of this Contract.

2.3 Owner's Right to Carry Out the Work

2.3.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7) day period after receipt of a written notice from the Owner to correct such default or neglect, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Architect's additional services and expenses made necessary by such default or neglect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to Owner. However, such notice shall be waived in the event of an emergency with the potential for property damage or the endangerment of students, faculty, staff, the public or construction personnel, at the sole discretion of the Owner.

2.3.2 In the event the Contractor has not satisfactorily completed all items on the Punch List within thirty (30) days of its receipt, the Owner reserves the right to complete the Punch List without further notice to the Contractor or its surety. In such case, Owner shall be entitled to deduct from payments then or thereafter due the Contractor the cost of completing the Punch List items, including compensation for the Architect's additional services. If payments then or

thereafter due Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to Owner.

2.4 Extent of Owner Rights

2.4.1 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (1) granted in the Contract Documents, (2) at law or (3) in equity.

2.4.2 In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

ARTICLE 3 CONTRACTOR

3.1 Contractor's Warranty

3.1.1 The Contractor warrants all equipment and materials furnished, and work performed, under this Contract, against defective materials and workmanship for a period of twelve months after acceptance as provided in this Contract, unless a longer period is specified, regardless of whether the same were furnished or performed by the Contractor or any Subcontractors of any tier. Upon written notice from the Owner of any breach of warranty during the applicable warranty period due to defective material or workmanship, the affected part or parts thereof shall be repaired or replaced by the Contractor at no cost to the Owner. Should the Contractor fail or refuse to make the necessary repairs, replacements, and tests when requested by the Owner, the Owner may perform, or cause the necessary work and tests to be performed, at the Contractor's expense, or exercise the Owner's rights under Article 14.

3.1.2 Should one or more defects mentioned above appear within the specified period, the Owner shall have the right to continue to use or operate the defective part or apparatus until the Contractor makes repairs or replacements or until such time as it can be taken out of service without loss or inconvenience to the Owner.

3.1.3 The above warranties are not intended as a limitation but are in addition to all other express warranties set forth in this Contract and such other warranties as are implied by law, custom, and usage of trade. The Contractor, and its surety or sureties, if any, shall be liable for the satisfaction and full performance of the warranties set forth herein.

3.1.4 Neither the final payment nor any provision in the Contract Documents nor partial or entire occupancy of the premises by the Owner, nor expiration of warranty stated herein, will constitute an acceptance of Work not

done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any responsibility for non-conforming work. The Contractor shall immediately remedy any defects in the Work and pay for any damage to other Work resulting therefrom upon written notice from the Owner. Should the Contractor fail or refuse to remedy the non-conforming work, the Owner may perform, or cause to be performed the work necessary to bring the work into conformance with the Contract Documents at the Contractor's expense.

3.1.5 The Contractor agrees to defend, indemnify, and save harmless The Curators of the University of Missouri, their Officers, Agents, Employees and Volunteers, from and against all loss or expense from any injury or damages to property of others suffered or incurred on account of any breach of the aforesaid obligations and covenants. The Contractor agrees to investigate, handle, respond to and provide defense for and defend against any such liability, claims, and demands at the sole expense of the Contractor, or at the option of the University, agrees to pay to or reimburse the University for the defense costs incurred by the University in connection with any such liability claims, or demands. The parties hereto understand and agree that the University is relying on and does not waive or intend to waive by any provision of this Contract, any monetary limitations or any other rights, immunities, and protections provided by the State of Missouri, as from time to time amended, or otherwise available to the University, or its officers, employees, agents or volunteers.

3.2 Compliance with Laws, Regulations, Permits, Codes, and Inspections

3.2.1 The Contractor shall, without additional expense to the Owner, comply with all applicable laws, ordinances, rules, permit requirements, codes, statutes, and regulations (collectively referred to as "Laws").

3.2.2 Since the Owner is an instrumentality of the State of Missouri, municipal, or political subdivision, ordinances, zoning ordinances, and other like ordinances are not applicable to construction on the Owner's property, and the Contractor will not be required to submit plans and specifications to any municipal or political subdivision authority to obtain construction permits or any other licenses or permits from or submit to, inspection by any municipality or political subdivision relating to the construction on the Owner's property, unless required by the Owner in these Contract Documents or otherwise in writing.

3.2.3 All fees, permits, inspections, or licenses required by municipality or political subdivision for operation on property not belonging to the Owner, shall be obtained by and paid for by the Contractor. The Contractor, of its own expense, is responsible to ensure that all inspections required by said permits or licenses on property, easements, or utilities not belonging to the Owner are conducted as required therein. All connection charges, assessments or transportation fees as may be imposed by any utility company or others are

included in the Contract Sum and shall be the Contractor's responsibility, as stated in 2.1.1 above.

3.2.4 If the Contractor has knowledge that any Contract Documents are at variance with any Laws, including Americans with Disabilities Act – Standards for Accessible Design, ordinances, rules, regulations, or codes applying to the Work, Contractor shall promptly notify the Architect and the Owner's Representative, in writing, and any necessary changes will be adjusted as provided in the Contract Documents. However, it is not the Contractor's primary responsibility to ascertain that the Contract Documents are in accordance with applicable Laws, unless such Laws bear upon performance of the Work.

3.3 Anti-Kickback

3.3.1 No member or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.

3.3.2 No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction, or material supply contract or any Subcontract of any tier in connection with the construction of the Work shall have a financial interest in this Contract or in any part thereof, any material supply contract, Subcontract of any tier, insurance contract, or any other contract pertaining to the Work.

3.4 Supervision and Construction Procedures

3.4.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the Contract. The Contractor shall supply sufficient and competent supervision and personnel, and sufficient material, plant, and equipment to prosecute the Work with diligence to ensure completion thereof within the time specified in the Contract Documents, and shall pay when due any laborer, Subcontractor of any tier, or supplier.

3.4.2 The Contractor, if an individual, shall give the Work an adequate amount of personal supervision, and if a partnership or corporation or joint venture the Work shall be given an adequate amount of personal supervision by a partner or executive officer, as determined by the Owner's Representative.

3.4.3 The Contractor and each of its Subcontractors of any tier shall submit to the Owner such schedules of quantities and costs, progress schedules in accordance

with 3.17.2 of this document, payrolls, reports, estimates, records, and other data as the Owner may request concerning Work performed or to be performed under the Contract.

3.4.4 The Contractor shall be represented at the site by a competent superintendent from the beginning of the Work until its final acceptance, whenever contract work is being performed, unless otherwise permitted in writing by the Owner's Representative. The superintendent for the Contractor shall exercise general supervision over the Work and such superintendent shall have decision making authority of the Contractor. Communications given to the superintendent shall be binding as if given to the Contractor. The superintendent shall not be changed by the contractor without approval from the Owner's Representative.

3.4.5 The Contractor shall establish and maintain a permanent benchmark to which access may be had during progress of the Work, and Contractor shall establish all lines and levels, and shall be responsible for the correctness of such. Contractor shall be fully responsible for all layout work for the proper location of Work in strict accordance with the Contract Documents.

3.4.6 The Contractor shall establish and be responsible for wall and partition locations. If applicable, separate contractors shall be entitled to rely upon these locations and for setting their sleeves, openings, or chases.

3.4.7 The Contractor's scheduled outage/tie-in plan, time, and date for any utilities is subject to approval by the Owner's Representative. Communication with the appropriate entity and planning for any scheduled outage/tie-in of utilities shall be the responsibility of the Contractor. Failure of Contractor to comply with the provisions of this Paragraph shall cause Contractor to forfeit any right to an adjustment of the Contract Sum or Contract Time for any postponement, rescheduling or other delays ordered by Owner in connection with such Work. The Contractor shall follow the following procedures for all utility outages/tie-ins or disruption of any building system:

- .1** All shutting of valves, switches, etc., shall be by the Owner's personnel.
- .2** Contractor shall submit its preliminary outage/tie-in schedule with its baseline schedule.
- .3** The Contractor shall request an outage/tie-in meeting at least two weeks before the outage/tie-in is required.
- .4** The Owner's Representative will schedule an outage/tie-in meeting at least one week prior to the outage/tie-in.

3.4.8 The Contractor shall coordinate all Work so there shall be no prolonged interruption of existing utilities, systems, and equipment of Owner. Any existing plumbing, heating, ventilating, air conditioning, or electrical disconnection necessary, which affect portions of this construction or building or any other building, must be scheduled with the Owner's Representative to avoid any

disruption of operation within the building under construction or other buildings or utilities. In no case shall utilities be left disconnected at the end of a workday or over a weekend. Any interruption of utilities, either intentionally or accidentally, shall not relieve the Contractor from repairing and restoring the utility to normal service. Repairs and restoration shall be made before the workers responsible for the repair and restoration leave the job.

3.4.9 The Contractor shall be responsible for repair of damage to property on or off the project occurring during construction of project, and all such repairs shall be made to meet code requirements or to the satisfaction of the Owner's Representative if code is not applicable.

3.4.10 The Contractor shall be responsible for all shoring required to protect its work or adjacent property and shall pay for any damage caused by failure to shore or by improper shoring or by failure to give proper notice. Shoring shall be removed only after completion of permanent supports.

3.4.11 The Contractor shall maintain at his own cost and expense, adequate, safe and sufficient walkways, platforms, scaffolds, ladders, hoists and all necessary, proper, and adequate equipment, apparatus, and appliances useful in carrying on the Work and which are necessary to make the place of Work safe and free from avoidable danger for students, faculty, staff, the public and construction personnel, and as may be required by safety provisions of applicable laws, ordinances, rules regulations and building and construction codes.

3.4.12 During the performance of the Work, the Contractor shall be responsible for providing and maintaining warning signs, lights, signal devices, barricades, guard rails, fences, and other devices appropriately located on site which shall give proper and understandable warning to all persons of danger of entry onto land, structure, or equipment, within the limits of the Contractor's work area.

3.4.13 The Contractor shall pump, bail, or otherwise keep any general excavations free of water. The Contractor shall keep all areas free of water before, during and after concrete placement. The Contractor shall be responsible for protection, including weather protection, and proper maintenance of all equipment and materials installed, or to be installed by him.

3.4.14 The Contractor shall be responsible for care of the Work and must protect same from damage of defacement until acceptance by the Owner. All damaged or defaced Work shall be repaired or replaced to the Owner's satisfaction, without cost to the Owner.

3.4.15 When requested by the Owner's Representative, the Contractor, at no extra charge, shall provide scaffolds

or ladders in place as may be required by the Architect or the Owner for examination or inspection of Work in progress or completed.

3.4.16 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors of any tier and their agents and employees, and any entity or other persons performing portions of the Work.

3.4.17 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner's Representative or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

3.4.18 The Contractor shall be responsible for inspection of portions of the Work already performed under this Contract to determine that such portions are compliant and in proper condition to receive subsequent Work.

3.5 Use of Site

3.5.1 The Contractor shall limit operations and storage of material to the area within the Work limit lines shown on Drawings, except as necessary to connect to existing utilities, shall not encroach on neighboring property, and shall exercise caution to prevent damage to existing structures.

3.5.2 Only materials and equipment, which are to be used directly in the Work, shall be brought to and stored on the Work site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Work site. Protection of construction materials and equipment stored at the Work site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.

3.5.3 No project signs shall be erected without the written approval of the Owner's Representative.

3.5.4 The Contractor shall ensure that the Work is at all times performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. Particular attention shall be paid to access for emergency vehicles, including fire trucks. Wherever there is the possibility of interfering with normal emergency vehicle operations, Contractor shall obtain permission from both campus and municipal emergency response entities prior to limiting any access. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Documents, Contractor shall not interfere with the occupancy or beneficial use of (1) any areas and buildings adjacent to the site of the Work or (2) the Work in the event of partial occupancy. Contractor shall assume full responsibility for any damage to the property

comprising the Work or to the owner or occupant of any adjacent land or areas resulting from the performance of the Work.

3.5.5 The Contractor shall not permit any workers to use any existing facilities at the Work site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by Owner. The Contractor, Subcontractors of any tier, suppliers and employees shall comply with instructions or regulations of the Owner's Representative governing access to, operation of, and conduct while in or on the premises and shall perform all Work required under the Contract Documents in such a manner as not to unreasonably interrupt or interfere with the conduct of Owner's operations. Any request for Work, a suspension of Work or any other request or directive received by the Contractor from occupants of existing buildings shall be referred to the Owner's Representative for determination.

3.5.6 The Contractor and the Subcontractor of any tier shall have its' name, acceptable abbreviation or recognizable logo and the name of the city and state of the mailing address of the principal office of the company, on each motor vehicle and motorized self-propelled piece of equipment which is used in connection with the project. The signs are required on such vehicles during the time the Contractor is working on the project.

3.6 Review of Contract Documents and Field Conditions by Contractor

3.6.1 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Architect and Owner and shall at once report in writing to the Architect and Owner's Representative any errors, inconsistencies or omissions discovered. If the Contractor performs any construction activity which it knows or should have known involves a recognized error, inconsistency, or omission in the Contract Documents without such written notice to the Architect and Owner's Representative, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

3.6.2 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported in writing to the Architect and Owner's Representative within twenty-four (24) hours. During the progress of work, Contractor shall verify all field measurements prior to fabrication of building components or equipment and proceed with the fabrication to meet field conditions. Contractor shall consult all Contract Documents to determine the exact location of all work and verify spatial relationships of all work. Any question concerning said

location or spatial relationships shall be submitted to the Owner's Representative. Specific locations for equipment, pipelines, ductwork and other such items of work, where not dimensioned on plans, shall be determined in consultation with Owner's Representative and Architect. Contractor shall be responsible for the proper fitting of the Work in place.

3.6.3 The Contractor shall provide, at the proper time, such material as required for support of the Work. If openings or chases are required, whether shown on Drawings or not, the Contractor shall see they are properly constructed. If required openings or chases are omitted, the Contractor shall cut them at the Contractors own expense, but only as directed by the Architect, through the Owner Representative.

3.6.4 Should the Contract Documents fail to particularly describe materials or goods to be used, it shall be the duty of the Contractor to inquire of the Architect and the Owner's Representative what is to be used and to supply it at the Contractor's expense, or else thereafter replace it to the Owner's Representative's satisfaction. At a minimum, the Contractor shall provide the quality of materials as generally specified throughout the Contract Documents.

3.7 Cleaning and Removal

3.7.1 The Contractor shall keep the Work site and surrounding areas free from accumulation of waste materials, rubbish, debris, and dirt resulting from the Work and shall clean the Work site and surrounding areas as requested by the Architect and the Owner's Representative, including mowing of grass greater than 6 inches high. The Contractor shall be responsible for the cost of clean up and removal of debris from premises. The building and premises shall be kept clean, safe, in a workmanlike manner, and in compliance with OSHA standards and code at all times. At completion of the Work, the Contractor shall remove from and about the Work site tools, construction equipment, machinery, fencing, and surplus materials. Further, at the completion of the work, all dirt, stains, and smudges shall be removed from every part of the building, all glass in doors and windows shall be washed, and entire Work shall be left broom clean in a finished state ready for occupancy. The Contractor shall advise his Subcontractors of any tier of this provision, and the Contractor shall be fully responsible for leaving the premises in a finished state ready for use to the satisfaction of the Owner's Representative. If the Contractor fails to comply with the provisions of this paragraph, the Owner may do so, and the cost thereof shall be charged to the Contractor.

3.8 Cutting and Patching

3.8.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

3.8.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter

such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

3.8.3 If the Work involves renovation and/or alteration of existing improvements, Contractor acknowledges that cutting and patching of the Work is essential for the Work to be successfully completed. Contractor shall perform any cutting, altering, patching, and/or fitting of the Work necessary for the Work and the existing improvements to be fully integrated and to present the visual appearance of an entire, completed, and unified project. In performing any Work which requires cutting or patching, Contractor shall use its best efforts to protect and preserve the visual appearance and aesthetics of the Work to the reasonable satisfaction of both the Owner's Representative and Architect.

3.9 Indemnification

3.9.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless the Owner, the Architect, Architect's consultants, and the agents, employees, representatives, insurers and re-insurers of any of the foregoing (hereafter collectively referred to as the "Indemnitees") from and against claims, damages (including loss of use of the Work itself), punitive damages, penalties and civil fines unless expressly prohibited by law, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from performance of the Work to the extent caused in whole or in part by negligent acts or omissions or other fault of Contractor, a Subcontractor of any tier, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by the negligent acts or omissions or other fault of a party indemnified hereunder. The Contractor's obligations hereunder are in addition to and shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that the Owner may possess. If one or more of the Indemnitees demand performance by the Contractor of obligations under this paragraph or other provisions of the Contract Documents and if Contractor refuses to assume or perform, or delays in assuming or performing Contractor's obligations, Contractor shall pay each Indemnitee who has made such demand its respective attorneys' fees, costs, and other expenses incurred in enforcing this provision. The defense and indemnity required herein shall be a binding obligation upon Contractor whether or not an Indemnitee has made such demand. Even if a defense is successful to a claim or demand for which Contractor is obligated to indemnify the Indemnitees from under this Paragraph, Contractor shall remain liable for all costs of defense.

3.9.2 The indemnity obligations of Contractor under this Section 3.9 shall survive termination of this Contract or final payment thereunder. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, the Owner may in its sole discretion reserve, return or apply any monies due or to become due the Contractor under the Contract for the purpose of resolving such claims; provided, however, that the Owner may release such funds if the Contractor provides the Owner with reasonable assurance of protection of the Owner's interests. The Owner shall in its sole discretion determine if such assurances are reasonable. Owner reserves the right to control the defense and settlement of any claim, action or proceeding which Contractor has an obligation to indemnify the Indemnitees against under Paragraph 3.9.1.

3.9.3 In claims against any person or entity indemnified under this Section 3.9 by an employee of the Contractor, a Subcontractor of any tier, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 3.9 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor of any tier under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

3.9.4 The obligations of the Contractor under Paragraph 3.9.1 shall not extend to the liability of the Architect, his agents or employees, arising out of the preparation and approval of maps, drawings, opinions, reports, surveys, Change Orders, designs, or Specifications.

3.10 Patents

3.10.1 The Contractor shall hold and save harmless the Owner and its officers, agents, servants, and employees from liability of any nature or kind, including cost and expense, for, or on account of, any patented or otherwise protected invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the Owner, unless otherwise specifically stipulated in the Contract Documents.

3.10.2 If the Contractor uses any design, device, or material covered by letters patent or copyright, he shall provide for such use by suitable agreement with the Owner of such patented or copyrighted design, device, or material. It is mutually agreed and understood, without exception, that the Contract Sum include, and the Contractor shall pay all royalties, license fees or costs arising from the use of such design, device, or material in any way involved in the Work. The Contractor and/or sureties shall indemnify and save harmless the Owner from any and all claims for infringement by reason of the use of such patented or copyrighted design, device, or material or any trademark or copyright in connection with Work agreed to be performed under this Contract and shall indemnify the Owner for any cost, expense, or damage it may be obligated to pay by reason of

such infringement at any time during the prosecution of the Work or after completion of the Work.

3.11 Delegated Design

3.11.1 If the Contract Documents specify the Contractor is responsible for the design of any work as part of the project, then the Contractor shall procure all design services and certifications necessary to complete the Work as specified, from a design professional licensed in the State of Missouri. The signature and seal of that design professional shall appear on all drawings, calculations, specifications, certifications, shop drawings, and other submittals related to the Work. The design professional shall maintain insurance as required per Article 11.

3.12 Materials, Labor, and Workmanship

3.12.1 Materials and equipment incorporated into the Work shall strictly conform to the Contract Documents and representations and approved Samples provided by Contractor and shall be of the most suitable grade of their respective kinds for their respective uses and shall be fit and sufficient for the purpose intended, merchantable, of good new material and workmanship, and free from defect. Workmanship shall be in accordance with the highest standard in the industry and free from defect in strict accordance with the Contract Documents.

3.12.2 Materials and fixtures shall be new and of latest design unless otherwise specified and shall provide the most efficient operating and maintenance costs to the Owner. All Work shall be performed by competent workers and shall be of best quality.

3.12.3 The Contractor shall carefully examine the Contract Documents and shall be responsible for the proper fitting of his material, equipment, and apparatus into the building.

3.12.4 The Contractor shall base his bid only on the Contract Documents.

3.12.5 Materials and workmanship shall be subject to inspection, examination, and testing by the Architect and the Owner's Representative at any and all times during manufacture, installation, and construction of any of them, at places where such manufacture, installation, or construction is performed.

3.12.6 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.12.7 Unless otherwise specifically noted, the Contractor shall provide and pay for supervision, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other

facilities and services necessary for the proper execution and completion of the Work.

3.12.8 Substitutions

3.12.8.1 A substitution is a Contractor proposal of an alternate product or method in lieu of what has been specified or shown in the Contract Documents, which is not an "or equal" as set forth in Section 3.12.1.

3.12.8.2 Contractor may make a proposal to the Architect and the Owner's Representative to use substitute products or methods as set forth herein, but the Architect's and the Owner's Representative's decision concerning acceptance of a substitute shall be final. The Contractor must do so in writing and setting forth the following:

- .1** Full explanation of the proposed substitution and submittal of all supporting data including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution.
- .2** Reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable.
- .3** The adjustment, if any, in the Contract Sum, in the event the substitution is acceptable.
- .4** The adjustment, if any, in the time of completion of the Contract and the construction schedule in the event the substitution is acceptable.
- .5** An affidavit stating that (a) the proposed substitution conforms to and meets all of the Contract Document requirements and is code compliant, except as specifically disclosed and set forth in the affidavit and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted to the Architect and Owner's Representative in sufficient time to allow the Architect and Owner's Representative no less than ten (10) working days for review. No substitution will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated herein.

3.12.8.3 Substitutions may be rejected without explanation at the Owner's sole discretion and will be considered only under one or more of the following conditions:

- .1** Required for compliance with interpretation of code requirements or insurance regulations then existing;
- .2** Unavailability of specified products, through no fault of the Contractor;
- .3** Material delivered fails to comply with the Contract Documents;
- .4** Subsequent information discloses inability of specified products to perform properly or to fit in designated space;

- .5 Manufacturer/fabricator refuses to certify or guarantee performance of specified product as required; or
- .6 When in the judgment of the Owner or the Architect, a substitution would be substantially to the Owner's best interests, in terms of cost, time, or other considerations.

3.12.8.4 Whether or not any proposed substitution is accepted by the Owner or the Architect, the Contractor shall reimburse the Owner for any fees charged by the Architect or other consultants for evaluating each proposed substitution.

3.13 Approved Equal

3.13.1 Whenever in the Contract Documents any article, appliance, device, or material is designated by the name of a manufacturer, vendor, or by any proprietary or trade name, the words "or approved equal," shall automatically follow and shall be implied unless specifically indicated otherwise. The standard products of manufacturers other than those specified will be accepted when, prior to the ordering or use thereof, it is proven to the satisfaction of the Owner's Representative and the Architect they are equal in design, appearance, spare parts availability, strength, durability, usefulness, serviceability, operation cost, maintenance cost, and convenience for the purpose intended. Any general listings of approved manufacturers in any Contract Document shall be for informational purposes only and it shall be the Contractor's sole responsibility to ensure that any proposed "or equal" complies with the requirements of the Contract Documents and is code compliant.

3.13.2 The Contractor shall submit to Architect and Owner's Representative a written and full description of the proposed "or equal" including all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and similar information demonstrating that the proposed "or equal" strictly complies with the Contract Documents. The Architect or Owner's Representative shall take appropriate action with respect to the submission of a proposed "or equal" item. If Contractor fails to submit proposed "or equals" as set forth herein, it shall waive any right to supply such items. The Contract Sum and Contract Time shall not be adjusted as a result of any failure by Contractor to submit proposed "or equals" as provided for herein. All documents submitted in connection with preparing an "or equal" shall be clearly and obviously marked as a proposed "or equal" submission.

3.13.3 No approvals or action taken by the Architect or Owner's Representative shall relieve Contractor from its obligation to ensure that an "or equal" article, appliance, device, or material strictly complies with the requirements of the Contract Documents. Contractor shall not propose "or equal" items in connection with Shop Drawings or

other Submittals, and Contractor acknowledges and agrees that no approvals or action taken by the Architect or Owner's Representative with respect to Shop Drawings or other Submittals shall constitute approval of any "or equal" item or relieve Contractor from its sole and exclusive responsibility. Any changes required in the details and dimensions indicated in the Contract Documents for the incorporation or installation of any "or equal" item supplied by the Contractor shall be properly made and approved by the Architect at the expense of the Contractor. No 'or equal' items will be permitted for components of or extensions to existing systems when, in the opinion of the Architect, the named manufacturer must be provided in order to ensure compatibility with the existing systems, including, but not limited to, mechanical systems, electrical systems, fire alarms, smoke detectors, etc. No action will be taken by the Architect with respect to proposed "or equal" items prior to receipt of bids, unless otherwise noted in the Special Conditions.

3.14 Shop Drawings, Product Data, Samples, and Coordination Drawings/BIM Models

3.14.1 Shop Drawings are drawings, diagrams, schedules, and other data specifically prepared for the Work by the Contractor or a Subcontractor, sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

3.14.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

3.14.3 Samples are physical samples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

3.14.4 Coordination Drawings are drawings for the integration of the Work, including work first shown in detail on shop drawings or product data. Coordination drawings show sequencing and relationship of separate units of work which must interface in a restricted manner to fit in the space provided, or function as indicated. Coordination Drawings are the responsibility of the contractor and are submitted for informational purposes. The Special Conditions will state whether coordination drawings are required. BIM models may be used for coordination in lieu of coordination drawings at the contractor's discretion, unless required in the Special Conditions. The final coordination drawings/BIM Model will not change the contract documents, unless approved by a fully executed change order describing the specific modifications that are being made to the contract documents.

3.14.5 Shop Drawings, Coordination Drawings/BIM Models, Product Data, Samples and similar submittals (collectively referred to as "Submittals") are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are

required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents.

3.14.6 The Contractor shall schedule submittal of Shop Drawings and Product Data to the Architect so that no delays will result in delivery of materials and equipment, advising the Architect of priority for checking of Shop Drawings and Product Data, but a minimum of two weeks shall be provided for this purpose. Because time is of the essence in this contract, unless noted otherwise in the Special Conditions or Technical Specifications, all submittals, shop drawings and samples must be submitted as required to maintain the contractor's plan for proceeding but must be submitted within 90 days of the Notice to Proceed. If Contractor believes that this milestone is unreasonable for any submittal, Contractor shall request an extension of this milestone, within 60 days of Notice to Proceed, for each submittal that cannot meet the milestone. The request shall contain a reasonable explanation as to why the 90-day milestone is unrealistic, and shall specify a date on which the submittal will be provided, for approval by the Owner's Representative. Failure of the Contractor to comply with this section may result in delays in the submittal approval process and/or charges for expediting approval, both of which will be the responsibility of the Contractor.

3.14.7 The Contractor, at its own expense, shall submit Samples required by the Contract Documents with reasonable promptness as to cause no delay in the Work or the activities of separate contractors and no later than twenty (20) days before materials are required to be ordered for scheduled delivery to the Work site. Samples shall be labeled to designate material or products represented, grade, place of origin, name of producer, name of Contractor and the name and number of the Owner's project. Quantities of Samples shall be twice the number required for testing so that Architect can return one set of the Samples. Materials delivered before receipt of Architect's approval may be rejected by Architect and in such event, Contractor shall immediately remove all such materials from the Work site. When requested by Architect or Owner's Representative, samples of finished masonry and field applied paints and finishes shall be located as directed and shall include sample panels built at the site of approximately twenty (20) square feet each.

3.14.8 The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the Architect. Such Work shall be in accordance with approved submittals.

3.14.9 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents such Submittals strictly comply with the requirements of the Contract Documents and that the

Contractor has determined and verified field measurements and field construction criteria related thereto, that materials are fit for their intended use and that the fabrication, shipping, handling, storage, assembly and installation of all materials, systems and equipment are in accordance with best practices in the industry and are in strict compliance with any applicable requirements of the Contract Documents. Contractor shall also coordinate each Submittal with other Submittals.

3.14.10 Contractor shall be responsible for the correctness and accuracy of the dimensions, measurements and other information contained in the Submittals.

3.14.11 Each Submittal will bear a stamp or specific indication that the Submittal complies with the Contract Documents and Contractor has satisfied its obligations under the Contract Documents with respect to Contractor's review and approval of that Submittal. Each Submittal shall bear the signature of the representative of Contractor who approved the Submittal, together with the Contractor's name, Owner's name, number of the Project, and the item name and specification section number.

3.14.12 The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the Architect's approval thereof. Specifically, but not by way of limitation, Contractor acknowledges that Architect's approval of Shop Drawings shall not relieve Contractor for responsibility for errors and omissions in the Shop Drawings since Contractor is responsible for the correctness of dimensions, details and the design of adequate connections and details contained in the Shop Drawings.

3.14.13 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous Submittals.

3.14.14 The Contractor represents and warrants that all Shop Drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the Shop Drawing is prepared and, if required by the Architect or applicable Laws, by a licensed engineer or other design professional.

3.15 Record Drawings

3.15.1 The Contractor shall maintain a set of Record Drawings on site in good condition and shall use colored pencils to mark up said set with "record information" in a legible manner to show: (1) bidding addendums, (2) executed change orders, (3) deviations from the Drawings made during construction; (4) details in the Work not previously shown; (5) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (6) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access

panels, control valves, drains, openings, and stub-outs; and (7) such other information as either Owner or Architect may reasonably request. The prints for Record Drawing use will be a set of "blue line" prints provided by Architect to Contractor at the start of construction. Upon Substantial Completion of the Work, Contractor shall deliver all Record Drawings to Owner and Architect for approval. If not approved, Contractor shall make the revisions requested by Architect or Owner's Representative. Final payment and any retainage shall not be due and owing to Contractor until the final Record Drawings marked by Contractor as required above are delivered to Owner.

3.16 Operating Instructions and Service Manuals

3.16.1 The Contractor shall submit four (4) volumes of operating instructions and service manuals to the Architect before completing 50% of the adjusted contract amount. Payments beyond 50% of the adjusted contract amount may be withheld until all operating instructions and service manuals are received. The operating instructions and service manuals shall contain:

- .1** Start-up and Shutdown Procedures: Provide a step-by-step write up of all major equipment. When manufacturer's printed start-up, trouble shooting and shut-down procedures are available, they may be incorporated into the operating manual for reference.
- .2** Operating Instructions: Written operating instructions shall be included for the efficient and safe operation of all equipment.
- .3** Equipment List: List of all major equipment as installed shall include model number, capacities, flow rate, and name-plate data.
- .4** Service Instructions: The Contractor shall be required to provide the following information for all pieces of equipment.
 - (a)** Recommended spare parts including catalog number and name of local suppliers or factory representative.
 - (b)** Belt sizes, types, and lengths.
 - (c)** Wiring diagrams.
- .5** Manufacturer's Certificate of Warranty: Manufacturer's certificates of warranty shall be obtained for all major equipment. Warranty shall be obtained for at least one year from the date of Substantial Completion. Where longer period is required by the Contract Documents, the longer period shall govern.
- .6** Parts catalogs: For each piece of equipment furnished, a parts catalog or similar document shall be provided which identifies the components by number for replacement ordering.

3.16.2 Submission

- .1** Manuals shall be bound into volumes of standard 8 1/2" x 11" hard binders. Large drawings too bulky to be folded into 8 1/2" x 11" shall be separately bound or folded and in brown

envelopes, cross-referenced and indexed with the manuals.

- .2** The manuals shall identify the Owner's project name, project number, and include the name and address of the Contractor and major Subcontractors of any tier who were involved with the activity described in that particular manual.

3.17 Taxes

3.17.1 The Contractor shall pay all applicable sales, consumer, use, and similar taxes for the Work which are legally enacted when the bids are received, whether or not yet effective or scheduled to go into effect. However, certain purchases by the Contractor of materials incorporated in or consumed in the Work are exempt from certain sales tax pursuant to RSMo § 144.062. The Contractor shall be issued a Project Tax Exemption Certificate for this Work to obtain the benefits of RSMo § 144.062.

3.17.2 The Contractor shall furnish this certificate to all subcontractors, and any person or entity purchasing materials for the Work shall present such certificate to all material suppliers as authorization to purchase, on behalf of the Owner, all tangible personal property and materials to be incorporated into or consumed in the Work and no other on a tax-exempt basis. Such suppliers shall provide to the purchasing party invoices bearing the name of the exempt entity and the project identification number. Nothing in this section shall be deemed to exempt from any sales or similar tax the purchase of any construction machinery, equipment or tools used in construction, repairing or remodeling facilities for the Owner. All invoices for all personal property and materials purchased under a Project Tax Exemption Certificate shall be retained by the Contractor for a period of five years and shall be subject to audit by the Director of Revenue.

3.17.3 Any excess resalable tangible personal property or materials which were purchased for the project under this Project Tax Exemption Certificate but which were not incorporated into or consumed in the Work shall either be returned to the supplier for credit or the appropriate sales or use tax on such excess property or materials shall be reported on a return and paid by such purchasing party not later than the due date of the purchasing party's Missouri sales or use tax return following the month in which it was determined that the materials were not used in the Work.

3.17.4 If it is determined that sales tax is owed by the Contractor on property and materials due to the failure of the Owner to revise the certificate expiration date to cover the applicable date of purchase, Owner shall be liable for the tax owed.

3.17.5 The Owner shall not be responsible for any tax liability due to Contractor's neglect to make timely orders, payments, etc. or Contractor's misuse of the Project Tax Exemption Certificate. Contractor represents that the Project Tax Exemption Certificate shall be used in accordance with RSMo § 144.062 and the terms of the Project Tax Exemption

Certificate. Contractor shall indemnify the Owner for any loss or expense, including but not limited to, reasonable attorneys' fees, arising out of Contractor's use of the Project Tax Exemption Certificate.

3.18 Contractor's Construction Schedules

3.18.1 The Contractor, within fifteen (15) days after the issuance of the Notice to Proceed, shall prepare and submit for the Owner's and Architect's information Contractor's construction schedule for the Work and shall set forth interim dates for completion of various components of the Work and Work Milestone Dates as defined herein. The schedule shall not exceed time limits current under the Contract Documents, shall be revised on a monthly basis or as requested by the Owner's Representative as required by the conditions of the Work, and shall provide for expeditious and practicable execution of the Work. The Contractor shall conform to the most recent schedule.

3.18.2 The construction schedule shall be in a detailed format satisfactory to the Owner's Representative and the Architect and in accordance with the detailed schedule requirements set forth in this document and the Special Conditions. If the Owner's Representative or Architect has a reasonable objection to the schedule submitted by Contractor, the construction schedule shall be promptly revised by the Contractor. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays.

3.18.3 As time is of the essence to this contract, the University expects that the Contractor will take all necessary steps to ensure that the project construction schedule shall be prepared in accordance with the specific requirements of the Special Conditions to this contract. At a minimum, contractor shall comply with the following:

- .1** The schedule shall be prepared using Primavera P3, Oracle P6, Microsoft Project or other software acceptable to the Owner's Representative.
- .2** The schedule shall be prepared and maintained in CPM format, in accordance with Construction CPM Scheduling, published by the Associated General Contractors of American (AGC).
- .3** Prior to submittal to the Owner's Representative for review, Contractor shall obtain full buy-in to the schedule from all major subcontractors, in writing if so, requested by Owner's Representative.
- .4** Schedule shall be updated, in accordance with Construction CPM Scheduling, published by the AGC, on a monthly basis at minimum, prior to, and submitted with, the monthly pay application or as requested by the Owner's Representative.
- .5** Along with the update the Contractor shall submit a narrative report addressing all changes, delays and impacts, including weather to the schedule

during the last month, and explain how the end date has been impacted by same.

- .6** The submission of the updated schedule certifies that all delays and impacts that have occurred on or to the project during the previous month have been factored into the update and are fully integrated into the schedule and the projected completion date.

Failure to comply with any of these requirements will be considered a material breach of this contract. See Special Conditions for detailed scheduling requirements.

3.18.4 In the event the Owner's Representative or Architect determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, facilities, (3) expediting delivery of materials, and (4) other similar measures (hereinafter referred to collectively as Extraordinary Measures). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule. The Contractor shall not be entitled to an adjustment in the Contract Sum concerning Extraordinary Measures required by the Owner under or pursuant to this Paragraph 3.17.3. The Owner may exercise the rights furnished the Owner under or pursuant to this Paragraph 3.17.3 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 Rights of the Owner

4.1.1 The Owner's Representative will administer the Construction Contract. The Architect will assist the Owner's Representative with the administration of the Contract as indicated in these Contract Documents.

4.1.2 If, in the judgment of the Owner's Representative, it becomes necessary to accelerate the work, the Contractor, when directed by the Owner's Representative in writing, shall cease work at any point and transfer its workers to such point or points and execute such portions of the work as may be required to enable others to hasten and properly engage and carry out the work, all as directed by the Owner's Representative. The additional cost of accelerating the work, if any, will be borne by the Owner, unless the Contractor's work progress is behind schedule as shown on the most recent progress schedule.

4.1.3 If the Contractor refuses, for any reason, to proceed with what the Owner believes to be contract work, the Owner may issue a Construction Directive, directing the Contractor to proceed. Contractor shall be obligated to promptly proceed with this work. If Contractor feels that it is entitled to additional compensation for this work, it may file a claim for additional compensation and/or time, in accordance with 4.4 of this Document.

4.1.4 The Owner's Representative, may, by written notice, require a Contractor to remove from involvement with the Work, any of Contractor's personnel or the personnel of its Subcontractors of any tier whom the Owner's Representative may deem abusive, incompetent, careless, or a hindrance to proper and timely execution of the Work. The Contractor shall comply with such notice promptly, but without detriment to the Work or its progress.

4.1.5 The Owner's Representative will schedule Work status meetings that shall be attended by representatives of the Contractor and appropriate Subcontractors of any tier. Material suppliers shall attend status meetings if required by the Owner's Representative. These meetings shall include preconstruction meetings.

4.1.6 The Owner does not allow smoking on university property.

4.2 Rights of the Architect

4.2.1 The Architect will interpret requirements of the Contract Documents with respect to the quality, quantity, and other technical requirements of the Work itself within a reasonable time after written request of the Contractor. Contractor shall provide Owner's Representative a copy of such written request.

4.3 Review of the Work

4.3.1 The Architect, the Owner's Representative, and the Owner's Authorized Agent shall, at all times, have access to the Work; and the Contractor shall provide proper and safe facilities for such access.

4.3.2 The Owner's Representative shall have authority to reject Work that does not strictly comply with the requirements of the Contract Documents. Whenever the Owner's Representative considers it necessary or advisable for implementation of the intent of the Contract Documents, Owner's Representative shall have the authority to require additional inspection or testing of the Work, whether or not such Work is fabricated, installed, or completed.

4.3.3 The fact that the Architect or the Owner's Representative observed, or failed to observe, faulty Work, or Work done which is not in accordance with the Contract Documents, regardless of whether or not the Owner has released final payment, shall not relieve the

Contractor from responsibility for all damages and additional costs of the Owner as a result of defective or faulty Work.

4.4 Claims

4.4.1 A Claim is a demand or assertion by Contractor seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or any other relief with respect to the terms of the Contract. The term "Claim(s)" also includes demands and assertions of Contractor arising out of or relating to the Contract Documents, including Claims based upon breach of contract, mistake, misrepresentation, or other cause for Contract Modification or rescission. Claims must be made by written notice. Contractor shall have the responsibility to substantiate Claims.

4.4.2 Claims by Contractor must be made promptly, and no later than within fourteen (14) days after occurrence of the event giving rise to such Claim. Claims must be made by written notice. Such notice shall include a detailed statement setting forth all reasons for the Claim and the amount of additional money and additional time claimed by Contractor. The notice of Claims shall also strictly comply with all other provisions of the Contract Documents. Contractor shall not be entitled to rely upon any grounds or basis for additional money on additional time not specifically set forth in the notice of Claim. All Claims not made in the manner provided herein shall be deemed waived and of no effect. Contractor shall furnish the Owner and Architect such timely written notice of any Claim provided for herein, including, without limitation, those in connection with alleged concealed or unknown conditions, and shall cooperate with the Owner and Architect in any effort to mitigate the alleged or potential damages, delay or other adverse consequences arising out of the condition which is the cause of such a Claim.

4.4.3 Pending final resolution of a Claim, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments that are not in dispute in accordance with the Contract Documents.

4.5 Claims for Concealed or Unknown Conditions

4.5.1 If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the Contractor shall be given to the Owner's Representative promptly before conditions are disturbed, and in no event later than three (3) days after first observance of the conditions. The Owner's Representative will promptly investigate such conditions. If such conditions differ materially, as provided for above and cause an increase or decrease in the Contractor's cost, or time, required for performance of the Work, an equitable adjustment in the Contract sum or Contract Time, or both, shall be made, subject to the provisions and restrictions set for herein. If the Owner's Representative determines that the

conditions at the site are not materially different from those indicated in the Contract Documents, and that no change in the terms of the Contract is justified, the Owner's Representative will so notify the Contractor in writing. If the Contractor disputes the finding of the Owner's Representative that no change in the terms of the Contract terms is justified, Contractor shall proceed with the Work, taking whatever steps are necessary to overcome or correct such conditions so that Contractor can proceed in a timely manner. The Contractor may have the right to file a Claim in accordance with the Contract Documents.

4.5.2 It is expressly agreed that no adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition which does not differ materially from those conditions disclosed or which reasonably should have been disclosed by the Contractor's (1) prior inspections, tests, reviews and preconstruction investigations for the Project, or (2) inspections, tests, reviews and preconstruction inspections which the Contractor had the opportunity to make or should have performed in connection with the Project.

4.6 Claim for Additional Cost

4.6.1 If the Contractor makes a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. In addition to all other requirements for notice of a Claim, said notice shall detail and itemize the amount of all Claims and shall contain sufficient data to permit evaluation of same by Owner.

4.7 Claims for Additional Time

4.7.1 If the Contractor makes a Claim for an increase in the Contract Time, written notice as provided herein shall be given. In addition to other requirements for notice of a Claim, Contractor shall include an estimate of the probable effect of delay upon the progress of the Work, utilizing a CPM Time Impact Schedule Analysis, (TIA) as defined in the AGC Scheduling Manual. In the case of a continuing delay, only one Claim is necessary.

.1 Time extensions will be considered for excusable delays only. That is, delays that are beyond the control and/or contractual responsibility of the Contractor.

4.7.2 If weather days are the basis for a Claim for additional time, such Claim shall be documented by the Contractor by data acceptable to the Owner's Representative substantiating that weather conditions for the period of time in question, had an adverse effect on the critical path of the scheduled construction. Weather days shall be defined as days on which critical path work cannot proceed due to weather conditions (including but not limited to rain, snow, etc.), in excess of the number of days shown on the Anticipated Weather Day schedule in the Special Conditions. To be considered a weather day,

at least four working hours must be lost due to the weather conditions on a critical path scope item for that day.-Weather days and Anticipated weather days listed in the Special Conditions shall only apply to Monday through Friday. A weather day claim cannot be made for Saturdays, Sundays, New Year's Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving Day and Christmas Day, unless that specific day was approved in writing for work by the Owner's Representative.

.1 The Contractor must have fulfilled its contract obligations with respect to temporary facilities and protection of its work, and worker protection for hot and cold weather per OSHA guidelines.

.2 If the contract obligations have been satisfied, the Owner will review requests for non-compensable time extensions for critical path activities as follows:

.2.1 If the Contractor cannot work on a critical path activity due to adverse weather, after implementing all reasonable temporary weather protection, the Contractor will so notify the Owner's Representative. Each week, the Contractor will notify the Owner's Representative of the number of adverse weather days that it believes it has experienced in the previous week. As provided in the contract, until such time as the weather days acknowledged by the Owner's Representative exceed the number of days of adverse weather contemplated in the Special Conditions, no request for extension of the contract completion time will be considered.

.2.2 If the Contractor has accumulated in excess of the number of adverse weather days contemplated in the Special Conditions due to the stoppage of work on critical path activities due to adverse weather, the Owner will consider a time extension request from the Contractor that is submitted in accordance with the contract requirements. The Owner will provide a change order extending the time for contract completion or direct an acceleration of the work in accordance with the contract terms and conditions to recover the time lost due to adverse weather in excess of the number of adverse weather working days contemplated in the Special Conditions.

4.7.3 A Force Majeure event or circumstance shall not be the basis of a claim by the Contractor seeking an adjustment in the Contract amount for costs or expenses of any type. With the exception of weather delays which are administered under this Article 4, and notwithstanding other requirements of the Contract, all Force Majeure events resulting in a delay

to the critical path of the project shall be administered as provided in Article 8.

4.7.4 The Owner will consider and evaluate requests for time extensions due to changes or other events beyond the control of the Contractor on a monthly basis only, with the submission of the Contractor's updated schedule, in conjunction with the monthly application for payment.

4.8 Resolution of Claims and Disputes

4.8.1 The Owner's Representative will review Claims and take one or more of the following preliminary actions within ten days of receipt of a Claim: (1) request additional supporting data from the Contractor, (2) reject the Claim in whole or in part, (3) approve the Claim, or (4) suggest a compromise.

4.8.2 If a Claim has not been resolved, the Contractor shall, within ten days after the Owner's Representative's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested, (2) modify the initial Claim, or (3) notify the Owner's Representative that the initial Claim stands.

4.8.3 If a Claim has not been resolved after consideration of the foregoing and of further information presented by the Contractor, the Contractor has the right to seek administrative review as set forth in Section 4.9. However, Owner's Representative's decisions on matters relating to aesthetics will be final.

4.9 Administrative Review

4.9.1 Claims not resolved pursuant to the procedures set forth in the Contract Documents except with respect to Owner's Representative's decision on matters relating to aesthetic effect, and except for claims which have been waived by the making or acceptance of final payment, or the Contractor's acceptance of payments in full for changes in work may be submitted to administrative review as provided in this section. All requests for administrative review shall be made in writing.

4.9.2 Upon written request from the Contractor, the Owner's Review Administrator authorized by the Campus Contracting Officer will convene a review meeting between the Contractor and Owner's Representative's within fifteen (15) days of receipt of such written request. The Contractor and Owner's Representative will be allowed to present written documentation with respect to the claim(s) before or during the meeting. The Contractor and Owner's Representative will be allowed to present the testimony of any knowledgeable person regarding the claim at the review meeting. The Owner's Review Administrator will issue a written summary of the review meeting and decision to resolve the Claim within fifteen (15) days. If the Contractor is in agreement with the decision the Contractor shall notify the Owner's Review Administrator in writing within five (5) days, and

appropriate documentation will be signed by the parties to resolve the Claim.

4.9.3 If the Contractor is not in agreement with the proposal of the Owner's Review Administrator as to the resolution of the claim, the Contractor may file a written appeal with the UM System Contracting Officer, [in care of the Director of Facilities Planning and Development, University of Missouri, 109 Old Alumni Centers, University of Missouri, Columbia, Missouri 65211] within fifteen (15) days after receipt of the Owner's Review Administrator's proposal. The UM System Contracting Officer will call a meeting of the Contractor, the Owner's Representative, and the Owner's Review Administrator by written notice, within thirty (30) days after receipt of the Contractor's written appeal. The Owner's Review Administrator shall provide the UM System Contracting Officer with a copy of the written decision and summary of the review meeting, the Contractor's corrections or comments regarding the summary of the review meeting, and any written documentation presented by the Contractor and the Owner's Representative at the initial review meeting. The parties may present further documentation and/or present the testimony of any knowledgeable person regarding the claim at the meeting called by the UM System Contracting Officer.

4.9.4 The UM System Contracting Officer will issue a written decision to resolve the claim within fifteen (15) days after the meeting. If the Contractor is in agreement with the UM System Contracting Officer's proposal, the Contractor shall notify the UM System Contracting Officer in writing within five (5) days, and the Contractor and the Owner shall sign appropriate documents. The issuance of the UM System Contracting Officer's written proposal shall conclude the administrative review process even if the Contractor is not in agreement. However, proposals and any opinions expressed in such proposals issued under this section will not be binding on the Contractor nor will the decisions or any opinions expressed be admissible in any legal actions arising from the Claim and will not be deemed to remove any right or remedy of the Contractor as may otherwise exist by virtue of Contract Documents or law. Contractor and Owner agree that the Missouri Circuit Court for the County where the Work is located shall have exclusive jurisdiction to determine all issues between them. Contractor agrees not to file any complaint, petition, lawsuit or legal proceeding against Owner except with such Missouri Circuit Court.

ARTICLE 5 SUBCONTRACTORS

5.1 Award of Subcontracts

5.1.1 Pursuant to Article 9, the Contractor shall furnish the Owner and the Architect, in writing, with the name, and trade for each Subcontractor and the names of all persons or entities proposed as manufacturers of products, materials and equipment identified in the Contract Documents and where applicable, the name of the installing contractor. The

Owner's Representative will reply to the Contractor in writing if the Owner has reasonable objection to any such proposed person or entity. The Contractor shall not contract with a proposed person or entity to whom the Owner has made reasonable and timely objection.

5.1.2 The Contractor may request to change a subcontractor. Any such request shall be made in writing to the Owner's Representative. The Contractor shall not change a Subcontractor, person, or entity previously disclosed if the Owner makes reasonable objection to such change.

5.1.3 The Contractor shall be responsible to the Owner for acts, defaults, and omissions of its Subcontractors of any tier.

5.2 Subcontractual Relations

5.2.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor of any tier, to the extent of the Work to be performed by the Subcontractor of any tier, to be bound to the Contractor by terms of the Contract Documents and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner and the Architect. Each subcontract agreement of any tier shall preserve and protect the rights of the Owner and the Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor of any tier so that subcontracting thereof will not prejudice such rights and shall allow to the Subcontractor of any tier, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with its sub-subcontractors. The Contractor shall make available to each proposed Subcontractor of any tier, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor of any tier shall be bound. Subcontractors of any tier shall similarly make copies of applicable portions of such documents available to their respective proposed Subcontractors of any tier.

5.2.2 All agreements between the Contractor and a Subcontractor or supplier shall contain provisions whereby Subcontractor or supplier waives all rights against the Owner, contractor, Owner's representative, Architect and all other additional insureds for all losses and damages caused by, arising out of, or resulting from any of the perils covered by property or builders risk insurance coverage required of the Contractor in the Contract Documents. If Contractor fails to include said provisions in all subcontracts, Contractor shall indemnify, defend and hold all the above entities harmless in the event of any legal action by Subcontractor or supplier. If insureds on any such policies require separate waiver

forms to be signed by any Subcontractors of any tier or suppliers, Contractor shall obtain the same.

5.3 Contingent Assignment of Subcontract

5.3.1 No assignment by the Contractor of any amount or any part of the Contract or of the funds to be received thereunder will be recognized unless such assignment has had the written approval of the Owner, and the surety has been given due notice of such assignment and has furnished written consent hereto. In addition to the usual recitals in assignment Contracts, the following language must be set forth: "it is agreed that the funds to be paid to the assignee under this assignment are subject to performance by the Contractor of the contract and to claims and to liens for services rendered or materials supplied for the performance of the Work called for in said contract in favor of all persons, firms or corporations rendering such services or supplying such materials."

ARTICLE 6 SEPARATE CONTRACTS AND COOPERATION

6.1 The Owner reserves the right to let other contracts in connection with the Work.

6.2 It shall be the duty of each Contractor to whom Work may be awarded, as well as all Subcontractors of any tier employed by them, to communicate immediately with each other in order to schedule Work, locate storage facilities, etc., in a manner that will permit all Contractors to work in harmony in order that Work may be completed in the manner and within the time specified in the Contract Documents.

6.3 No Contractor shall delay another Contractor by neglecting to perform his work at the proper time. Each Contractor shall be required to coordinate his work with other Contractors to afford others reasonable opportunity for execution of their work. Any costs caused by defective, non-compliant, or ill-timed work, including actual damages and liquidated damages for delay, if applicable, shall be borne by the Contractor responsible therefor.

6.4 Each Contractor shall be responsible for damage to Owner's or other Contractor's property done by him or persons in his employ, through his or their fault or negligence. If any Contractor shall cause damage to any other Contractor, the Contractor causing such damage shall upon notice of any claim, settle with such Contractor.

6.5 The Contractor shall not claim from the Owner money damages or extra compensation under this Contract when delayed in initiating or completing his performance hereunder, when the delay is caused by labor disputes, acts of God, or the failure of any other Contractor to complete his performance under any Contract with the Owner, where any such cause is beyond the Owner's reasonable control.

6.6 Progress schedule of the Contractor for the Work shall be submitted to other Contractors as necessary to permit coordinating their progress schedules.

6.7 If Contractors or Subcontractors of any tier refuse to cooperate with the instructions and reasonable requests of other contractors performing work for the Owner under separate contract, in the overall coordinating of the Work, the Owner's Representative may take such appropriate action and issue such instructions as in his judgement may be required to avoid unnecessary and unwarranted delay.

ARTICLE 7 CHANGES IN THE WORK

7.1 CHANGE ORDERS

7.1.1 A change order is a written instrument prepared by the Owner and signed by the Owner and Contractor formalizing their agreement on the following:

- .1** a change in the Work
- .2** the amount of an adjustment, if any, in the Contract amount
- .3** an adjustment, if any, in the Contract time

7.1.2 The Owner may at any time, order additions, deletions, or revisions in the Work by a Change Order or a Construction Change Directive. Such Change Order or Construction Change Directive shall not invalidate the Contract and requires no notice to the surety. Upon receipt of any such document, or written authorization from the Owner's Representative directing the Contractor to proceed pending receipt of the document, Contractor shall promptly proceed with the Work involved in accordance with the terms set forth therein.

7.1.3 Until such time as the change order is formalized and signed by both the Owner and the Contractor it shall be considered a Change Order Request.

7.1.4 The amount of adjustment in the contract price for authorized Change Orders will be agreed upon before such Change Orders becomes effective and will be determined as follows:

- .1** By a lump sum proposal from the Contractor and the Subcontractors of any tier, including overhead and profit.
- .2** By a time and material basis with or without a specified maximum. The Contractor shall submit to the Owner's Representative itemized time and material sheets depicting labor, materials, equipment utilized in completing the Work on a daily basis for the Owner's Representative approval. If this pricing option is utilized, the Contractor may be required to submit weekly reports summarizing costs to

date on time and material change orders not yet finalized.

- .3** By unit prices contained in the Contractor's original bid and incorporated in the Construction Contract or subsequently agreed upon. Such unit prices contained in the Contractor's original proposal are understood to include the Contractor's overhead and profit. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order that application of such unit prices to quantities of the Work proposed will cause substantial inequity to the Owner or to the Contractor, the applicable unit prices shall be equitably adjusted.

7.1.5 The Contractor shall submit all fully documented change order requests with corresponding back-up documentation within the time requested by the Owner but no later than fourteen (14) working days following 1.) the Owner's request for change order pricing in the case of a lump sum; or 2.) the completion of unit price or time and material work.

7.1.6 The Contractor shall submit change order requests in sufficient detail to allow evaluation by the Owner. Such requests shall be fully itemized by units of labor, material and equipment and overhead and profit. Such breakdowns shall be itemized as follows:

- .1** Labor: The Contractor's proposal shall include breakdowns by labor, by trade, indicating number of hours and cost per hour for each Subcontractor as applicable. Such breakdowns shall only include employees in the direct employ of Contractor or Subcontractors in the performance of the Work. Such employees shall only include laborers at the site, mechanics, craftsmen and foremen. Payroll cost shall include base rate salaries and wages plus the cost of fringe benefits required by agreement or custom and social security contributions, unemployment, payroll taxes and workers' or workmen's compensation insurance and other customary and legally required taxes paid by the Contractor or Subcontractors. Any item or expense outside of these categories is not allowed. The expense of performing Work after regular working hours, on Saturdays, Sundays or legal holidays shall not be included in the above, unless approved in writing and in advance by Owner.
- .2** Material, supplies, consumables and equipment to be incorporated into the Work at actual invoice cost to the Contractor or Subcontractors; breakdowns showing all material, installed equipment and consumables fully itemized with number of units installed and cost per unit extended. Any singular item or items in aggregate greater than one thousand dollars (\$1,000) in cost shall be supported with supplier invoices at the request of the Owner's Representative. Normal hand tools are not compensable.
- .3** Equipment: Breakdown for required equipment shall itemize (at a minimum) delivery / pick-up charge, hourly

rate and hours used. Operator hours and rate shall not be included in the equipment breakdown. Contractor must use the most cost-effective equipment available in the area and should not exceed the rates listed in the Rental Rate Blue Book for Construction Equipment (Blue Book). Contractor shall submit documentation for the Blue Book to support the rate being requested.

7.2 Construction Change Directive

7.2.1 A construction change directive is a written order prepared and signed by the Owner, issued with supporting documents prepared by the Architect (if applicable), directing a change in the Work prior to agreement on adjustment of the Contract amount or Contract time, or both. A Construction Change Directive shall be used in the absence of complete agreement between the Owner and Contractor on the terms of a change order. If the Construction Change Directive allows an adjustment of the contract amount or time, such adjustment amount shall be based on one of the following methods:

- .1** A lump sum agreement, properly itemized and supported by substantiating documents of sufficient detail to allow evaluation.
- .2** By unit prices contained in the Contractor's original proposal and incorporated in the Construction Contract or subsequently agreed upon.
- .3** A method agreed to by both the Owner and the contractor with a mutually agreeable fee for overhead and profit.
- .4** In the absence of an agreement between the Owner and the Contractor on the method of establishing an adjustment of the contract amount, the Owner, with the assistance of the architect, shall determine the adjustment amount on the basis of expenditures by the Contractor for labor, materials, equipment, and other costs consistent with other provisions of the Contract. The contractor shall keep and submit to the Owner an itemized accounting of all cost components, either expended or saved, while performing the Work covered under the Construction Change Directive.

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

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

7.3 Overhead and Profit

7.3.1 Overhead and Profit on Change Orders shall be applied as follows:

- .1** The overhead and profit charged by the Contractor and Subcontractors shall be considered to include, but not limited to, job site office and clerical expense, normal hand tools, incidental job supervision, field supervision, payroll costs and other compensation for project manager, officers, executives, principals, general managers, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, time-keepers, and other personnel employed whether at the site or in principal or a branch office for general superintendent and administration of the Work.
- .2** The percentages for overhead and profit charged on Change Orders shall be negotiated and may vary according to the nature, extent, and complexity of the Work involved but in no case shall exceed the following:
 - 15% To the Contractor or the Subcontractor of any tier for Work performed with their respective forces or materials purchased
 - 5% To the Contractor on Work performed by other than his forces
 - 5% To first tier Subcontractor on Work performed by his Subcontractor
- .3** The Contractor will be allowed to add 2% for the cost of bonding and insurance to their cost of work. This 2% shall be allowed on the total cost of the added work, including overhead and profit.
- .4** Not more than three mark-ups, not to exceed individual maximums shown above, shall be allowed regardless of the number of tier subcontractors. Overhead and profit shall be shown separately for each subcontractor of any tier and the Contractor.
- .5** On proposals covering both increases and decreases in the amount of the Contract, the application of overhead and profit shall be on the net change in direct cost for the Contractor or Subcontractor of any tier performing the Work.
- .6** The percentages for overhead and profit credit to the Owner on Change Orders that are strictly decreases in the quantity of work or materials shall be negotiated and may vary according to the nature, extent, and complexity of the Work involved, but shall not be less than the following:

Overhead and Profit

 - 7.5% Credit to the Owner from the Contractor or Subcontractor of any tier for Work performed with their respective forces or materials purchased
 - 2.5% Credit to the Owner from the Contractor on Work performed by other than his forces
 - 2.5% Credit to the Owner from the first tier Subcontractor on Work performed by his Subcontractor of any tier

7.4 Extended General Conditions

7.4.1 The Contractor acknowledges that the percentage mark-up allowed on change orders for overhead and profit cover the Contractor's cost of administering and executing the Work, inclusive of change orders that increase the contract time. Contractor further acknowledges that no compensation beyond the specified mark-up percentages for extended overhead shall be due or payable as a result of an increase in the Contract Time.

7.4.2 The Owner may reimburse the Contractor for extended overhead if an extension of the Contract Time is granted by the Owner, in accordance with Article 4.7.1 and the Owner determines that the extension of the Contract Time creates an inequitable condition for the Contractor. If these conditions are determined by the Owner to exist, the Contractor may be reimbursed by unit prices contained in the Contractor's original bid and incorporated in the Construction Contract or by unit prices subsequently agreed upon.

7.4.3 If unit prices are subsequently agreed upon, the Contractor's compensation shall be limited as follows:

- .1** For the portion of the direct payroll cost of the Contractor's project manager expended in completing the Work and the direct payroll cost of other onsite administrative staff not included in Article 7.3.1. Direct payroll cost shall include base rate salaries and wages plus the cost of fringe benefits required by agreement or custom and social security contributions, unemployment, payroll taxes and workers' or workmen's compensation insurance and other customary and legally required taxes paid by the Contractor;
- .2** Cost of Contractor's temporary office, including temporary office utilities expense;
- .3** Cost of temporary utilities required in the performance of the work;
- .4** Profit not to exceed 5% of the total extended overhead direct costs;

7.4.4 All costs not falling into one of these categories and costs of the Contractors staff not employed onsite are not allowed.

7.5 Emergency Work

7.5.1 If, during the course of the Work, the Owner has need to engage the Contractor in emergency work, whether related to the Work or not, the Contractor shall immediately proceed with the emergency work as directed by the Owner under the applicable provisions of the contract. In so doing, Contractor agrees that all provisions of the contract remain in full force and effect and the schedule for the Work is not impacted in any way unless explicitly agreed to in writing by the Owner.

ARTICLE 8 TIME

8.1 Progress and Completion

8.1.1 Contractor acknowledges and agrees that time is of the essence of this Contract

8.1.2 Contract Time is the period of time set forth in the Contract for Construction required for Substantial Completion and Final Completion of the entire Work or portions of the Work as defined in the Contract Documents. Time limits stated in the Contract Documents are of the essence of the Contract. The Contract Time may only be changed by a Change Order. By executing the Contract, the Contractor confirms that the Contract Time is a sufficient period for performing the Work in its entirety.

8.1.3 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance and bonds required by Article 11 to be furnished by the Contractor.

8.1.4 The Contractor shall proceed expeditiously and diligently with adequate forces and shall achieve Substantial Completion and Final Completion within the time specified in the Contract Documents.

8.2 Delay in Completion

8.2.1 The Contractor shall be liable for all of the Owner's damages for delay in achieving Substantial Completion and/or Final Completion of the entire Work or portions of Work as set forth in the Contract Documents within the Contract Time unless liquidated damages are specifically provided for in the Contract Documents. If liquidated damages are specifically provided for in the Contract for Construction, Contractor shall be liable for such liquidated damages as set forth in Paragraph 8.3

8.2.2 All time limits stated in the Contract are of the essence of the Contract. However, if the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner or by the Owner's Representative, by changes ordered in the Work, Force Majeure including but not limited to war, armed conflict, riot, civil commotion or disorder, act of terrorism or sabotage; epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions, compliance with any law or governmental order, rule, regulation or direction, curfew restriction, act of God or natural disaster such as earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, damage or destruction by lightning, drought; explosion, fire, destruction of machines, equipment, prolonged break-down of transport, telecommunication or electric current; general labor disturbance such as but not limited to boycott, strike and lock-out, occupation of factories and premises, or any other causes beyond the Contractor's reasonable control which the Owner's Representative determines may justify

delay then, upon submission of the Time Impact Schedule Analysis (TIA) justifying the delay called out in Section 4.7 of these General Conditions, the Contract Time may be extended for a reasonable time to the extent such delay will prevent Contractor from achieving Substantial Completion and/or Final Completion within the Contract Time and if performance of the Work is not, was not or would not have been delayed by any other cause for which the Contractor is not entitled to an extension of the Contract Time under the Contract Documents. It shall be a condition precedent to any adjustment of the Contract Time that Contractor provide the Owner's Representative with written notice of the cause of delay within seven (7) days from the occurrence of the event or condition which caused the claimed delay. If a Force Majeure is approved by the Owner as the basis for a delay claim, an adjustment in the contract time to the extent the Force Majeure impacts the schedule is the only remedy. No increase in the contract sum for any reason shall be allowed due to a Force Majeure.

8.2.3 The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (1) is not caused, or could not have been anticipated, by the Contractor, (2) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay, (3) prevents Contractor from completing its Work by the Contract Time, and (4) is of a duration not less than one (1) day. Delays attributable to and within the control of a Subcontractor or supplier shall not justify an extension of the Contract Time.

8.2.4 Notwithstanding anything to the contrary in the Contract Documents, except as otherwise noted in these General Conditions, an extension in the Contract Time, to the extent permitted under this Article, shall be the sole remedy of the Contractor for any (1) delay in the commencement, prosecution or completion of the Work, (2) hindrance or obstruction in the performance of the Work, (3) loss of productivity, or (4) other claims due to or caused by any events beyond the control of both the Owner and Contractor defined herein as Force Majeure. In no event shall the Contractor be entitled to any compensation or recovery of any damages or any portion of damages resulting from delays caused by or within the control of Contractor or by acts or omissions of Contractor or its Subcontractors of any tier or delays beyond the control of both Owner and Contractor. If the Contractor contends that delay, hindrance, obstruction or other adverse condition results from acts or omissions of the Owner, the Owner's Representative or the Architect, Contractor shall provide written notice to the Owner within seven (7) calendar days of the event giving rise to such claim. Contractor shall only be entitled to an adjustment in the Contract Sum to the extent that such acts or omissions continue after the Contractor's written notice to the Owner of such acts or omissions, but in no case shall Force Majeure be the basis of an increase in the Contract sum. The Owner's exercise of any of its rights or remedies under the Contract

Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling or correction of the Work) regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be the basis of any Claim for an increase in the Contract Sum or Contract Time. In the event Contractor is entitled to an adjustment in the Contract Sum for any delay, hindrance, obstruction or other adverse condition caused by the acts or omissions of the Owner, the Owner's Representative or the Architect, Contractor shall only be entitled to its actual direct costs caused thereby and Contractor shall not be entitled to and waives any right to special, indirect, or consequential damages including loss of profits, loss of savings or revenues, loss of anticipated profits, labor inefficiencies, idle equipment, home office overhead, and similar type of damages.

8.2.5 If the Contractor submits a progress report or any construction schedule indicating, or otherwise expressing an intention to achieve completion of the Work prior to any completion date required by the Contract Documents or expiration of the Contract Time, no liability of the Owner to the Contractor for any failure of the Contractor to so complete the Work shall be created or implied. Further, the Contractor acknowledges and agrees that even if Contractor intends or is able to complete the Work prior to the Contract Time, it shall assert no Claim and the Owner shall not be liable to Contractor for any failure of the Contractor, regardless of the cause of the failure, to complete the Work prior to the Contract Time.

8.3 Liquidated Damages

8.3.1 If Liquidated Damages are prescribed on the Bid Form and Special Conditions in the Contract Documents, the Owner may deduct from the Contract Sum and retain as Liquidated Damages, and not as penalty or forfeiture, the sum stipulated in the Contract Documents for each calendar day after the date specified for completion of the Work that the entire Work is not substantially complete and/or finally complete.

8.3.2 The Owner's Representative shall establish the date of Substantial completion and the date of Final Completion of the Work which shall be conclusive and binding on the Owner and Contractor for the purpose of determining whether or not Liquidated Damages shall be assessed under terms hereof and the sum total amount due.

8.3.3 Liquidated Damages or any matter related thereto shall not relieve the Contractor or his surety of any responsibility or obligation under this Contract.

ARTICLE 9 PAYMENTS AND COMPLETION

9.1 Commencement, Prosecution, and Completion

9.1.1 The Contractor shall commence Work within five (5) days upon the date of a "Notice to Proceed" from the Owner or the date fixed in the Notice to Proceed. Contractor shall prosecute the Work with faithfulness and diligence, and the

Contractor shall complete the Work within the Contract Time set forth in the Contract Documents.

9.1.2 The Owner will prepare and forward three (3) copies of the Contract and Performance Bond to the bidder to whom the contract for the Work is awarded and such bidder shall return two (2) properly executed prescribed copies of the Contract and Bond to the Owner.

9.1.3 The construction period, when specified in consecutive calendar days, shall begin when the Contractor receives notice requesting the instruments listed in below. Before the Owner will issue Notice to Proceed to permit the Contractor to begin Work, the Owner shall have received the following instruments, properly executed as described in the Contract Documents. The documents below shall have been received by the Owner within fifteen (15) days after receipt of request for documents:

- .1 Contract
- .2 Bond (See Article 11)
- .3 Insurance (See Article 11)
- .4 List of Subcontractors of any tier
- .5 Affirmative Action Plan (see Article 13.4)

9.1.4 In the event Contractor fails to provide Owner such documents, Contractor may not enter upon the site of the Work until such documents are provided. The date the Contractor is required to commence and complete the Work shall not be affected by the Owner denying Contractor access to the site as a result of Contractor's failure to provide such documents and Contractor shall not be entitled to an adjustment of the Contract Time or Contract sum as a result of its failure to comply with the provisions of this Paragraph

9.1.5 Contracts executed by partnerships shall be signed by all general partners of the partnership. Contracts signed by corporations shall be signed by the President or Vice President and the Secretary or Assistant Secretary. In case the Assistant Secretary or Vice President signs, it shall be so indicated by writing the word "Asst." or "Vice" in front of the words "Secretary" and "President". The corporate seal of the corporation shall be affixed. For all other types of entities, the Contractor and the person signing the Contract on behalf of Contractor represent and warrant that the person signing the Contract has the legal authority to bind Contractor to the Contract.

9.1.6 Any successful bidder which is a corporation organized in a state other than Missouri or any bidder doing business in the State of Missouri under a fictitious name shall furnish, at no cost to the Owner, no later than the time at which the executed Contract for Construction, the Payment Bond, and the Performance Bond are returned, a properly certified copy of its current Certificate of Authority and License to do business in the State of Missouri. No contract will be executed by the

Owner until such certificate is furnished by the bidder, unless there already is on file with the Owner a current certificate, in which event, no additional certificate will be required during the period of time for which such current certificate remains in effect.

9.1.7 Within fifteen (15) calendar days of the issuance of a Notice to Proceed, the Contractor shall submit one (1) signed copy of the following instruments. No payment will be processed until all of these instruments are received and approved by the Owner's Representative.

- .1 Reproducible progress and payment schedule
- .2 Contractor's Schedule of Values
- .3 List of material suppliers
- .4 Itemized breakdown of all labor rates for each classification. Overhead and profit shall not be included. Payroll cost shall include base rate salaries and wages plus the cost of fringe benefits required by agreement or custom and social security contributions, unemployment, payroll taxes and workers' or workmen's compensation insurance and other customary and legally required taxes paid by the Contractor or Subcontractors. Any item or expense outside of these categories is not allowed. The expense of performing Work after regular working hours, on Saturdays, Sundays or legal holidays shall not be included in the above, unless approved in writing and in advance by Owner.
- .5 Itemized breakdown of anticipated equipment rates (breakout operator rate). Overhead and profit shall not be included. Breakdown for required equipment shall itemize (at a minimum) delivery/ pick-up charge, hourly rate and hours used. Operator hours and rate shall not be included in the equipment breakdown. Contractor must use the most cost-effective equipment available in the area and should not exceed the rates listed in the Rental Rate Blue Book for Construction Equipment (Blue Book). Contractor shall submit documentation for the Blue Book to support the rate being requested.

9.1.8 The Contractor shall be paid electronically using the Owner's web-based payment program with a direct electronic transfer from the Owner's account into the Contractor's account. The Contractor must submit the following information to the Owner's Representative:

- .1 Bank Transit Number for the Contractor's bank into which the electronic deposit will be made.
- .2 Bank Account Number for the Contractor's account into which the electronic deposit will be made.
- .3 Contractor's E-Mail address so that formal notification of the deposit by the Owner can be provided.

9.2 Contract Sum

9.2.1 The Owner shall compensate Contractor for all Work described herein, and in the Contract Documents the Contract

Sum set forth in the Contract for Construction, subject to additions and deletions as provided hereunder.

9.3 Schedule of Values

9.3.1 Within fifteen (15) days after receipt of the Notice to Proceed, the Contractor shall submit to the Owner's Representative a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner's Representative may require. This schedule, unless objected to by the Owner's Representative, shall be used as a basis for reviewing the Contractor's Applications for Payment. The values set forth in such schedule may, at the Owner's option be used in any manner as fixing a basis for additions to or deletions from the Contract Sum.

9.3.2 The progress and payment schedule of values shall show the following:

- .1** Enough detail as necessary to adequately evaluate the actual percent complete of any line item on a monthly basis, as determined by the Owner's Representative.
- .2** Line items, when being performed by a subcontractor or material supplier, shall correlate directly back to the subcontract or purchase order amount if requested by the Owner's Representative.

9.4 Applications for Payment

9.4.1 The Contractor shall submit monthly to the Owner's Representative and the Architect an itemized Application for Payment for operations completed in accordance with the Schedule of Values. Such application shall be supported by such data substantiating the Contractor's right to payment as the Owner's Representative or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage as provided for herein.

9.4.2 Such applications shall not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier

9.4.3 Progress payments shall be made on account of materials and equipment delivered to the site and incorporated in the Work. No payments will be made for materials and equipment stored at the Project site but not yet incorporated into the Work except as provided in Paragraph 9.4.4.

9.4.4 If approved in writing and in advance by Owner, progress payments may be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. Owner may in its sole discretion refuse to grant approval for payments for materials and equipment stored at the Project site but not yet incorporated in the Work. Any approval by Owner for payment for materials and equipment delivered and suitably stored at the site, or stored offsite as noted below,

for subsequent incorporation in the Work shall be conditioned upon Contractor's demonstrating that such materials and equipment are adequately protected from weather, damage, vandalism and theft and that such materials and equipment have been inventoried and stored in accordance with procedures established by or approved by the Owner. Nothing in this clause shall imply or create any liability on the part of the Owner for the Contractor's inventory and storage procedures or for any loss or damage to material, equipment or supplies stored on the site, whether incorporated into the work or not. In the event any such loss or damage occurs, the Contractor remains solely responsible for all costs associated with replacement of the affected materials, supplies and equipment including labor and incidental costs, and shall have no claim against the Owner for such loss.

No allowance shall be made in the project pay requests for materials not delivered to the site of the work and incorporated into the work, except as noted below. For the purposes of this Article, Offsite is defined as any location not owned or leased by the Owner. Contractor shall submit a list of materials that they are requesting payment for offsite storage within 60 days of Notice to Proceed.

- .1** Items considered to be major items of considerable magnitude, if suitably stored, may be allowed in project pay requests on the basis of ninety percent (90%) of invoices
- .2** Determination of acceptable "major items of considerable magnitude" and "suitably stored" shall be made by the Owner's Representative.
- .3** Aggregate quantities of materials not considered unique to this project will not be considered for offsite storage payment.
- .4** Contractor shall submit to the Owner's Representative a list of the material for which application for payment for offsite storage is anticipated no less than forty-five days prior to the submission of the applicable pay request. The list shall include a material description, applicable division, quantity, and discounts offered to the Owner for early payment. Contractor shall also submit the location the material will be stored and the method of protection
- .5** The storage facility shall be subject to approval by the Owner's representative, shall be located within an acceptable distance of the project sites as established by the Owner's Representative and all materials for the Owner's project must be stored separately from all other items within the storage facility and shall be labeled and stored in the name of The Curators of the University of Missouri.
- .6** The Owner's representative shall be provided a minimum of two weeks' notice to visit the storage facility and inspect the stored material prior to submission of the pay request.
- .7** Upon favorable inspection by the Owner's Representative, the Contractor shall, at the Owner's option, submit a Bill of Sale and Bailment Agreement on forms provided by the Owner's

Representative, transferring title of the material or equipment to The Curators of the University of Missouri.

- .8 An invoice provided by the supplier shall be included with the applicable pay request.
- .9 The contractor shall remain fully responsible for all items, until acceptance of the project by the Owner.
- .10 The contractor shall reimburse all costs incurred by the Owner in inspecting and verifying all material stored offsite, including mileage, airfare, meals, lodging and time, charged at a reasonable hourly rate.
- .11 The Contractor shall furnish and maintain insurance covering the replacement cost of the material stored offsite against all losses and shall furnish proof of coverage with the application for payment for material stored offsite.
- .12 The Contractor is responsible for all costs related to storage and handling of material stored offsite unless otherwise directed by the Owner's Representative.

9.4.5 The Application for Payment shall constitute a representation by the Contractor to the Owner that the Work has progressed to the point indicated; the quality of the Work covered by the Application for Payment is in accordance with the Contract Documents; and the Contractor is entitled to payment in the amount requested.

9.4.6 The Contractor will be reimbursed for ninety-five percent (95%) of the value of all labor furnished and material installed and computed in the same manner, less all previous payments made. On projects where a bond is not required, the contractor will be reimbursed for ninety percent (90%) of the value of all labor furnished and material installed and computed in the same manner, less all previous payments made

9.5 Approval for Payment

9.5.1 The Owner's Representative will, within fifteen (15) days after receipt of the Contractor's Application for Payment, either approve Contractor's Application for Payment for such amount as the Owner's Representative determines is properly due or notify the Contractor of the Owner's Representative's reasons for withholding certification in whole or in part as provided in Section 9.6.

9.6 Decisions to Withhold Approval

9.6.1 The Owner's Representative may decide not to certify payment and may withhold approval in whole or in part, to the extent reasonably necessary to protect the Owner. If the Owner's Representative is unable to approve payment in the amount of the Application, the Owner's Representative will notify the Contractor as provided in Paragraph 9.5.1. If the Contractor and Owner's Representative cannot agree on a revised amount, the

Owner's Representative will promptly issue approval for payment for the amount for which the Owner's Representative is able to determine is due Contractor. The Owner's Representative may also decide not to approve payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of approval for payment previously issued, to such extent as may be necessary in the Owner's Representative opinion to protect the Owner from loss because of:

- .1 defective or non-compliant Work not remedied, or damage to completed Work;
- .2 failure to supply sufficient skilled workers or suitable materials;
- .3 third party claims filed or reasonable evidence indicating probable filing of such claims;
- .4 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment, Owner may, at its sole option issue joint checks to subcontractors who have presented evidence that it has not been paid in accordance with the Contract;
- .5 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .6 damage to the Owner or another contractor;
- .7 reasonable evidence that the Work will not be completed within the Contract Time or an unsatisfactory rate of progress made by Contractor;
- .8 Contractor's failure to comply with applicable Laws;
- .9 Contractor's or Subcontractor's failure to comply with contract Prevailing Wage requirements; or
- .10 Contractor's failure to carry out the Work in strict accordance with the Contract Documents.

9.6.2 When the above reasons for withholding approval are removed, approval will be made for amounts previously withheld.

9.7 Progress Payments

9.7.1 Based upon Applications for Payment submitted to the Owner by the Contractor and approvals issued by the Owner's Representative, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

9.7.2 The period covered by each Application for Payment shall be one (1) calendar month.

9.7.3 The Owner shall make payment to Contractor for amounts due and approved by Owner's Representative not later than thirty (30) days after the Owner approves a properly detailed Application for Payment which is in compliance with the Contract Documents. The Owner shall not have the obligation to process or pay such Application for Payment until it receives an Application for Payment satisfying such requirements.

9.7.4 Based on the Schedule of Values submitted by Contractor, Applications for Payment submitted by Contractor

shall indicate the actual percentage of completion of each portion of Contractor's Work as of the end of the period covered by the Application for Payment.

9.7.5 The Contractor shall promptly pay each Subcontractor and Supplier, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's or supplier's portion of the Work, the amount to which said Subcontractor or supplier is entitled, reflecting percentages actually retained from payments to the Contractor on account of each Subcontractor's or supplier's portion of the Work, in full compliance with state statute. The Contractor shall, by appropriate agreement with each Subcontractor or supplier, require each Subcontractor or supplier to make payments to Sub-subcontractors in similar manner.

9.7.6 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor of any tier nor a laborer or employee of Contractor except to the extent required by law. Retainage provided for by the Contract Documents are to be retained and held for the sole protection of Owner, and no other person, firm or corporation shall have any claim or right whatsoever thereto.

9.7.7 An approval for payment by Owner's Representative, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.8 Failure of Payment

9.8.1 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment by Contractor shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to: (1) deduct an amount equal to that to which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that to which the Owner is entitled.

9.9 Substantial Completion

9.9.1 Substantial Completion is the stage in the progress of the Work as defined in Paragraph 1.1.14 as certified by the Owner.

9.9.2 When the Contractor considers the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify the Owner and the Architect. The Owner's

Representative will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's Representative's inspection discloses any item which is not in accordance with the requirements of the Contract Documents, the Contractor shall complete or correct such item upon notification by the Owner's Representative. The Contractor shall then submit a request for another inspection by the Owner's Representative to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Owner will issue a Certificate of Substantial Completion. Substantial Completion shall transfer from the Contractor to the Owner responsibilities for security, maintenance, heat, utilities, damage to the Work and insurance. In no event shall Contractor have more than thirty (30) days to complete all items on the Punch List and achieve Final Completion. Warranties required by the Contract Documents shall commence on the date of Substantial Completion or as agreed otherwise.

9.9.3 At the date of Substantial Completion, the Contractor may apply for, and if approved by Owner's Representative, the Owner, subject to the provisions herein, shall increase total payments to one hundred percent (100%) of the Contract Sum less one hundred fifty percent (150%) of the value of any incomplete Work and unsettled claims, as determined by the Owner's Representative.

9.10 Partial Occupancy or Use

9.10.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, security, maintenance, heat, utilities, damage to the Work and insurance. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by the Owner's Representative.

9.10.2 Immediately before such partial occupancy or use, the Owner, and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.11 Final Completion and Final Payment

9.11.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner's Representative and the Architect will promptly make such inspection and, when the Owner's Representative and Architect find the Work acceptable under the Contract Documents and the Contract fully performed, the Owner's Representative will promptly issue a final approval for payment; otherwise, Owner's

Representative will return Contractor's Final Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application. Submission of a Final Application for Payment shall constitute a further representation that conditions listed in Paragraph 9.11.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Owner's Representative as part of the final Application for Payment. The final approval for payment will not be issued by the Owner's Representative until all warranties and guarantees have been received and accepted by the Owner.

9.11.2 The Owner will request the Contractor to submit the application for final payment along with a manually signed notarized letter on the Contractor's letterhead certifying that:

- .1** Labor costs, prevailing wage rates, fringe benefits and material costs have been paid.
- .2** Subcontractors of any tier and manufacturers furnishing materials and labor for the project have fully completed their Work and have been paid in full.
- .3** The project has been fully completed in accordance with the Contract Documents as modified by Change Orders.
- .4** The acceptance by Contractor of its Final Payment, by check or electronic transfer, shall be and operate as a release of all claims of Contractor against Owner for all things done or furnished or relating to the Work and for every act or alleged neglect of Owner arising out of the Work.

9.11.3 Final Payment constituting the entire unpaid balance due shall be paid by the Owner to the Contractor within thirty (30) days after Owner's receipt of Contractor's Final Application for Payment which satisfies all the requirements of the Contract Documents and Owner's receipt of all information and documents set forth in Section 9.11.

9.11.4 No payment under this Contract, including but not limited to final payment, shall constitute acceptance by Owner of any Work or act not in accordance with the requirements of the Contract Documents.

9.11.5 No recourse shall be had against any member of the Board of Curators, or officer thereof, for any payment under the Contract or any claim based thereon.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 Safety Precautions and Programs

10.1.1 The Contractor shall at all times conduct operations under this Contract in a manner to avoid the risk of bodily harm to persons or risk of damage to any property. The Contractor shall promptly take precautions which are necessary and adequate against conditions created during the progress of the Contractor's activities hereunder which involve a risk of bodily harm to persons or a risk of damage to property. The Contractor shall continuously inspect Work, materials, and equipment to discover and determine any such conditions and shall be solely responsible for discovery, determination, and correction of any such conditions. The Contractor shall comply with applicable safety laws, standards, codes, and regulations in the jurisdiction where the Work is being performed, specifically, but without limiting the generality of the foregoing, with rules regulations, and standards adopted pursuant to the Williams-Steiger Occupational Safety and Health Act of 1970 and applicable amendments.

10.1.2 All contractors, subcontractors and workers on this project are subject to the Construction Safety Training provisions 292.675 RSMo.

10.1.3 In the event the Contractor encounters on the site, material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), lead, mercury, or other material known to be hazardous, which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner's Representative and the Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner's Representative and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless by written agreement of the Owner's Representative and the Contractor. "Rendered Harmless" shall mean that levels of such materials are less than any applicable exposure standards, including but limited to OSHA regulations.

10.2 Safety Of Persons and Property

10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide protection to prevent damage, injury, or loss to:

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

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

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, safeguards for safety and protection, including, but not limited to, posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise the highest degree of care and carry on such activities under supervision of properly qualified personnel.

10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Article 10 caused in whole or in part by the Contractor, a Subcontractor of any tier, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable, and for which the Contractor is responsible under Article 10, except damage or loss attributable solely to acts or omissions of Owner or the Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's other obligations stated elsewhere in the Contract.

10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents, and the maintaining, enforcing and supervising of safety precautions and programs. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner's Representative and Architect. The Contractor shall hold regularly scheduled safety meetings to instruct Contractor personnel on safety practices, accident avoidance and prevention, and the Project Safety Program. The Contractor shall furnish safety equipment and enforce the use of such equipment by its employees and its subcontractors of any tier.

10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

10.2.8 The Contractor shall promptly report in writing to the Owner all accidents arising out of or in connection with

the Work which cause death, lost time injury, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately.

10.2.9 The Contractor shall promptly notify in writing to the Owner of any claims for injury or damage to personal property related to the work, either by or against the Contractor.

ARTICLE 11 INSURANCE & BONDS

11.1 Insurance

11.1.1 Contractor shall secure from the date of the Contract for Construction and maintain for such periods of time as set forth below, insurance of such types and in such amounts specified below, to protect Contractor, Owner and others against all hazards or risks of loss described below. The form of such insurance together with carriers thereof, in each case, shall be approved by Owner, but, regardless of such approval, it shall be the responsibility of Contractor to maintain the insurance coverages set forth herein.

11.1.2 The contractor shall not be allowed on the Owners property without proof of the insurance coverages set forth herein

11.2 Commercial General Liability

11.2.1 Contractor shall secure and maintain from the date of the Contract and for a period of at least five (5) years from the date of Final Completion of the entire Work Commercial General Liability insurance ("CGL") with a combined single limit of not less than \$2,000,000 per occurrence, \$5,000,000 general aggregate, \$5,000,000 products and completed operations aggregate and \$1,000,000 personal injury and advertising injury. General Aggregate should apply per project. An umbrella policy may be used to satisfy these limits. If the General Aggregate is not on a per project basis, the contractor shall provide an additional \$2,000,000 general aggregate.

11.2.2 CGL insurance shall be written on a comprehensive form and shall cover claims and liability in connection with or resulting from the Contractor's operations and activities under the Contract, for personal injuries, occupational sickness, disease, death or damage to property of others, including loss of use resulting therefrom, arising out of any operations or activities of the Contractor, its agents, or any Subcontractors of any tier or by anyone directly or indirectly employed by either of them.

11.2.3 CGL insurance shall include premises, operations, independent contractors, products-completed operations, personal injury and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) coverages. In particular, and not by way of any limitation, the CGL

insurance shall cover the Contractor's indemnity obligations contained in the Contract Documents.

11.2.4 There shall be no endorsement or modification of the CGL policy limiting the scope of coverage for liability arising from blasting, explosion, collapse, or underground property damage.

11.2.5 "The officers, employees, and agents of The Curators of the University of Missouri" shall be endorsed as an "additional insured" under the CGL policy. The additional insured status must be conveyed by using the ISO CG 2 10 (2004) edition or equivalent and the ISO CG 20 37 (2004) edition. The policy shall be endorsed to be primary coverage and any other insurance carried by the Owner shall be excess only and will not contribute with Contractors' insurance. To confirm, the Endorsement should accompany the insurance certificate.

11.2.6 Contractor waives all rights against Owner and its agents, officers, representatives, and employees for recovery of damages to the extent those damages are covered by the CGL policy required hereunder.

11.3 Licensed for Use Vehicle Liability

11.3.1 Contractor shall secure and maintain from the date of the Contract for Construction until the date of Final Completion of the entire Work, insurance, to be on comprehensive form, which shall protect Contractor against any and all claims for all injuries and all damage to property arising from the use of automobiles, trucks and motorized vehicles, in connection with the performance of Work under this Contract, and shall cover the operation on or off the site of the Work of all motor vehicles licensed for highway use whether they are owned, non-owned or hired. Such insurance shall include contractual liability coverage and shall provide coverage on the basis of the date of any accident. The liability limits under such policy shall not be less than \$2,000,000 combined single limit for bodily injury and property damage per accident.

11.3.2 Contractor waives all rights against Owner and its agents, officers, directors, and employees for recovery of damages to the extent such damages are covered by the automobile liability insurance required hereunder.

11.4 Workers' Compensation Insurance

11.4.1 Contractor shall purchase and maintain workers' compensation insurance and employers' liability insurance which shall protect Contractor from claims for injury, sickness, disease or death of Contractor's employees or statutory employees. The insurance policies required hereunder shall include an "all states" or "other states" endorsement. In case any Work is sublet, Contractor shall require any Subcontractor of any tier to provide the insurance coverages required under this Section 11.4.

11.4.2 Contractor's workers' compensation insurance coverage shall be in compliance with all applicable Laws, including the statutes of the State of Missouri. Contractor's employers' liability coverage limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

11.5 Liability Insurance General/Other Requirements

11.5.1 Any Consultant/Contractor providing professional design services as part of the contract shall be required to provide and maintain, from the date of this Contract and for a period of ten (10) years after the date of Final Completion, Professional Liability insurance to cover any claims, including but not limited to errors, omissions, and negligence, which may arise from the Design and related Services performed by the Consultant. The minimum limits for such Policy shall be \$1,000,000.00 per occurrence/\$1,000,000.00 aggregate. The insurance afforded by the policy shall meet the requirements of this Section 11.2 and Section 11.5 relating to CGL Policies, and without limiting the foregoing, shall be extended to cover the liability of "The officers, employees, and agents of The Curators of the University of Missouri", who shall be named as additional insureds therein, and this liability is assumed in writing by the Contractor's Consultant under the written Subcontract described herein. All insurance coverages procured by Contractor shall be provided by agencies and insurance companies acceptable to and approved by Owner. Any insurance coverage shall be provided by insurance companies that are duly licensed to conduct business in the State of Missouri as an admitted carrier. The form and content of all insurance coverage provided by Contractor are subject to the approval of Owner. All required insurance coverages shall be obtained and paid for by Contractor. Any approval of the form, content or insurance company by Owner shall not relieve the Contractor from the obligation to provide the coverages required herein.

11.5.2 All insurance coverage procured by the Contractor shall be provided by insurance companies having policyholder ratings no lower than "A-" and financial ratings not lower than "XI" in the Best's Insurance Guide, latest edition in effect as of the date of the Contract, and subsequently in effect at the time of renewal of any policies required by the Contract Documents. Insurance coverages required hereunder shall not be subject to a deductible amount on a per-claim basis of more than \$10,000.00 and shall not be subject to a per-occurrence deductible of more than \$25,000.00. Insurance procured by Contractor covering the additional insureds shall be primary insurance and any insurance maintained by Owner shall be excess insurance.

11.5.3 All insurance required hereunder shall provide that the insurer's cost of providing the insureds a defense and appeal, including attorneys' fees, shall be supplementary and shall not be included as part of the policy limits but shall remain the insurer's separate responsibility. Contractor shall cause its insurance carriers to waive all rights of subrogation,

except for Workers' Compensation, against the Owner and its officers, employees and agents.

11.5.4 The Contractor shall furnish the Owner with certificates, Additional Insured endorsements, policies, or binders which indicate the Contractor and/or the Owner and other Contractors (where required) are covered by the required insurance showing type, amount, class of operations covered, effective dates and dates of expiration of policies prior to commencement of the work. Contractor is required to maintain coverages as stated and required to notify the University of a Carrier Change or cancellation within 2 business days. The University reserves the right to request a copy of the policy. Contractor fails to provide, procure, and deliver acceptable policies of insurance or satisfactory certificates or other evidence thereof, the Owner may obtain such insurance at the cost and expense of the Contractor without notice to the Contractor.

11.5.5 With respect to all insurance coverages required to remain in force and affect after final payment, Contractor shall provide Owner additional certificates, policies and binders evidencing continuation of such insurance coverages along with Contractor's application for final payment and shall provide certificates, policies and binders thereafter as requested by Owner.

11.5.6 The maintenance in full current force and effect of such forms and amounts of insurance and bonds required by the Contract Documents shall be a condition precedent to Contractor's exercise or enforcement of any rights under the Contract Documents.

11.5.7 Failure of Owner to demand certificates, policies and binders evidencing insurance coverages required by the Contract Documents, approval by Owner of such certificates, policies and binders or failure of Owner to identify a deficiency from evidence that is provided by Contractor shall not be construed as a waiver of Contractor's obligations to maintain the insurance required by the Contract Documents.

11.5.8 The Owner shall have the right to terminate the Contract if Contractor fails to maintain the insurance required by the Contract Documents.

11.5.9 If Contractor fails to maintain the insurance required by the Contract Document, Owner shall have the right, but not the obligation, to purchase said insurance at Contractor's expense. If Owner is damaged by Contractor's failure to maintain the insurance required by the Contract Documents, Contractor shall bear all reasonable costs properly attributable to such failure.

11.5.10 By requiring the insurance set forth herein and in the Contract Documents, Owner does not represent or warrant that coverage and limits will necessarily be adequate to protect Contractor, and such coverages and

limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

11.5.11 If Contractor's liability policies do not contain a standard separation of insureds provision, such policies shall be endorsed to provide cross-liability coverage.

11.5.12 If a part of the Work hereunder is to be subcontracted, the Contractor shall: (1) cover any and all Subcontractors in its insurance policies; (2) require each Subcontractor to secure insurance which will protect said Subcontractor and supplier against all applicable hazards or risks of loss designated in accordance with Article 11 hereunder; and (3) require each Subcontractor or supplier to assist in every manner possible in the reporting and investigation of any accident, and upon request, to cooperate with any insurance carrier in the handling of any claim by securing and giving evidence and obtaining the attendance of witnesses as required by any claim or suit.

11.5.13 It is understood and agreed that the insurance coverages required by the provisions of this Article 11 are required in the public interest and that the Owner does not assume any liability for acts of Contractor or Subcontractors of any tier or their employees in the performance of the Contract or Work.

11.6 Builder's Risk Insurance

11.6.1 The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the State of Missouri, as an admitted carrier, builder's risk insurance on the entire Work. Such insurance shall be written on a completed value form for the entire Work. The insurance shall apply on a replacement cost basis.

11.6.2 The insurance as required herein shall name as insureds the Owner, Contractor, and all Subcontractors of any tier. The insurance policy shall contain a provision that the insurance will not be canceled, allowed to expire or materially changed until at least thirty (30) days prior written notice has been given to Owner.

11.6.3 The insurance as required herein shall cover the entire Work, including reasonable compensation for Architect's services and expenses made necessary by an insured loss. Insured property shall include portions of the Work located away from the site (including all offsite stored materials) but intended for use at the site and shall also cover portions of the Work in transit, including ocean transit. The policy shall include as insured property scaffolding, falsework, and temporary buildings located at the site. The policy shall cover the cost of removing debris, including demolition as may be made legally necessary by the operation of any law, ordinance, or regulation.

11.6.4 The insurance required herein shall be on an all risk form and shall be written to cover all risks of physical loss or damage to the insured party and shall insure at least against the perils of fire and extended coverage, theft, vandalism,

malicious mischief, collapse, lightening, earthquake, flood, frost, water damage, windstorm and freezing.

11.6.5 If there are any deductibles applicable to the insurance required herein, Contractor shall pay any part of any loss not covered because of the operation of such deductibles.

11.6.6 The insurance as required herein shall be maintained in effect until the earliest of the following dates:

- .1 the date which all persons and organization who are insureds under the policy agree in writing that it shall be terminated;
- .2 the date on which final payment of this Contract has been made by Owner to Contractor; or
- .3 the date on which the insurable interests in the property of all insureds other than the Owner have ceased.

11.6.7 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors of any tier, suppliers, agents and employees, each of the other, (2) the Architect and Architect's consultants, and (3) separate contractors described in Article 6, if any, and any of their subcontractors of any tier, suppliers, agents and employees, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Section 11.7 or other insurance applicable to the Work, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors of any tier, suppliers, agents, and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, was at fault or was negligent in causing the loss and whether or not the person or entity had an interest in the property damaged.

11.6.8 A loss insured under Contractor's property insurance shall be adjusted by the Owner in good faith and made payable to the Owner for the insureds, subject to requirements of the Contract Documents. The Contractor shall pay Subcontractors of any tier their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors of any tier to make payments to their Sub-subcontractors in similar manner.

11.7 Bonds

11.7.1 When the Contract sum exceeds Fifty Thousand Dollars (\$50,000), the Contractor shall procure and

furnish a Performance Bond and a Payment Bond in the form prepared by the Owner, each in an amount equal to one hundred percent (100%) of the Contract Sum, as well as adjustments to the Contract Sum. The Performance Bond shall secure and guarantee Contractor's faithful performance of this Contract, including but not limited to Contractor's obligation to correct defects after final payment has been made as required by the Contract Documents. The Payment Bond shall secure and guarantee payment of all persons performing labor on the Project under this Contract and furnishing materials in connection with this Contract. These Bonds shall be in effect through the duration of the Contract plus the Guaranty Period as required by the Contract Documents.

11.7.2 The bonds required hereunder shall be executed by a responsible surety licensed in the State of Missouri, with a Best's rating of no less than A-/XI. The Contractor shall require the attorney in fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of this power of attorney indicating the monetary limit of such power.

11.7.3 If the surety of any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to conduct business in the State of Missouri is terminated, or it ceases to meet the requirements of this paragraph, Contractor shall within ten (10) days substitute another bond and surety, both of which must be acceptable to Owner. If Contractor fails to make such substitution, Owner may procure such required bonds on behalf of Contractor at Contractor's expense.

11.7.4 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds to such person or entity.

11.7.5 The Contractor shall keep the surety informed of the progress of the Work, and, where necessary, obtain the surety's consent to or waiver of: (1) notice of changes in the Work; (2) request for reduction or release of retention; (3) request for final payment; and (4) any other material required by the surety. The Owner shall be notified by the Contractor, in writing, of all communications with the surety, as it relates to items one through four. The Owner may, in the Owner's sole discretion, inform surety of the progress of the Work, any defects in the Work, or any defaults of Contractor under the Contract Documents and obtain consents as necessary to protect the Owner's rights, interest, privileges and benefits under and pursuant to any bond issued in connection with the Work.

11.7.6 Contractor shall indemnify and hold harmless the Owner and any agents, employees, representative or member of the Board of Curators from and against any claims, expenses, losses, costs, including reasonable attorneys' fees, as a result of any failure of Contractor to procure the bonds required herein.

ARTICLE 12
UNCOVERING AND CORRECTION OF THE
WORK

12.1 Uncovering of the Work

12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it shall, if required in writing by the Architect or the Owner's Representative, be uncovered for the Architect's observation and be replaced at the Contractor's expense without change in the Contract Time.

12.1.2 If a portion of the Work has been covered which the Architect or the Owner's Representative has not specifically requested to observe, prior to its being covered, the Architect or the Owner's Representative may request to see such Work, and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate contractor in which event the Owner will be responsible for payment of such costs.

12.2 Correction of the Work

12.2.1 The Architect or Owner's Representative shall have the right to reject Work not in strict compliance with the requirements of the Contract Documents. The Contractor shall promptly correct Work rejected by the Architect or the Owner's Representative for failing to conform to the requirements of the Contract Documents, whether observed before or after final completion and whether or not fabricated, installed, or completed. If Work has been rejected by Architect or Owner's Representative, the Architect or Owner's Representative shall have the right to require the Contractor to remove it from the Project site and replace it with Work that strictly conforms to the requirements of the Contract Documents regardless, if such removal and replacement results in "economic waste." Contractor shall pay all claims, costs, losses and damages caused by or resulting from the correction, removal or replacement of defective, or non-compliant Work, including but not limited to, all costs of repair or replacement of Work of others. The Contractor shall bear costs of correcting, removing and replacing such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby. If prior to the date of final payment, the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner.

12.2.2 If, within twelve (12) months after the date of Final Completion of the Work or designated portion thereof, or after the date for commencement of warranties, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found not to be in strict accordance with the requirements of the Contract Documents, the Contractor shall correct or remove and replace such defective Work, at the Owner's discretion. Such twelve (12) month period is referred to as the "Guarantee Period." The obligations under this Paragraph 12.2.2 shall cover any repairs, removal, and replacement to any part of the Work or other property caused by the defective Work.

12.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

12.2.4 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct or remove it and replace such nonconforming Work. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Owner, the Owner may take action to correct or remove the nonconforming work at the contractor's expense.

12.2.5 The Contractor shall bear the cost of correcting destroyed or damaged Work or property, whether completed or partially completed, of the Owner or of others caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.2.6 Nothing contained in Article 12 shall be construed to establish a period of limitation with respect to other obligations that the Contractor might have under the Contract Documents. Establishment of the twelve (12) month Guarantee Period as described in Article 12 relates only to the specific obligation of the Contractor to correct, remove or replace the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations under the Contract Documents. The requirements of Article 12 are in addition to and not in limitation of any of the other requirements of the Contract for warranties or conformance of the Work to the requirements of the Contract Documents.

12.3 Acceptance of Nonconforming Work

12.3.1 The Owner may accept Work which is not in accordance with the Contract Documents, instead of requiring its removal and correction, in its sole discretion. In Such case the Contract Sum will be adjusted as appropriate and equitable. Such adjustment shall be made whether or not final payment has been made. Nothing contained herein shall impose any obligation upon the Owner to accept nonconforming or defective Work.

ARTICLE 13 MISCELLANEOUS PROVISIONS

13.1 Written Notice

13.1.1 All notices required to be given by the contractor under the terms of this Contract shall be made in writing. Written notice when served by the Owner will be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an office of the corporation for which it was intended, or if delivered at or sent to the last business address known to the party giving notice.

13.2 Rights and Remedies

13.2.1 Duties and obligations imposed by the Contract Documents, and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

13.2.2 No action or failure to act by the Owner, the Architect, or the Owner's Representative will constitute a waiver of a right or duty afforded to the Owner under the Contract Documents, nor will such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

13.2.3 The terms of this Contract and all representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Work and shall remain in effect so long as the Owner is entitled to protection of its rights under applicable law.

13.2.4 Contractor shall carry out the Work and adhere to the current construction schedule during all disputes or disagreements with the Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements except as the Owner and Contractor may otherwise agree to in writing.

13.3 Tests and Inspections

13.3.1 Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, codes, or regulations shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory, the Owner's Authorized Agent, or entity acceptable to the Owner, and the Contractor shall bear related costs of tests, inspections, and approvals as required in the Contract Documents. The Contractor shall give the Architect, Owner's Representative, and the Owner's Authorized Agent timely notice of when and where tests and inspections are to be made so the

Architect, the Owner's Representative and/or the Owner's Authorized Agent may observe procedures or perform the necessary tests or inspections.

13.3.2 If the Architect, Owner's Representative, or the Owner's Authorized Agent determine that portions of the Work require additional testing, inspection or approval not included in the Contract Documents, or required by law, the Architect, or the Owner's Representative will instruct the Contractor to make arrangements for such additional testing, inspection, or approval by an entity acceptable to the Owner's Representative and the Contractor shall give timely notice to the Architect, the Owner's Representative or the Owner's Authorized Agent, of when and where tests and inspections are to be made so the Architect, Owner's Representative and/or the Owner's Authorized Agent, ~~so~~ may choose that the tests or inspections can be performed or observed. The Owner will bear such costs except as provided elsewhere in Article 13.

13.3.3 If such procedures for testing, inspection, or approval under Article 13 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's and Owner's Authorized Agent's services and expenses.

13.3.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor, and promptly delivered to the Owner's Representative and Architect.

13.3.5 Contractor shall take all necessary actions to ensure that all tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

13.3.6 Contractor shall arrange for and pay for all costs of all testing required by the Contract Documents or any applicable Laws for materials to be tested or certified at or on the place or premises of the source of the material to be supplied. The Owner shall have the right to require testing of all materials at the place of the source of the material to be supplied if not required by the Contract Documents or any applicable Laws. The Owner shall bear the costs of such tests and inspections not required by the Contract Documents or by applicable Laws unless prior defective Work provides Architect or Owner with a reasonable belief that additional defective Work may be found, in which case Contractor shall be responsible for all costs of tests and inspections ordered by the Owner or Architect, whether or not such tests or inspection reveals that Work is in compliance with the Contract Documents.

13.4 Nondiscrimination in Employment Equal Opportunity

13.4.1 The University serves from time to time as a contractor for the United States government. Accordingly, the provider of goods and/or services shall comply with

federal laws, rules and regulations applicable to subcontractors of government contracts including those relating to equal employment opportunity and affirmative action in the employment of minorities (Executive Order 11246), women (Executive Order 11375), persons with disabilities (29 USC 706) and Executive Order 11758, and certain veterans (38 USC 4212 formerly [2012]) contracting with business concerns with small disadvantaged business concerns (Publication L. 95-507). Contract clauses required by the Government in such circumstances are incorporated herein by reference.

13.5 Supplier Diversity Goal Program

13.5.1 The Contractor shall subcontract with diverse firms no less than the amount pledged in the Contractor's Bid and/or the amount accepted by the Owner.

13.5.2 If the Contractor must remove any diverse subcontractor of any tier, the Contractor shall replace the diverse subcontractor of any tier with another diverse subcontractor(s) of equal dollar value to the diverse supplier removed. The Contractor shall immediately notify the Owner's Representative in writing of the Contractor's intent to remove any, and the Contractor's plan to maintain subcontracts with diverse firms of no less than amount pledged in the Contractor's Bid and/or the amount accepted by the Owner. All changes of diverse subcontractor of any tier shall be approved by the Director of Facilities Planning & Development.

13.5.3 If the Contractor fails to meet or maintain the contractor's Supplier Diversity subcontracting pledge, the Contractor shall immediately notify in writing the Owner's Representative, and the Director of Facilities Planning & Development. Such notice shall include a description of the Contractor's good faith effort to comply with their Supplier Diversity subcontracting pledge.

13.5.4 If the Director of Facilities Planning & Development finds the Contractor has failed to comply in good faith with the Owner's Supplier Diversity goal program, the Director may take appropriate action, including but not limited to, declaring the Contractor ineligible to participate in any contracts with the Owner for a period not to exceed six (6) months, and/or directing that the Contractor's actions be declared a material breach of the Contract and that the Contract be terminated.

13.5.5 The Contractor and his subcontractors shall develop, implement, maintain, and submit in writing to the Director of Facilities Planning & Development, an affirmative action program if at least fifty (50) persons in the aggregate are employed under this contract. If less than fifty (50) persons in the aggregate are to be employed under this contract, the Contractor shall submit, in lieu of the written affirmative action program, a properly executed "Affidavit for Affirmative Action" in the form as included in the Contract Documents. For the purpose of this section, an "Affirmative Action Program"

means positive actions to influence all employment practices (including, but not limited to, recruiting, hiring, promoting, and training) in providing equal employment opportunity regardless of race, color, sex, national origin, religion, age (where the person affected is between 40 and 70), disabled and Vietnam-era veteran status, and handicapped otherwise qualified status. Such affirmative action program shall include:

- .1** A written policy statement committing the total organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination.
- .2** The identification of a person designated to handle affirmative action.
- .3** The establishment of non-discriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure, and standards applicable to lay-off, recall, discharge, demotion, and discipline.
- .4** The exclusion of discrimination from collective bargaining agreements.
- .5** Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.

13.5.6 In the enforcement of this non-discrimination requirement, the Owner may use any reasonable procedures available, including but not limited to: requests, reports, site visits, and inspection of relevant documents of Contractors and Subcontractors of any tier. The contractor shall submit a final Affidavit of Supplier Diversity Participation for each diverse firm at the end of the project stating the actual amount paid to the diverse firm.

13.6 Wage Rates (If the contract amount is less than \$75,000, the requirements of this section will not apply. Any contract adjustments that increase the contract above \$75,000 will be subject to this section.)

13.6.1 The Contractor shall pay workers employed in the execution of this contract in full each week and not less than the predetermined wage rates and overtime for work of a similar character that have been made a part of this Contract. These rates are determined by the University of Missouri Director of Facilities Planning and Development. The rates are based on wage rates published in the Annual Wage Orders of the Missouri Department of Labor and Industrial Relations (MDLIR). The Contractor is to use MDLIR 8 CSR 30-3.020; .030; .040, .060 in determining the appropriate occupational titles and rates for workers used in the execution of this contract. All determinations and/or interpretations regarding wage rates and classification of workers will be made by the office of the University of Missouri Director of Facilities Planning and Development. The Contractor is responsible for the payment of the aggregate of the Basic Hourly Rate and the Total Fringe Benefits to the workers on the project. Fringe benefit payments may be made to the worker in cash, or irrevocably made by a Contractor or Subcontractor to a trustee or to a third person pursuant to a fund, plan or program, or pursuant to an enforceable

commitment, or any combination thereof, to carry out a financially responsible plan or program which was communicated in writing to the workmen affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the Contractor or Subcontractor is not required by other federal or state law to provide any of the benefits as referenced in §290.210(5) RSMo 1994. Pay for travel, mileage, meals, bonuses, or other expenses are not fringe benefits and cannot be considered part of the workers wage rate. The Contractor shall not make any deductions for food, sleeping accommodations, transportation, use of small tools, uniforms, or anything of any kind or description, unless the Contractor and employee enter into an agreement in writing at the beginning of the worker's term of employment, and such agreement is approved by the Owner. In the event the contract contains more than one wage determination the Contractor shall comply with both.

13.6.2 The Contractor shall submit to the Owner with the Contractor's periodic pay request, certified payroll records for labor performed by the Contractor and Subcontractors of any tier. The Contractor shall submit all required certified payroll information records electronically in pdf format using the Owner's web-based payment program. The certified payroll forms shall contain the name, address, personal identification number, and occupational title of the workers as well as the hours they work each day. The Owner's acceptance of certified payroll records does not in any way relieve the Contractor of any responsibility for the payment of prevailing wages to workers on the project. The Contractor shall also maintain copies of the certified payroll records. The Owner may, at any time, request copies of, and/or inspect all of the Contractor's payroll records for the Work to verify compliance. The Contractor shall furnish the Owner copies of payroll records within 10 days of the Owner's written request. The Contractor shall provide copies of workers I-9 forms within 24 hours of written notice. (If applicable, and required by Owner, the Contractor will demonstrate that the Contractor is enrolled and participating in a federal work authorization program with respect to the employees working in connection with this project.) Such payroll records shall be maintained in accordance with Article 13.7.1 and shall be available for inspection for two (2) years after final completion of the Work. The contractor further agrees, in the event the records are not presented as requested, he will abide by any decision made by the Owner regarding underpayment of wages to workers and amounts owed them as well as liquidated damages for underpayment of wages. Falsification of the certified payroll records may

result in the debarment of the contractor or subcontractor from future work with the University.

13.6.3 The acquisition of products or services is subject to the supplier's conformance to the rules and regulations of the President's Committee on Equal Employment Opportunity (41 CFR, Ch. 60).

13.6.4 The Contractor shall comply with the Copeland Regulations of the Secretary of Labor (29 CFR, Part 3), which are incorporated herein by reference. In addition, the Weekly Statement of Compliance required by these Regulations shall also contain a statement that the applicable fringe benefits paid are equal to or greater than those set forth in the minimum wage decision.

13.6.5 Contractor acknowledges that violation of the requirements of Article 13.6 result in additional costs to Owner, including, but not limited to, cost of construction delays, of additional work for Owner's staff and legal expense. The cost of Contractor's violation of the provisions of Article 13.6 would be and is difficult to determine and establish. In the event that Contractor fails to comply with the provisions of this Article 13.6, Owner shall be entitled to retain or recover from the Contractor, as liquidated damages and not as a penalty, the sum of Fifty Dollars (\$50.00) per day per individual who is paid less than the applicable prevailing wage, to approximate the investigative cost resulting to the Owner for such violations. To approximate the delay costs, Owner shall be entitled to retain or recover from the Contractor, as liquidated damages and not as a penalty, the sum of One Hundred Dollars (\$100.00) per day for each day the Contract cannot be closed out and final payment made because of Contractor's failure to comply with the provisions of this Article 13.6. Such liquidated damages shall be collected regardless of whether the Work has been completed. The liquidated damages and other amounts set forth in this Article 13.6 shall be in addition to all other liquidated damages the Owner may be entitled as set forth in the Contract Documents.

13.6.6 The Owner may deduct liquidated damages described Article 13 and the amounts set forth in Article 13 from any unpaid amounts then or thereafter due the Contractor under the Contract. Any liquidated damages not so deducted from any unpaid amounts due the Contractor shall be payable to the Owner at the demand of the Owner.

13.6.7 The Contractor shall specifically incorporate the obligations of Article 13 into the subcontracts, supply agreements and purchase orders for the Work and require the same of any Subcontractors of any tier.

13.6.8 Contractor acknowledges and recognizes that a material factor in its selection by the Owner is the Contractor's willingness to undertake and comply with the requirements of this Article 13.6. If Contractor fails to comply with the provisions of this Article 13.6, Owner may, in its sole discretion, immediately terminate the Contract

upon written notice. The rights and remedies of Owner provided herein shall not be exclusive and are in addition to other rights and remedies provided by law or under this Contract.

13.6.9 Only such workers who are individually registered in a bona fide apprenticeship program approved by the U.S. Department of Labor, Office of Apprenticeship can be paid less than the journeyperson rate of pay. "Entry Level Workers; must be registered apprentices. The apprenticeship ratio will be one to one with a journeyperson of the same classification. Any worker not registered as an apprentice per this section will be paid as a journeyperson.

13.6.10 The Contractor shall post the wage rates for the contract in a conspicuous place at the field office on the project. On projects where there is no field office the Contractor may post the wage rates at their local office, as long as they provide a copy of the wage rates to a worker upon request. The wage rates shall be kept in a clearly legible condition for the duration of the project.

13.6.11 Neither the Contractor, nor any Subcontractor of any tier, nor any person hired by them or acting on their behalf, shall request or demand that workers pay back, return, donate, contribute, or give any part, or all, of said workers wages, salary, or any thing of value, upon the statement, representation or understanding that failure to comply with such request or demand will prevent such worker from procuring or retaining employment. The exception being to an agent or representative of a duly constituted labor organization acting in the collection of dues or assessments of such organization.

13.6.12 No contractor or subcontractor may directly or indirectly receive a wage subsidy, bid supplement, or rebate for employment on this project if such wage subsidy, bid supplement, or rebate has the effect of reducing the wage rate paid by the employer on a given occupational title below the prevailing wage rate as provided in contract. In the event a wage subsidy, bid supplement, or rebate is provided or received, the entity receiving such subsidy, supplement, or rebate shall report the date and amount of such subsidy, supplement, or rebate to the University within thirty days of receipt of payment. This disclosure report shall be a matter of public record. Any employer not in compliance with this Article shall owe to the University double the dollar amount per hour that the wage subsidy, bid supplement, or rebate has reduced the wage rate paid by the employer below the prevailing wage rate for each hour that work was performed.

13.6.13 Time and one-half overtime will be paid on all hours over 10 hours per day or 40 hours per week. The wage rate is the total of the "Basic Hourly Rate" plus "Total Fringe Benefits" or the "public works contracting minimum wage". For all work performed on a Sunday or

Holiday, not less than twice the prevailing hourly rate of pay or public works contracting minimum wage will apply. Holidays are as follows: January first, the last Monday in May, July fourth, the first Monday in September, November 11, the fourth Thursday in November, December twenty-fifth. If any holiday falls on a Sunday, the following Monday shall be considered a holiday.

13.7 Records

13.7.1 The Owner, or any parties it deems necessary, shall have access to and the right to examine any accounting or other records of the Contractor involving transactions and Work related to this Contract for five (5) years after final payment or five (5) years after the final resolution of any on going disputes at the time of final payment. All records shall be maintained in accordance with generally accepted accounting procedures, consistently applied. Subcontractors of any tier shall be required by Contractor to maintain records and to permit audits as required of Contractor herein.

13.8 Codes and Standards

13.8.1 The Work shall be performed to comply with the International Code Council (ICC) Codes, and the codes and standards noted below. The latest editions and supplements of these Codes and Standards in effect on the date of the execution of the Contract for Construction shall be applicable unless otherwise designated in the Contract Documents. Codes and standards required by accreditation agencies will also be used unless the ICC requirements are more stringent. In the event that special design features and/or construction systems are not covered in the ICC codes, the applicable edition of the National Fire Protection Association (NFPA) family of standards and/or the NFPA 101 Life Safety Code shall be used.

- .1** ICC International Building Code and reference standards
- .2** ICC International Plumbing Code
- .3** ICC International Mechanical Code
- .4** ICC International Fire Code
- .5** ICC International Fuel Gas Code
- .6** NFPA 70 National Electric Code (NEC)
- .7** Americans with Disabilities Act – Standards for Accessible Design.
- .8** American National Standard Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks as published by the American Society of Mechanical Engineers (ASME), American National Standards Institute (ANSI) A17.1
- .9** NFPA 101 Life Safety Code (as noted above)
- .10** American Concrete Institute (ACI)
- .11** American National Standards Institute (ANSI)
- .12** American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE)
- .13** American Refrigeration Institute (ARI)
- .14** American Society for Testing and Materials (ASTM)
- .15** Missouri Standard Specification for Highway Construction, Missouri State Highway Commission

- .16 National Electrical Manufacturers Association (NEMA)
- .17 Underwriter's Laboratories, Inc. (UL), Federal Specifications
- .18 Williams Steiger Occupational Safety and Health Act of 1970 (OSHA)

13.9 General Provisions

13.9.1 Any specific requirement in this Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and are also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

13.9.2 This Contract shall be interpreted, construed, enforced, and regulated under and by the laws of the State of Missouri. Whenever possible, each provision of this Contract shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Contract, or a portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without invalidating or affecting the remaining provisions of this Contract or valid portions of such provision, which are hereby deemed severable. Contractor and Owner further agree that in the event any provision of this Contract, or a portion thereof, is prohibited by law or found invalid under any law, this Contract shall be reformed to replace such prohibited or invalid provision or portion thereof with a valid and enforceable provision which comes as close as possible to expressing the intention of the prohibited or invalid provision.

13.9.3 Contractor and Owner each agree that the State of Missouri Circuit Court for the County where the Project is located shall have exclusive jurisdiction to resolve all Claims and any issue and disputes between Contractor and Owner. Contractor agrees that it shall not file any petition, complaint, lawsuit or legal proceeding against Owner in any other court other than the State of Missouri Circuit Court for the County where the Project is located.

13.9.4 Owner's total liability to Contractor and anyone claiming by, through, or under Contractor for any Claim, cost, loss, expense, or damage caused in part by the fault of Owner and in part by the fault of Contractor or any other entity or individual shall not exceed the percentage share that Owner's fault bears to the total fault of Owner, Contractor and all other entities and individuals as determined on the basis of comparative fault principles.

13.9.5 Contractor agrees that Owner shall not be liable to Contractor for any special, indirect, incidental, or consequential damage whatsoever, whether caused by

Owner's negligence, fault, errors or omissions, strict liability, breach of contract, breach of warranty or other cause or causes whatsoever. Such special, indirect, incidental or consequential damages include, but are not limited to loss of profits, loss of savings or revenue, loss of anticipated profits, labor inefficiencies, idle equipment, home office overhead, and similar types of damages.

13.9.6 Nothing contained in this Contract, or the Contract Documents shall create any contractual relationship with or cause of action in favor of a third party against the Owner.

13.9.7 No member or officer of the Board of Curators of the University incurs or assumes any individual or personal liability under the Contract or by reason of the default of the Owner in the performance of any terms thereof. Contractor releases and discharges all members or officers of the Board of Curators of the University from any liability as a condition of and as consideration for the award of the Contract to Contractor.

13.9.8 The Contractor hereby binds itself, its partners, successors, assigns and legal representatives to the Owner in respect to covenants, agreements and obligations contained in the Contract Documents. Contractor shall not assign the Contract or proceeds hereof without written consent of the Owner. If Contractor attempts to make such an assignment without such consent, it shall be void and confer no rights on third parties, and Contractor shall nevertheless remain legally responsible for all obligations under the Contract. The Owner's consent to any assignment is conditioned upon Contractor entering into a written assignment which contains the following language: "it is agreed that the funds to be paid to the assignee under this assignment are subject to performance by the Contractor and to claims and to liens for services rendered or materials supplied for the performance of the Work required in said Contract in favor of all persons, firms, corporations rendering such services or supplying such materials."

13.10 Certification

13.10.1 The contractor certifies to the best of its knowledge and belief that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency in accordance with Executive Order 12549 (2/18/86).

13.10.2 If this contract is for \$100,000 or more, and if the Contractor is a company with ten (10) or more employees, then Contractor certifies that it, and any company affiliated with it, does not boycott Israel, and will not boycott Israel during the term of this Contract. In this paragraph, the terms "company" and "boycott Israel" shall have the meanings described in Section 34.600 of the Missouri Revised Statutes.

ARTICLE 14
TERMINATION OR SUSPENSION OF THE
CONTRACT

14.1 Termination by Owner for Cause

14.1.1 In addition to other rights and remedies granted to Owner under the Contract Documents and by law, the Owner may terminate the Contract if the Contractor:

- .1** refuses or fails to supply enough properly skilled workers, superintendents, foremen, or managers;
- .2** refuses or fails to supply sufficient or proper materials;
- .3** fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .4** disregards laws, ordinances, rules, codes, regulations or orders of an authority having jurisdiction;
- .5** disregards the authority of the Owner's Representative, Architect, or Owner's Authorized Agent;
- .6** breaches any warranty or representations made by the Contractor under or pursuant to the Contract Documents;
- .7** fails to furnish the Owner with assurances satisfactory to the Owner evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;
- .8** fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than ten (10) days, except as permitted under the Contract Documents;
- .9** fails to maintain a satisfactory rate of progress with the Work or fails to comply with approved progress schedules; or
- .10** violates in any substantial way any provisions of the Contract Documents.

14.1.2 When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner, terminate this Contract by delivering a written notice of termination to Contractor and Contractor's surety, and may:

- .1** take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2** accept assignment of subcontracts pursuant to Paragraph 5.3; and
- .3** finish the Work by whatever reasonable method the Owner may deem expedient, including turning the Work over to the surety.

14.1.3 The Contractor, in the event of a termination under Section 14.1, shall not be entitled to receive any further payments under the Contract until the Work is completed in its entirety. Then, if the unpaid balance

under the Contract shall exceed all expenses of the Owner in finishing the Work, including additional compensation for the Architects services and expenses made necessary thereby, such excess will be paid to the Contractor; but, if such expenses of Owner to finish the Work shall exceed the unpaid balance, the Contractor and its surety shall be liable for, and shall pay the difference and any damages to the Owner. The obligation of the Contractor and its surety for payment of said amounts shall survive termination of the Contract.

14.1.4 In exercising the Owner's right to secure completion of the Work under any of the provisions hereof, the Owner shall have the right to exercise the Owner's sole discretion as to the manner, methods, and reasonableness of costs of completing the Work.

14.1.5 The rights of the Owner to terminate pursuant to Article 14.1 will be cumulative and not exclusive and shall be in addition to any other remedy provided by law or the Contract Documents.

14.1.6 Should the Contractor fail to achieve Final Completion of the Work within thirty (30) calendar days following the date of Substantial Completion, the Owner may exercise its rights under Article 14.1.

14.2 Suspension by the Owner for Convenience

14.2.1 The Owner may, without cause, order the Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Owner may determine.

14.2.2 An adjustment will be made to the Contract Sum for increases in the cost of performance of the Contract caused by suspension, delay or interruption. However, in the event of a suspension under this Article 14.2, Contractor hereby waives and forfeits any claims for payment of any special, indirect, incidental or consequential damages such as lost profits, loss of savings or revenue, loss of anticipated profits, idle labor or equipment, home office overhead, and similar type damages. No adjustment will be made to the extent:

- .1** that performance is, was, or would have been so suspended, delayed or interrupted by another cause for which the Contractor in whole or in part is responsible, or
- .2** that an equitable adjustment is made or denied under another provision of this Contract.

14.3 Owner's Termination for Convenience

14.3.1 The Owner may, at any time, terminate the Contract in whole or in part for the Owner's convenience and without cause. Termination by the Owner under this Paragraph shall be by a notice of termination delivered to the Contractor specifying the extent of termination and the effective date.

14.3.2 Upon receipt of a notice of termination for convenience, the Contractor shall immediately, in accordance with instructions from the Owner, proceed with performance

of the following duties regardless of delay in determining or adjusting amounts due under this Paragraph:

- .1 cease operation as specified in the notice;
- .2 place no further orders and enter into no further subcontracts for materials, labor, services or facilities except as necessary to complete Work not terminated;
- .3 terminate all subcontracts and orders to the extent they relate to the Work terminated;
- .4 proceed to complete the performance of Work not terminated; and
- .5 take actions that may be necessary, or that the Owner may direct, for the protection and preservation of the terminated Work.

14.3.3 Upon such termination, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions and for all Owner approved claims, costs, losses and damages incurred in settlement of terminated contracts with Subcontractors and suppliers. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits, consequential damages and other economic losses.

14.3.4 The Owner shall be credited for (1) payments previously made to the Contractor for the terminated portion of the Work, (2) claims which the Owner has against the Contractor under the Contract and (3) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum.

14.3.5 Upon determination by a court that termination of Contractor or its successor in interest pursuant to Paragraph 14.1 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Paragraph 14.3, and Contractor's sole and exclusive remedy for wrongful termination is limited to recovery of the payments permitted for termination for convenience as set forth in Paragraph 14.3.