

SUPPLEMENTARY CONDITIONS - PART A**A. BASIC DEFINITIONS**

1. The "Project", as used herein, shall mean the detailed design and construction document preparation for, as well as the construction of The Work.
2. The Project also includes the demolition or removal of any designated buildings or structures on the site.
3. The "Program Manager" (Owner's Representative) is hereby authorized by the Owner to act as the Owner's agent in connection with the Project and this Agreement.
4. "Contractor" as used herein, shall mean the party contracting to provide all final architectural and engineering design services, construction labor and material under this Agreement and includes being responsible for the work of all of the Contractor's subcontractors including the work of the Contractor's Architect and Engineers (Contractor's AE). The term "Design-Builder" is considered synonymous with "Contractor".
5. "Contract Documents," also sometimes referred to as the Bridging Contract Documents (BCD) shall mean:
 - a) Instructions to Bidders
 - b) Proposal Form
 - c) The form of Agreement between the Owner and the Contractor.
 - d) The Owner's Minimum Requirements ("OMR") and the Design Guide Illustrations (DGI") dated _____. (Exhibit "C")
 - e) After the design-build contract has been awarded and the Contractor's AE has completed the Construction Documents, the Construction Documents will supplement, but not supplant, the Bridging Contract Documents. These Construction Documents will become one of the components of the Contract Documents after the Construction Documents have been prepared by the Contractor.
 - f) The approved Schedule of Values submitted as a part of the Cost Proposal.
 - g) Any addenda agreed to by the Parties.
6. "Construction Documents" (CDs) shall mean detailed architectural and engineering documents including detailed drawings and specifications setting forth the design for the Project (and not to be confused with Bridging Contract Documents, of which they ultimately become a part). The Construction Documents shall meet the requirements set forth in the Agreement. 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 Construction Documents, which will be prepared by the Contractor's AE and for which the Contractor has full responsibility, are complementary to the other Contract Documents, and what is required by one shall be binding as if required by all.
7. not used.
8. not used.
9. The "Contract Sum" shall mean the amount payable to the Contractor for the Work as provided in Article 9.

10. "Consultants" shall mean any and all Architects, Engineers, land planners, lawyers, accountants, and other consultants, except the Program Manager, deemed, from time-to-time, by the Owner to be necessary or appropriate to assist the Owner in the Project.
11. "Owner's Design Consultant" or "ODC" shall mean the design consultant and its consulting engineers that assist the Program Manager in the preparation of Requests for Proposals for prospective Design-Build Contractors by preparing the Design Guide Illustrations and the Owner's Minimum Requirements. The Owner's Design Consultant shall provide certain other services related to review of the Construction Documents prepared by the Contractor's Architect/Engineers and certain other services related to technical observation of the Work during construction. (Within the design profession and the construction industry, in a project done by the Bridging method, the Owner's Design Consultant is sometimes referred to as the Bridging Architect.)
12. "Design Guide Illustrations" (DGI) shall mean the drawings prepared by Owner's Design Consultant and made a part of the Bridging Contract Documents.
13. "Owner's Minimum Requirements" (OMR) shall mean the performance specifications and prescriptive specifications prepared by Owner's Design Consultant and made a part of this Agreement.
14. The "Contractor's Architect and Engineer", also referred to as the "Contractor's AE" ("AE"), is a subcontractor to the Contractor and is the Architect-of-Record and are the Consulting Engineers-of-Record.
15. "Other Documents" shall mean any and all documents, instruments, agreements, certificates and affidavits executed and delivered pursuant to or in connection with this Agreement.
16. "Work" shall mean all labor, materials, equipment, services and things necessary to produce the total architectural and engineering design, construction and related services of the Project.
17. The "Bridging Method" refers to a method of contracting for final engineering design and preparation of detailed architectural drawings and specifications as well as the construction of the project, under a Design-Build form of contract between the Owner and the Contractor, the contract being based on preliminary design and performance specifications referred to as Design Guide Illustrations and Owner's Minimum Requirements. The Owner's Design Consultant prepares the DGI and OMR documents.
18. "Program Manager" (PM) refers to the Owner's internal Program Manager, or, if appointed by the Owner, a professional construction program management ("program management") firm. The Program Manager is appointed by the Owner to provide assistance to the Owner throughout the pre-design, design, bid/award, construction and post-construction/move-in phases of the project.
19. A "Subcontractor" is a person or entity who has a direct contract with the Contractor to perform a portion of the Work under the Agreement.
20. "Parties" are the Owner and Contractor, the Parties to this Agreement.

B. REFERENCE STANDARDS

1. For products or workmanship specified by association, trade or Federal standards, comply with requirements of the standard, except when more rigid requirements are specified.
2. Obtain copy of standards when required by Contract Documents.
3. Should specified reference standards conflict with Contract Documents, request clarification from the Owner's Design Consultant before proceeding.
4. References to known Standard Specifications mean and intend the latest edition of said Specifications adopted and published as of the date of invitation to submit Bids. References to technical society, organization or body are made in the Specifications.
5. Codes, industry standards and guidelines referenced in the Contract Documents include but are not limited to the following acronyms:

ADAAG	Americans with Disabilities Act Accessibility Guidelines
ACI	American Concrete Institute
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
ANSI	American National Standards Institute (all publications)
ARI	American Refrigeration Institute
ASHRAE	American Society of Heating, Refrigeration & Air-Conditioning Engineers, Inc.
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing Materials
AWI	Architectural Woodwork Industry
AWSC	American Welding Society Code
CBM	Certified Ballast Manufacture
FM/IRI	Factory Mutual/Insurance Rating Institute
GCEHMF	Guidelines for Construction and Equipment of Hospital and Medical Facilities
IBC	International Building Code
ICEA	Insulated Cable Engineers Association
IEEE	Institute of Electrical and Electronics Engineers
IFC	International Fire Code
IFGC	International Fuel Gas Code
IMC	International Mechanical Code
IPC	International Plumbing Code
JCAHO	Joint Commission on Accreditation of Healthcare Organizations Kansas Boiler Safety Act Rules and Regulations
LSC	Life Safety Code
MRCA	Midwest Roofing Contractors Association
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NESC	National Electrical Safety Code
NFPA	National Fire Protection Association
NIST	National Institute of Standards & Technology
NRCA	National Roofing Contractors Association
OSHA	Occupational Safety and Health Act
SIGMA	Sealed Insulating Glass Manufacturers Association
SMACNA	Sheet Metal Air Conditioning National Association
UL	Underwriters Laboratories, Inc.

SUPPLEMENTARY CONDITIONS – PART B

A. THE CONTRACTOR'S PREPARATION OF CONSTRUCTION DOCUMENTS

1. The Contractor's Services for the Preparation of Construction Documents to be prepared by the Contractor's AE pursuant to this Agreement are described in this Section.
2. The Contractor shall review in detail the Owner's Minimum Requirements and the Design Guide Illustrations and all other documents attached hereto to ascertain the requirements of the Project.
3. The Contractor, using the services of the Contractor's AE, shall prepare complete and detailed Construction Documents in accordance with this Agreement and the other Contract Documents. Further detailed requirements as to the Construction Documents are in Part B, Paragraphs A.3.a through A.3.h below:
 - a. The Construction Documents shall be based upon the other Contract Documents, including the Owner's Minimum Requirements and the Design Guide Illustrations, and shall indicate, in extensive and complete detail, the requirements for the construction of the Project (including all on-site and off-site work).
 - b. Construction Documents ("CDs") shall consist of complete detailed working drawings and specifications. These CDs shall contain all required drawings and specifications completed in detail sufficient to construct the Project. Also, the CDs shall be in a form sufficient to obtain required building permits as well as required planning and zoning approvals.
 - c. The Specifications shall be in the full Construction Specifications Institute (CSI) Master Format 2004, 50 Division/Three Part Format as established in the CSI Manual of Practice as of 2004 covering required materials, products and equipment, their installation and operation, quality assurances, reference standards, submittal requirements etc. The Specifications shall provide all supplemental information and requirements including those not covered by the Owner's Minimum Requirements.
 - d. Working Drawings shall consist of those drawings, specifications and other documents necessary to describe the size and character of the Project and its design, construction, materials, finishes, fixtures, structure, mechanical systems and electrical systems, etc. The Working Drawings shall include, without limitation, the following:
 - .1 All Architectural Floor Plans, Exterior Elevations, Interior Elevations, Building Sections, Wall Sections, Reflected Ceiling Plans, Interior and Exterior Details, Door and Finish Schedules, Roof Plan, all fully and accurately dimensioned, and any other documents in conformance with the Design Guide Illustrations. All Architectural Floors Plans, at not less than $1/8" = 1'-0"$, shall be fully coordinated with all the engineering disciplines and with all required equipment and shall show all required partitions, partition types, doors and door numbers, windows, room names and numbers, dimensions and any other required notes and information for a complete floor plan.
 - .2 Full architectural detailing that carries out the design of the building and site development in a manner consistent with and of the quality of the Design Guide Illustrations and the Owner's Minimum Requirements. The architectural detailing shall be consistent with and shall complement the designs established in the Design Guide Illustrations and the Owner's Minimum Requirements.
 - .3 Full Wall Sections at not less than $3/4" = 1'0"$ scale, and, Wall Sections at all wall conditions, at not less than $1\ 1/2" = 1'-0"$ scale.
 - .4 Reflected Ceiling Plans at not less than $1/8" = 1'-0"$ scale, but at the same scale as the respective floor plan. All reflected ceiling plans shall

be fully coordinated with all the engineering disciplines and shall show all required ceiling lights, diffusers, sprinkler heads, smoke detectors, and any other required devices on the ceiling. The architectural reflected ceiling plan shall take precedence over all the other engineering plans in regard to fixture and device locations.

- .5 Interior Elevations of all finished public spaces and major rooms at not less than $1/2" = 1' - 0"$ scale and showing wall profile and details that are not apparent in the elevations.
 - .6 Site Plan up-dated and more complete as necessary and appropriate, also detailing all off-site work required. All required site details, sections and profiles shall be drawn.
 - .7 All required drawings for mechanical and electrical work shall be as specified in the Owner's Minimum Requirements.
 - .8 HVAC, Plumbing, and Fire Protection layouts showing major equipment and mains as well as distribution branches, supply and return grilles, sprinkler heads, and a schedule of plumbing fixtures and all other "end product" elements and features. All HVAC, Plumbing and Fire Protection plans shall be fully coordinated with the architectural floor plans and reflected ceiling plans.
 - .9 Electrical, Signal and Data/Telecom Conduit systems layouts as well as riser diagrams for the building, and all other "end product" elements and fixtures. All Electrical Power and Lighting plans shall be fully coordinated with the architectural floor plans and reflected ceiling plans.
 - .10 Electrical Site Plans at not less than $1" = 20' - 0"$ scale.
 - .11 Structural construction drawings and specifications. These shall be for any structural steel, cast in place concrete and precast concrete work as well as for foundation reinforcing steel, and any other structural elements. Structural System Plans with both Longitudinal and Latitudinal full Building Sections at not less than $1/8" = 1' - 0"$ scale.
 - .12 Complete structural details at not less than $3/4" = 1' - 0"$ scale.
- e. The Contractor and the Contractor's AE, in the preparation of the Working Drawings, may change any sectional details shown on the Design Guide Illustrations as long as there is no change in the appearance of the end product or ceiling heights, and as long as the same detail is equal in firmness, permanence and suitability for its intended purpose, and meets all applicable codes and laws. The Contractor has the ultimate responsibility for all architectural and engineering design and construction details.
- f. Landscape plans and specifications shall be produced by a licensed Landscape Architect engaged by the Contractor in conjunction with the Contractor's Civil Engineer and shall cover all aspects of the site development including grading, drainage, planting, features, paving, retaining walls and other site structures of a landscape nature. The Landscape plans shall be prepared at a scale agreed on with the Program Manager.
- g. The Contractor, for itself and for its AE, hereby specifically acknowledges and agrees that the Program Manager shall be the judge regarding whether the CDs comply with the terms and provisions of the Agreement.

- h. The Contractor shall assure that the Contractor's AE shall review all laws, codes and regulations applicable to the Contractor's AE services and shall comply in the final design of the Project with applicable laws, provisions, codes and standards of all governmental entities having jurisdiction over the Project.
- 4. Regardless of whether the Owner, the Program Manager, the Owners' Design Consultant or other representatives of the Owner shall have reviewed drawings, specifications or other documents prepared by the Contractor, the Contractor shall neither make changes in nor omit any of the work called for in the Contract Documents, specifically including the Owner's Minimum Requirements, and the Design Guide Illustrations, unless the Owner shall approve such change or omission pursuant to a written Change Order, signed by both Parties.
 - 5. If there shall be any conflict between the Construction Documents and the Contract Documents, the Contract Documents shall prevail and govern, except in the following circumstances:
 - a. The Contract Documents cause a code violation.
 - b. The Contract Documents show or call for a situation that is not constructible in the opinion of the Owner's Design Consultant or Program Manager.
 - c. The other Contract Documents show or call for a situation that does not function properly or is not suitable for the purposes intended, it being the Contractor's responsibility to carry out all final design and engineering.

In any and all cases of a, b or c above, the Contractor and the Contractors' AE shall develop the final, suitable and code compliant design so as to be as close to the requirements of the Contract Documents as possible and with the Owners' approval. In the three cases listed immediately above, no change shall be made that is not necessitated by code compliance. Further, the Contractor shall obtain the Owner's approval of all such changes. In all of the above cases, it is the Contractor's responsibility to call to the attention of the Owner through the Program Manager the situation with a full explanation and description, in writing, as early as feasible. Said communication to the Owner, through the Program Manager, shall be delivered to the Program Manager well before the situation's deliberate resolution is needed and well before the Owner's response is required. Further, the Contractor's notification for each and every such situation shall be accompanied by a complete description, including drawings and specifications, as appropriate in the opinion of the Program Manager, of the proposed resolution. Said resolution must not cause any delay or additional cost to the Owner and shall be subject to deliberate review by the Program Manager on behalf of the Owner. Further, the solution may not affect the appearance, functionality, quality or operating characteristics of the Project. The work called for in the resolution may not proceed without the Owner's notification of Receipt and Authorization to Proceed. If the Program Manager's response is received later than ten (10) business days ("grace period") after the complete notice and proposed resolution are submitted, then the Contractor will be entitled to a day-for-day extension in the the Date for Substantial Completion if, and only if, the Contractor can show that the resolution of the particular situation is, at that time, on the critical path of the Project's schedule. Further, the work of the resolution shall not proceed if the Owner has notified the Contractor that the proposed resolution is not acceptable. It is the Contractor's responsibility to call to the attention of the Owner matters requiring resolution well in advance of the time required for consideration of proposed resolutions, several re-submissions and other delays as may be reasonably expected. Therefore, the disapproval of a proposed resolution shall neither be the basis for an extension in the Date for Substantial Completion nor the basis of any extra cost to the Owner. Further, the Contractor may not expect a response from the Owner on more than one such proposed resolution within a ten (10) business day period. Further, no more than one ten (10) day grace period may run simultaneously.

The Contractor shall not, in any case, be relieved of the responsibility to design and construct a Project that meets all applicable codes and laws and is suitable for the Owner's intended purpose.

Further, the Owner has the right to expect that, prior to placing a proposal for this project and prior to entering into this Agreement, the Contractor has made a thorough analysis of the existing Contract Documents and has determined that there are no problems with these documents in terms of obtaining planning approval and all required building permits from the appropriate jurisdictions, that there are no problems of constructability of the project as illustrated and described in the DGI and OMR, that there are no problems in obtaining the various specific materials, items and specialty labor required to carry out the work in accordance with such Contract Documents, and that there are no problems in terms of the site or site access.

Instructions and other information furnished in the Contract Documents, including, without limitation, items in connection with prefabricated or pre-finished items, are not intended to supersede work agreements between employers and employees. Should the Contract Documents conflict with such work agreements, the work agreements shall be followed, provided such items are provided and finished as called for in the Contract Documents.

Should a conflict occur in or between the DGI and the OMR, the Contractor is deemed to have included the better quality and larger quantity of work in the bid.

6. **IN-PROGRESS CD REVIEWS.** The Contractor shall submit to the Program Manger in-progress Construction Documents (CDs) when thirty, sixty and ninety percent (30%, 60%, 90%) complete. These documents may or may not be reviewed in detail by the Program Manager, the Owner's Design Consultant and/or the Owner. In any case neither the Contractor nor the Contractor's AE shall rely upon the Program Manager, Owner's Design Consultant or the Owner for a detailed review or check of these or the completed Construction Documents. These submittal reviews shall not be the basis for a postponement of the Deadline.
7. **GOVERNMENTAL AGENCY REVIEWS AND PERMITS.** The Contractor shall submit partially completed Construction Documents for review by the Program Manager on behalf of the Owner in groups of documents that support the jurisdictional planning approval and building permitting process. These groups shall include all completed drawings and specifications by the Contractor's A/E that are required to support the issuance of the following permits and documents:
 - .1 Site Permit/Soil Disturbance Permit
 - .2 Foundation Permit
 - .3 Superstructure Permit, and
 - .4 Building Permit
 - .5 Any other documents required by the permitting jurisdiction(s)

Any drawings and specifications not specifically required for any of the above permits, shall be delivered no later than the submission of the fourth group for the Building Permit. These submittal reviews shall not be the basis for a postponement of the Date of Substantial Completion.

The Contractor shall initiate the building permit process in a timely manner by proceeding to file the documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project. The Contractor shall provide to the Owner updates of its progress on this matter, including a timeline schedule for obtaining all necessary permits.

The Contractor shall submit substantially completed Construction Documents to all governmental agencies having jurisdiction over the Project, shall obtain their approval, and shall incorporate changes in the Construction Documents as may be required by such authorities.

The Owner shall be entitled to request up to two (2) additional interim reviews of the Construction Documents being prepared, and may do so at any time and from time to

time as the Owner (in its sole discretion) may deem necessary or desirable. The Contractor shall provide the Owner with three (3) sets of prints and a set of reproducible prints of all drawings then completed or in preparation within three (3) calendar days of such request. Accompanying such "progress prints" shall be three (3) copies of all specifications completed or in preparation at the time of the Owner's request. In the event of such a request by the Owner, the Contractor shall not stop work on the preparation of the Construction Documents unless it receives written instructions to do so by Change Order.

8. The Owner shall be entitled in its sole discretion (but shall not be obligated) to review any or all drawings and specifications prepared by the Contractor including the required submissions called for in Part B, Paragraphs A.5 and A.7. If the Owner elects to review any such documents, the Owner shall be entitled (but not obligated) to limit its review to a cursory review or to such review as may be required to enable the Owner to determine rate of progress. The Contractor may not rely upon the Owner, the Program Manager nor the Owner's Design Consultant to fully check or review the Construction Documents.
9. Upon any submission by the Contractor to the Owner, whether such submission is required herein or not, the Contractor shall notify the Owner in writing of any change Orders that may be contemplated or required to the documents submitted. In giving such written notice, the Contractor shall separately list and identify each proposed change, omission or addition for which there is, or is expected to be, a request for a Change Order. No Change Order shall be effective unless and until it is executed by the Owner in writing. Any price change related thereto must be approved of in writing by both Parties to this Agreement.
10. The Contractor shall complete the Construction Documents in every respect and submit five (5) sets of prints and one (1) set of reproducible copies of the specifications, to the Program Manager.
11. The Owner shall notify the Contractor of any objections to the submitted documents, or an agreed section thereof, within fourteen (14) Calendar Days after their submittal to the Owner. The Construction Documents, or such agreed section thereof unless they have been sooner rejected by the Owner or the Owner's Representative, shall be deemed accepted and shall become part of the Contract Documents upon the passing of fourteen (14) Calendar Days after the Contractor has submitted the Construction Documents to the Owner or upon notice to the Contractor by the Owner that the Owner will not reject the documents, whichever date shall come first. The Owner shall be entitled to rely entirely on the Contractor to have completed the Construction Documents to be in accordance with the other Contract Documents and to be complete and accurate.
12. None of the Owner, Program Manager nor Owners' Design Consultant shall be obligated to review the Construction Documents. The Contractor acknowledges that the Owner may limit its review of the Construction Documents to a cursory review, or a review for the limited purpose of determining whether to make payment to the Contractor, it being the Contractor's sole responsibility to prepare the Construction Documents properly and completely. Because of the Contractor's Design-Build responsibilities under this Agreement, none of the Owner, the Owners' Design Consultant nor the Program Manager may be expected to carry out a detailed review, check or coordination of these documents. The Contractor shall not rely on such in any case. The Owner, the Owners' Design Consultant and/or the Program Manager may elect to make such a review as superficial, brief and limited as they may, in their own sole discretion, choose to do. Even though the Owner shall have no obligation to review the Construction Documents in any respect, the Owner shall be entitled (but not obligated) to notify the Contractor if the Owner, the Owners' Design Consultant or the Program Manager shall determine that the Construction Documents (or any part of them) are incomplete or inconsistent with the Contract Documents in any respect. In such event, the Contractor shall complete, correct and/or modify the Construction Documents in question and shall resubmit such Construction Documents to the Owner. If the need for re-submittal of the Construction Documents (or any part of them) shall not be due to a change requested by the Owner in the Contract Documents, then the Contractor shall have ten (10) calendar days within which to correct, complete and re-submit the Construction Documents, but there shall be no extension of the Date for Substantial Completion. In the event the Owner shall request any change in the Construction Documents that represents a change in the Scope of Work, such request shall constitute the basis for a Change Order.

13. Once the Construction Documents have been completed by the Contractor they become operative; the Construction Documents shall then compliment and become a part of the Contract Documents, as provided herein, at which time the Construction Documents become the property of the Owner.

B. RESPONSIBILITIES OF THE CONTRACTOR DURING THE PREPARATION OF CONSTRUCTION DOCUMENTS

1. All design services required to be performed by the Contractor, including, without limitation, the preparation of the Construction Documents, shall be performed by employees of or sub-contractors to the Contractor, who shall be qualified Architects, Engineers and other professionals, as required, and who shall be properly and currently licensed in the jurisdiction of the Project and selected, engaged or employed and paid for by the Contractor. The professional obligations of each member of the AE firm(s) or group(s) shall be undertaken and performed in the interest of the Contractor. Nothing contained in this Agreement shall create any professional obligation or contractual relationship between the Owner and the Contractor's AE, or any other person or firm engaged by the Contractor with respect to the Work.

2. The architectural and engineering services described in this Agreement will be provided to the Contractor by the following:

Architect:

Contact:

Person:

Email Address:

Mailing Address:

Telephone:

Fax:

Structural Engineer:

Contact Person:

Email Address:

Mailing Address:

Telephone:

Fax:

Mechanical Engineer:

Contact Person:

Email Address:

Mailing Address:

Telephone:

Fax:

Civil Engineer:	
Contact Person:	
Email Address:	
Mailing Address:	
Telephone:	
Fax:	

Similar information as above should be listed for any other major engineers or consultants in the employ of the Contractor for preparing the Construction Documents.

3. In case of the proposed termination of the Contractor's AE by the Contractor, the Contractor shall obtain the services of another AE, who is a lawfully licensed person(s) or entity(ies), subject to obtaining the Owner's approval of such person(s) or entity(ies) as replacement Architect and/or Engineer(s).
4. The Contractor shall be liable to the Owner for acts and omissions of the Contractor's agents and employees, subcontractors, sub-subcontractors and suppliers, including the parties listed above, and their respective agents and employees.
5. The Contractor acknowledges that the Contract Documents, and all documents and materials submitted by the Owner to the Contractor in connection therewith, are complete and sufficient to have enabled the Contractor to determine the cost of the Work in order to enter into this Agreement. The Contractor confirms that it has examined the site and all physical, legal and other conditions affecting the Work and is fully familiar with the site and with such conditions. The Contractor specifically represents to the Owner that it has examined (a) the nature, location, and character of the Project and the site, including, without limitation, the surface and subsurface conditions of the site and all structures and obstructions thereon and thereunder, both natural and man- made, all utilities, and all surface and subsurface water conditions of the site and the surrounding area; (b) the nature, location, and character of the general area in which the Project is located, including without limitation, its climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and (c) the quality and quantity of all materials, supplies, tools, equipment, labor, and professional services necessary to complete the Work in the manner and within the cost and time required by the Contract Documents. In connection with the foregoing, and having carefully examined all Contract Documents, and having examined the site, the Contractor acknowledges and declares that it has no knowledge of any discrepancies, omissions, ambiguities or conflicts in the Contracts Documents and agrees that if it becomes aware of any such discrepancies, omissions, ambiguities or conflicts, it shall promptly notify the Owner thereof. Notwithstanding the foregoing, Contractor assumes, and is entitled to assume that the Contract Documents meet Zoning without additional setback or open space requirements, and meet the Owner's intended purpose. If an event arises whereby the foregoing is not true, then the Contract Documents shall be modified by Change Order pursuant to this Agreement.
6. The Contractor acknowledges that it has been provided reasonable access to all subsurface geotechnical survey data developed by and for the Owner and related to the Project, and that it was, prior to submitting its proposal, provided access to the site for whatever additional survey effort it deemed it appropriate to undertake. The Contractor further acknowledges that these test results indicate that the site is buildable as contemplated by the Contract Documents and acknowledges that it will make no claims for any subsurface or other conditions revealed by these tests. The Contractor may elect, after it has commenced the performance of its Work, to perform further tests and explorations of the subsurface conditions at the site in connection with preparation of the Construction Documents, provided, however, that the Date for Substantial Completion shall not be extended by reason of the Contractor's performance of such further

tests and explorations. In any case, the Contractor's design and construction shall fully take into account the results of such tests and investigations so that the Project will be structurally stable, suitable for the Owner's intended purposes and in compliance with all applicable laws and regulations for the actual subsurface conditions. The Contractor shall provide to the Owner true and complete copies of all soil tests, geotechnical exploration reports and foundation recommendations as soon as possible after the Contractor receives such tests and reports.

7. The Contractor shall, as a part of the design process and utilizing a qualified engineer land surveyor selected and commissioned by the Contractor, confirm all conditions of the site and immediate surrounding area, along with the locations of each utility.

The Contractor acknowledges that the exactness of grades, elevations, dimensions, or locations given on the Design Guide Illustrations issued by the Owner's Design Consultant, or the work installed by other contractors, are not guaranteed by the Owner's Design Consultant or the Owner.

The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work and the Contractor shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, locations or dimensions shall be promptly rectified by the Contractor without any additional cost and time to the Owner.

8. The Contractor and the Contractor's AE shall participate in weekly or biweekly design progress meetings to update the Owner and its representatives, Program Manager, Owner's Design Consultant, and other appropriate parties as to the progress of the Work preparation of the Construction Documents.

C. EXECUTION AND COMPLETION OF THE CONSTRUCTION PHASE OF THE WORK

The provisions for execution and completion of the construction phase of the Work shall take effect if and when the Owner issues to the Contractor a Notice to Proceed with the construction phase of the Work or designated portion thereof.

1. The Contractor's basic services for execution and completion of the construction phase of the Work to be performed pursuant to this Agreement are described in this Section 2.3. The Contractor shall execute the entire Work described in the Contract Documents except to the extent specifically indicated in the Contract Documents to be the responsibility of others, if any.
2. The Contractor shall be responsible for securing and paying for all required building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work and all Certificates of Occupancy. The obtaining of appropriate building permits shall be a condition precedent to the Owner's right to issue the Notice(s) to Proceed.

The Contractor shall be responsible for and coordinate any and all inspections required by any governmental body that has jurisdiction over the Project. Failure to obtain any permits, licenses, or other approvals because of the failure of the Contractor to conform to this paragraph will not extend the Contract Time and the contractor shall not be entitled to an increase in the Contract Sum therefore. Further, the Contractor shall be liable to the Owner for any financial damage such failure may cause the Owner.

3. Unless otherwise provided in the Contract Documents, the Contractor shall provide or cause to be provided, and shall pay for, Construction Documents preparation, shop drawings, document preparation services, 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, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

The Contractor's Work required by the Contract Documents, including, without limitation, all construction details, construction means, methods, procedures and techniques necessary to perform the Work, use of material, selection of equipment, and requirements of product manufacturers are consistent with; (1) good and sound practices within the construction industry; (2) generally prevailing and accepted construction industry standards applicable to the Work; (3) requirements of any warranties applicable to the Work; and (4) all laws, ordinance, regulations, rules and orders which bear upon the Contractor's performance of the Work.

4. 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 this Agreement.

The Contractor shall engage workers who are skilled in performing the Work. All Work shall be performed under the full-time supervision of a qualified engineer or foreman employed by the Contractor. The Contractor shall be liable for all property damage, including, without limitation, repairs and replacements of the Work, which proximately result from the breach of this duty. The Contractor shall coordinate with its AE to assure that; (a) No specific product deviates from good construction practices; and (b) If following the Specifications will not affect any warranties.

5. The Contractor shall keep the Owner regularly informed of progress and quality of the Work. The Contractor shall provide reasonable access to the Owner, the Owner's employees, consultants and representatives in order to review the Work.

The Contractor shall ensure that the Work, at all time, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. 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 will be free from debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Documents, the Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of any areas and buildings adjacent to the site of the Work.

6. The Contractor shall promptly, upon notice thereof given to the Contractor by the Owner or the Program Manager, correct in accordance with this Agreement any and all Work which does not conform to the Contract Documents. If the Contractor fails to so or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner, by a written order, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. Further, the right of the Owner to stop the Work for such reason shall 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.

7. The Contractor warrants to the Owner that all materials and equipment incorporated in the Work will be new unless otherwise specified, and that the Work will be of good quality, free from faults and defects, and in conformance with the requirements of the Contract Documents.

The representations and warranties contained in this Part B, Paragraph C.7 and elsewhere in this Agreement survive the complete performance of the Work or earlier termination of this Agreement.

The Contractor agrees to assign to the Owner at the time of Final Completion of the Work, any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such a manner so as to preserve any and all such manufacturer's warranties.

8. The Contractor shall pay all sales, consumer, use and similar taxes arising in connection with the Project.
9. The Contractor shall give notices as required by, and shall comply with, all laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project.
10. The Contractor shall pay applicable royalties and license fees arising in connection with the Project. The Contractor shall defend suits or claims for infringement of patent rights and shall

indemnify and save the Owner, the Owner's affiliates, and their respective members, shareholders, directors, agents and employees, harmless from and against loss or liability on account thereof. The Contractor will not be responsible for suits arising out of the Owner's negligence.

11. The Contractor shall be liable to the Owner for acts and omissions of the Contractor's agents and employees, subcontractors, sub-subcontractors, and suppliers, including the parties listed in Part B, Paragraph B, above, and their respective agents and employees.
12. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit unfit persons or persons not skilled in tasks assigned to them to be employed in connection with the Project. The Contractor shall only employ labor on the Project or in connection with the Work, capable of working harmoniously with all trade crafts and any other individuals associated with the Project. The Contractor shall also be responsible for maintaining labor peace and harmony on the Project at all times during the term of this Agreement, and shall at all times use its best efforts and judgment as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes or strikes when reasonably possible and practical under the circumstances.

Except as specifically provided in this agreement, Contractor shall not be entitled to any adjustment in the Contract Sum or the Contract Time and shall be liable to Owner for all damages suffered by Owner occurring as a result of work stoppages, slowdowns, disputes, or strikes by the work force of or provided by Contractor or its Subcontractors.

13. The Contractor and the Contractor's AE shall prepare Change Orders requested by either Party for the Owner's approval and execution in accordance with this Agreement, but shall not have authority to make changes in the design or construction of the Project regardless of the minor nature of the change. The Contractor shall promptly inform the Owner, in writing, of any proposed changes in the design and construction of the Project.
14. The Contractor shall maintain in good order, at the site, one (1) record copy of the Owner's Minimum Requirements, the Design Guide Illustrations, the Construction Documents, other pertinent drawings and specifications, product data, samples, shop drawings, Change Orders and other modifications relating to the Project and the Work currently marked to record changes made during construction (As-Built documents). As-Built documents shall be delivered to the Owner upon completion of the Work and prior to Final Payment, or upon any prior termination of this Agreement. The provisions of this Part B, Paragraph C.14 shall survive the expiration or prior termination of this Agreement.
15. The Contractor shall install furniture, fixtures, equipment and accessories in the Project, which have been purchased and delivered to the Site by the Owner and other contractors and are listed in the OMR or DGI for installation by the Contractor.
16. The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which shall be at the sole discretion of the Owner.

Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances and parking areas other than those designated by the Owner. Without limitation of any other provision of the Contract Documents, the Contractor shall use its best efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the Building, as amended from time to time. The Contractor shall immediately notify the Owner in writing if during the performance of the Work, the Contractor finds compliance with any portion of such rules and regulations to be impracticable, setting forth the problems of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulation can be achieved. The Owner shall, in the Owner's sole discretion, adopt such suggestions, develop new alternatives or require compliance with the existing requirements of the rules and regulation. The Contractor shall also comply with all insurance requirements and collective bargaining agreements applicable to use

the occupancy of the Project site and the Building.

The Contractor and the Contractor's AE shall participate in biweekly construction phase progress meetings for the purpose of updating the Owner on the progress of the Project and to facilitate information to the Contractor.

The Contractor shall assure that the Contractor's AE shall provide its services as expeditiously as is consistent with a high skill and care and in accordance with the schedule of AE services. This schedule contains certain specific dates, which must be adhered to and which are the last acceptable dates for provision of the indicated services, unless changed by the Owner. If the Owner finds that the Contractor's AE's services are behind schedule, the Owner shall notify the Contractor and direct that the AE promptly work overtime at the Contractor's own expense to bring its effort within conformance with the schedule, or add additional workforce.

17. **SUBSTANTIAL COMPLETION.** The Contractor shall notify the Owner when the Contractor shall achieve Substantial Completion. Any Contractor's Notice of Substantial Completion delivered to the Owner pursuant to the preceding sentence (Substantial Completion Notice) shall:

- .1 Specify the date the Contractor claims to be the date on which Substantial Completion occurred;
- .2 With respect to that portion of the Work delivered, set forth the Contractor's position regarding the respective responsibilities of the Contractor and the Owner for security, maintenance, heat, utilities, damage to such Work and insurance;
- .3 With respect to that portion of the Work delivered, set forth a list of items remaining to be completed or corrected in connection with such Work;
- .4 Specify the date or dates by which each of the remaining items referred to in clause C.17.3 above shall be completed or corrected, and, in any event, no later than thirty (30) calendar days after Substantial Completion.

A copy of any such Substantial Completion Notice shall be delivered to the Program Manager concurrently with its delivery to the Owner. If the Program Manager shall agree with the date of Substantial Completion specified in such Substantial Completion Notice, the Program Manager shall confirm the date in a written response delivered to the Owner and the Contractor. If the Program Manager shall disagree with the date of Substantial Completion specified in a Substantial Completion Notice, the Program Manager shall notify the Contractor and the Owner, setting forth with reasonable specificity the basis for ruling that one or more of the criteria for Substantial Completion has not been satisfied. The Contractor shall be entitled to resubmit the Substantial Completion Notice specifying a later date for Substantial Completion. The Contractor shall also be entitled to contest the determination of Program Manager. However, the Contractor shall not be entitled to stop or delay the Work. Substantial Completion shall not be deemed to have occurred until the earliest date specified therefore by the Contractor in a Substantial Completion Notice and confirmed in writing by the Program Manager.

18. Substantial Completion is defined herewith as the time when the entire Project (or designated portion) and all of its systems, including access to the Project and any off- site work required, are completed in accordance with the Contract Documents such that the Project or designated portion thereof is ready, suitable, and fully operational and cleaned for the Owner's full Beneficial Occupancy for the purpose for which it is intended, with the required Certificates of Occupancy and other governmental approvals having been obtained. (See Cleaning section below, Part B, Paragraph C.19.) In order for the Contractor to have achieved Substantial Completion, only minor incidental corrective work that does not interfere with the Owner's full beneficial occupancy and operation of the Project may remain as "Punch Lists. The Owner reserves the right to waive any of the above conditions for a part or all of the Project without relieving the Contractor of any other responsibilities.

19. To achieve Substantial Completion, the Contractor shall have fully cleaned the building(s) and

site. All debris and equipment shall have been removed from the site and all paved surfaces shall have been broom swept and thoroughly hosed down. In and on the building(s), all debris shall have been removed, all hard surface floors swept and mopped, all carpeted floors vacuumed, all surfaces other than floors dusted, blower dusted, or wiped (depending on type of surface) and all mairs cleaned, all glazing washed both sides, and all electrical and mechanical equipment and fixtures cleaned with all ductwork cleaned before other cleaning started and re-cleaned if any dust or dirt has gotten into the ductwork during the cleaning process. This cleaning shall be completed before the Program Manager is required to commence preparation of the punch list.

20. When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is Substantially Complete, the Owner's Design Consultant and the Program Manager shall prepare a comprehensive list of items to be completed or corrected. Such a list is referred to as the "Punch List". This list is a list of items of required work that, as a minimum, are to be accomplished for the Contractor to achieve Final Completion. At its discretion, the Program Manager may choose to issue one or more punch lists before that time, but such shall not be required from the Program Manager by the Contractor in lieu of the Contractor's or Subcontractors' routine work list. Punch Lists are prepared by the Program Manager for convenience of the Contractor. The issuance of a Punch List by the Program Manager or any other party does not imply that any item of Work not listed is not required. The Program Manager may add items to the Punch List from time to time as any additional defects or omissions come to the attention of the Program Manager. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Program Manager's list, the Owner's Design Consultant will make an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If the Owner's Design Consultant's inspection, or observations by the Program Manager, discloses any item, whether or not included on the list, which is not in accordance with the requirements of the Contract Documents, and which is necessary to achieve Substantial Completion, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Program Manager or Owner's Design Consultant. The Contractor shall then submit a request for another inspection by the Owner's Design Consultant and by the Program Manager to determine Substantial Completion. When the Work or designated portion thereof is Substantially Complete, the Owner's Design Consultant will produce a Certificate of Substantial Completion, which, upon approval by the Program Manager, shall establish the date of Substantial Completion. The Contractor shall be responsible for security, maintenance, heat, utilities, damage to the Work and insurance as stated in the Contract Documents, and the Owner shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof or mutually agreed to date established by the Owner and Contractor, unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. The Owner takes over utility cost at the first of the month following Substantial Completion, but not sooner than 15 calendar days after Substantial Completion. The Owner takes over the Contractor's security and insurance costs the first of the month following Substantial Completion, but not sooner than 15 calendar days after Substantial Completion.
21. OWNER'S RIGHT TO OCCUPY INCOMPLETE PROJECT: Should the Project, or any portion thereof, not be Substantially Complete on or before the Date for Substantial Completion, the Owner shall nevertheless have the right to occupy any portion of the Project. In such an event, the Contractor shall not be entitled to any extra compensation on account of such occupancy by the Owner or by the Owner's normal full use of the Project. Further, the Contractor shall not be relieved of any of its responsibilities under the Contract Documents. Such occupancy by the Owner shall not, in itself, constitute evidence of Substantial Completion or final completion.

D. RESPONSIBILITIES DURING EXECUTION AND COMPLETION OF THE WORK

1. The Contractor shall provide all labor necessary to complete the construction of the Project, all materials and equipment (whether for temporary or permanent use) incorporated or to be incorporated in such construction, all tools, equipment, supplies, supervision, insurance, taxes and all other services and facilities necessary to complete such construction and other Work described in the Contract Documents.
2. Only documents prepared for or by the Contractor for this Project may be used for obtaining building permits or any required zoning or planning approvals or for construction. No drawings or specifications prepared by the Owner or by the Program Manager or by their representatives shall be used for permits or construction without the Owner's and the Program Manager's prior written permission in each instance.
3. Construction services shall be performed by qualified construction contractors, subcontractors and suppliers, selected (subject to approval of the Owner in accordance with Part B, Paragraph B.3 of this Agreement) and paid by the Contractor and acting in the interest of the Contractor. The professional and contractual obligations of such persons shall be undertaken and performed in the interest of the Contractor, and nothing contained in this Agreement shall create any professional obligation or contractual relationship between such persons and the Owner.
4. The Contractor shall make, execute and deliver, or obtain and deliver, all affidavits, certificates, and other instruments and documents, and shall do or cause to be done all such acts or documents, which the Owner may reasonably request to effect timely execution of the work of the Agreement.

E. ARCHITECT AND ENGINEERS OF RECORD

1. The Contractor's AE shall be directly employed by or be a Subcontractor of the Contractor, and shall be the Architect/Engineers of Record. All documents for permitting and construction shall bear the Contractor's AE's Seal(s). The architectural and engineering services performed under this contract will be provided by persons and entities who are lawfully licensed to practice architecture and engineering in the jurisdiction(s) of this Project and who have been identified in Part B, Paragraph B.2 of this Agreement, or their successor(s) provided pursuant to Part B, Paragraph B.3.
2. The Contractor shall assure that the Contractor's AE shall receive, check and approve all shop drawings from the Contractor after the Contractor has checked all field and surrounding structural conditions and met all other shop drawing requirements. Upon completion of the checking of a set of shop drawings, the Contractor's AE shall submit to and file an approved copy of such shop drawings with the Program Manager. The AE shall not make more than one such filing within any three business days, except in the case of Division 31 and 03 Work in which case up to two sets of shop drawings that have been checked by the Contractor's AE may be filed with the Program Manager within any two business days.
3. Neither the Owner nor the Program Manager, the Owner's Design Consultant nor other consultant to or representative of the Owner has any responsibility of any nature for reviewing or approving shop drawings. However, no fabrication or construction of Work shown on shop drawings shall commence for seven (7) business days after the Contractor's AE has filed the set of shop drawings for that Work with the Program Manager and has received no adverse comments thereon.
4. All Samples and Color Selection Charts shall be sent immediately by the Contractor's AE to the Program Manager.
5. The Contractor shall assure that the Contractor's AE shall provide its services as expeditiously as is consistent with a high skill and care and in accordance with the schedule of AE services. This schedule contains certain specific dates, which must be adhered to and which are the last acceptable dates for provision of the indicated services, unless changed by the Owner. If the Owner determines that the Contractor's AE's services are behind schedule, the Owner shall notify the Contractor to direct that the AE promptly work overtime at the Contractor's own expense to bring its effort within conformance with the schedule.

F. SUBCONTRACTS

1. The Contractor shall furnish to the Owner in writing the names of the persons or entities the Contractor proposes to engage as subcontractors at least ten (10) days before said entity shall start any Work as a subcontractor.
2. The Contractor shall not contract with any Subcontractor to whom the Owner or the Program Manager has made reasonable and timely objection.
3. Nothing contained in the Contract Documents shall create a professional or business obligation or contractual relationship between the Owner and any third party.
4. Notwithstanding the foregoing, the Owner shall only be required to compensate a Subcontractor or supplier for compensation accruing to such party for Work done or materials delivered from and after the date on which the assignment of the subcontract agreement or purchase order to the Owner shall become effective, provided that such Work and materials are in conformance with the Contract Documents. All sums due and owing by the Contractor to any Subcontractor or supplier for work performed or materials supplied prior to such date shall constitute an obligation solely of the Contractor and not of the Owner. The Contractor shall deliver or cause to be delivered to the Owner a written acknowledgment in form and substance satisfactory to Owner from each of its Subcontractors and suppliers no later than ten (10) calendar days after the date of execution of each subcontract agreement and purchase order with such parties. The Contractor shall keep a suitable record of this transaction.
5. Any specific requirements in this Contract that are 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.

G. CONTRACTOR'S SUPERINTENDING FIELD STAFF

1. Before starting Work, Contractor shall designate the Project Manager, Superintendent, Assistant Superintendent and other key employees of the Contractor who shall be assigned to the Project in a management capacity through and including Final Completion. The Superintendent and Assistant Superintendent shall be qualified, full-time, and in attendance at the Project site throughout the Work, including completion of the punchlist. Full-time shall mean not less than eight (8) hours per day, in addition to lunch breaks, Mondays through Fridays except for legal holidays and earned vacation days. Both the Superintendent and Assistant Superintendent shall be approved by Owner in its sole discretion. Neither the Superintendent nor the Assistant Superintendent shall have other project or business responsibilities or calls on his or her time other than this Project. Said representatives shall be qualified in the type of Work to be undertaken and shall not be changed during the course of construction without the prior consent of the Owner. If a representative is injured, ill, or leaves Contractor's employ, Contractor shall promptly designate a qualified substitute to the Owner.
2. Owner shall have the right, at any time, to direct a change in Contractor's representatives if their performance is unsatisfactory. In the event of such demand, Contractor shall, within seven (7) days after notification thereof, replace said individual(s) with an individual satisfactory to Owner, in Owner's sole discretion. If said replacement is disapproved, Contractor shall replace said individual with an individual satisfactory to Owner, in Owner's sole discretion, within seven (7) days of the disapproval of the first candidate. This process will continue, as necessary, until the Owner's approval has been gained.
3. At any time after the first thirty (30) days after the execution of this Agreement if it is found by an independent construction schedule analyst that the Project is two (2) weeks or more behind schedule, at the Owner's option, the Contractor shall take whatever acceleration measures are necessary, and the Superintendent and Assistant Superintendent shall be on the Project at the site for not less than ten (10) hours per day, 5 days a week, including any legal holidays, until Substantial Completion or until the schedule analyst rules that the Project is completely back on schedule (whichever comes first), all at no additional charge to the Owner. The Program Manager may appoint the schedule analyst,

whose fee shall be paid by the Owner. Further, at any time during the last thirty (30) days preceding the Date for Substantial Completion that the schedule analyst rules that the Contractor is one (1) week or more behind schedule, the Program Manager may direct that the Superintendent and Assistant Superintendent be on the Project site full time for not less than ten (10) hours per day, 6 days a week, including any legal holidays, and the Contractor shall, in addition, take such acceleration measures as are necessary until Substantial Completion or until the schedule analyst rules that the Project is completely back on schedule (whichever comes first). Such acceleration measures shall be at no additional cost to the Owner; provided, however, that if the Owner or those for whom the Owner is responsible have caused or contributed to the delay, or if the delay is one for which the Contractor is entitled to an extension of time pursuant to this Agreement, then the Contract Sum shall be increased by the cost of such acceleration measures and a Change Order shall be executed in accordance with this Agreement. Should the Contractor fail to have the approved and qualified Superintendent and Assistant Superintendent on the Project at any time as required above, the Contract Sum shall be adjusted by deducting the amount of Five Hundred Dollars (\$500.00) per hour for each hour that the Superintendent or Assistant Superintendent, or both is not assigned to the Project and present at the site.

SUPPLEMENTARY CONDITIONS – PART C

A. SURVEYS, PERMITS AND REGULATIONS

1. If additional site information is required beyond that shown in the Contract Documents, the Contractor shall be responsible for all site, topography and property surveys not provided.
2. The Contractor shall pay all fees and shall procure all applications, permits, licenses and approvals necessary for the execution of his Contract. See K.S.A. 75-3741c.
3. The Contractor shall give all notices and comply with all State and Federal laws, codes, rules and regulations relating to the performance of the Work, the protection of adjacent property, and the maintenance of passageways, guard fences or other protective facilities.
4. If charges for water, sewer and other utility connections made by municipalities are costs which the State is obligated to pay, the Contractor shall pay these charges where required by the Specifications.

B. MATERIALS AND WORKMANSHIP

1. Materials and fixtures shall be new and of latest design and current manufacture unless otherwise specified as approved by the Owner's Design Consultant. All Work shall be performed by competent workers and shall be of best quality.
2. The Contractor shall carefully examine the plans and specifications and shall be responsible for the proper fitting of his material, equipment, and apparatus into the building.
3. The Contractor shall base his bid only on the Contract Documents. Contractor may make a written proposal to the Owner's Design Consultant to use alternate materials or fixtures, but the Owner's Design Consultant's decision shall be final. Refer to this Agreement - "Or Approved Substitute" Clause.
4. Not Used.
5. Materials and workmanship shall be subject to inspection, examination, and test by the Owner's Design Consultant, the Construction Representative and the Owner's Representative at any and all times during manufacture, installation, and construction on any of them, at places where such manufacture, installation, or construction is carried on. The Owner shall have the authority and right to reject defective materials and workmanship or to require correction.
6. Materials prohibited by governmental authority or regulation from being used in construction shall not be used on this project.
7. The Contractor shall promptly remove, at his expense, all rejected materials from work site.
8. Not Used.
9. Not Used.
10. Reference to "standard" specifications of any association or manufacturer, or codes of State authorities, refers to the most recent printed edition or catalog in effect on the date which corresponds with date of the Contract Documents.
11. Whenever reference is made in the Specifications that work shall be "performed," "applied," "installed," "finished," "tested," or "connected," in accordance with the "manufacturer's directions or instruction," the Contractor to whom those instructions are directed shall furnish printed copies of such instructions when requested by the Owner's Design Consultant before execution of the work.

C. INSPECTION AND TESTING OF MATERIALS

1. All work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records shall be made available by the Contractor to authorized representatives and agents of State government.
2. If a portion of the Work is covered contrary to the Owner's Design Consultant's request or to requirements specifically expressed in the Contract Documents, it shall, if required in writing by the

Owner's Design Consultant, or the Owner's Representative, be uncovered for observation and be replaced and recovered at the Contractor's expense with the proper personnel in a timely manner as approved by the Owner, without change in the Contract Time.

3. Not Used
4. Unless otherwise provided, Contractor shall provide all testing as outlined in the Contract Documents by approved independent testing agencies. Copies of tests reports shall be sent to Office of Facilities and Property Management, the Owner, and the Owner's Design Consultant and the Contractor by the testing agency.
5. If any work is required to be specially tested or approved, the Contractor shall give the Owner's Design Consultant, Construction Representative and the Owner's Representative a minimum of five working days notice of date for such inspection. Such materials and equipment requiring testing, shall be tested in accordance with accepted or specified standards, as applicable. Unless otherwise called for in the Specifications, the laboratory or inspection agency shall be accepted by the Owner and the Contractor will pay all costs incurred by the specified testing and laboratory procedures. Should retesting be required, due to failure of initial testing, the cost of such retesting shall be borne by the Contractor.
6. The cost of any testing performed by manufacturers or contractors for the purpose of substantiating acceptability of proposed substitution of materials and equipment, or the necessary conformance testing in conjunction with manufacturing processes or factory assemblage, shall be borne by the Contractor or manufacturer responsible.
7. On the basis of the test results, materials, equipment, or accessories may be rejected even though general approval has been given. If items have been incorporated in the Work, the Owner will have the right to cause their removal and replacement, without cost to the Owner, by items meeting contract requirements or to demand and secure such reparation to the Owner from the Contractor as is equitable.
8. The Owner reserves the right to require the Contractor to furnish a certificate guaranteeing that material or equipment as submitted complies with contract requirements. If statement originates with manufacturer, the Contractor shall endorse all claims and submit statement in his own name.

D. "OR APPROVED SUBSTITUTE" CLAUSE

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 substitute", shall automatically follow and shall be implied unless specifically indicated otherwise. The standard products of manufacturers other than those specified will be accepted when, it is proven in writing via product literature to the satisfaction of the Owner's Design Consultant they are equal in design, spare parts availability, strength, durability, usefulness, serviceability, operation cost, maintenance cost, and convenience for the purpose intended. The written product literature shall include information to allow a complete comparison of the proposed product. Any changes required in the details and dimensions indicated in the Contract Documents for the substitution of standard products other than those called for shall be properly made and approved by the Owner's Design Consultant at the expense of the Contractor requesting the substitution or change. No substitutions will be permitted for components of extensions to existing systems when, in the opinion of the Owner's Design Consultant, the named manufacturer must be provided in order to insure compatibility with the existing systems, including, but not limited to, fire alarms, smoke detectors, controls, etc.
2. No substitution shall be purchased or installed by the Contractor without the Owner's Design Consultant's written approval. Requests for approval of substitutions must be made in a timely manner.
3. It shall be understood that the use of materials or equipment other than those specified, or approved substitute by the Owner's Design Consultant, shall constitute a violation of Contract, and that the Owner shall have the right to require the removal of such materials or equipment and their replacement with the specified materials or equipment at the Contractor's expense.
4. Substitutions after the Award of Contract are not allowed.

E. SUBSURFACE AND LATENT CONDITIONS FOUND DIFFERENT

1. Should the Contractor encounter subsurface or latent conditions at the site materially differing from those indicated in the Contract Documents, he shall immediately stop work in the area where differing

conditions are found and give notice to the Owner's Design Consultant, Owner, and Office of Facilities and Property Management, of such conditions before they are further disturbed. The Owner's Design Consultant will thereupon promptly investigate the conditions, and if he finds that they materially differ from those indicated in the Contract Documents, he will at once make such changes as he may find necessary, any increase or decrease of cost resulting from such changes to be adjusted as provided in this Agreement.

F. CHANGES IN WORK

1. Overhead and profit on Change Orders shall be applied as follows:

a. The overhead and profit charged by the Contractor shall be considered to include, but not limited to, performance bond, builder's risk and public liability insurance, job site office expense, incidental job supervision, field supervision, company benefits, general office overhead, and cost associated with the preparation of design documents, layout drawings, or shop drawings. 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:

OVERHEAD AND PROFIT FOR ADD CHANGE ORDERS

	Overhead	Profit	Fee
To Contractor on work performed by other than his own forces:	0%	0%	10%
To First level subcontractor on work performed by his subcontractors:	0%	0%	10%
To Contractor and/or his sub-contractors for that portion of work performed with their respective forces:	10%	10%	0%

b. 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 of the direct cost for the Contractor or Subcontractor of any tier performing the Work.

c. The percentages for overhead and profit credit to the Owner on Change Orders that are strictly decreases in the Quantity of work or material shall be negotiated and may vary according to the nature, extent, and complexity of the Work involved.

2. No claim for an addition to the Contract sum will be valid unless authorized as aforesaid in writing by the Owner's Design Consultant. In the event that none of the foregoing methods are agreed upon, the Owner may require the contractor to complete the work by force account. The cost of such Work will be determined by the Contractor's actual labor and material cost to perform the work plus applicable overhead and profit as outlined above recorded on a daily basis. The Owner's Representative and the Owner's Design Consultant will verify daily the Contractor's time and material for the Work.

3. Any work completed by the Contractor outside the original project scope without written approval from the Owner's Design Consultant will be deemed as a waiver by the Contractor for additional compensation for said work.

4. The Owner will either accept or reject a change order within (14) calendar days after receipt of complete change order pricing and documentation from the Contractor.

G. MUTUAL RESPONSIBILITY OF CONTRACTORS

1. If, through acts of neglect on the part of the Contractor, any other contractor or any subcontractor shall suffer loss or damage on the work, the Contractor agrees to promptly settle with such other contractor or subcontractor by agreement or otherwise to resolve the dispute. If such other contractor or subcontractor shall assert any claim against the Owner on account of any damage alleged to have been sustained, the Owner shall notify the Contractor, who shall indemnify and hold harmless the Owner against any such claim.

H. DUTIES OF THE CONTRACTOR

1. The Contractor shall be responsible for layout of his own work and for any damage which may occur to work of any other Contractor or subcontractors of any tier, because of errors or inaccuracies on the part of this Contractor and his Subcontractor of any tier as well as be responsible for unloading, uncrating, and handling of all materials and equipment to be erected or placed by him, whether furnished by the Contractor or others. The Contractor is further responsible that the layout of work by Subcontractors of any tier which shall be coordinated with layouts of all general construction Work and all other subcontract work. Unless otherwise directed by the Owner's Representative, salvage materials, waste, and scrap resulting from such work shall be promptly removed from the site by the Contractor, at his expense.
2. The Contractor shall limit operations and storage of materials to the area within the project 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. The contractor shall follow procedures outlined below for all utility outages/tie-ins:
 - a) All shutting of valves, switches, etc. shall be in conjunction with or by the Owner's personnel.
 - b) The Contractor shall request an outage/tie-in meeting at least two weeks before the outage/tie-in is required.
 - c) The Owner's Representative will schedule an outage/tie-in meeting at least one week prior to the outage/tie-in.
 - d) The following individuals shall attend this meeting:
 - .1 Owner's Representative
 - .2 Contractor's Superintendent
 - .3 Subcontractors of any tier performing the Work
 - e) The Contractor shall be prepared to discuss the following at this meeting:
 - .1 Date and time of proposed outage/tie-in.
 - .2 Detailed work plan to be followed during the outage and the total time required to complete all work.
 - .3 Work force to be employed during the outage.
 - .4 Owner and/or utility responsibilities during the outage.
 - .5 Contingency plan in case of complications (i.e., the availability of additional personnel and materials) during the outage.
 - f) The Contractor shall be aware that the outage/tie-in time and date is subject to approval by the Owner's Representative.
4. The Contractor shall coordinate all Work so there shall be no prolonged interruption of existing equipment and services. Any existing plumbing, heating, ventilation, 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 work day 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.
5. The Contractor shall promptly remedy damage and loss to property 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.

6. 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.
7. The Contractor shall be responsible for care of his finished Work and must protect same from damage or defacement until acceptance by Owner. All damaged or defaced work shall be repaired or replaced to the Owner's satisfaction, without cost to the Owner.
8. The Contractor shall comply with all applicable ordinances and regulations. The Contractor shall save the Owner and the Owner's Design Consultant harmless as a result of any failure to do so.
9. Required Code inspections necessary for Occupancy

It is the responsibility of the Contractor to coordinate with the OFPM inspectors to schedule required code inspections. The agency and the Owner's Design Consultant are to be informed of all scheduled required code inspections.

Code inspections (if component is included in the project) are required to be performed by OFPM prior to covering work. These inspections include but are not limited to:

1. Footings and Foundations
2. Underfloor/Under slab
3. MEP Underground (not associated with underfloor/under slab)
4. Framing
5. In-Wall
6. Fire-resistive assemblies and fire-resistant penetrations
7. Above Ceiling
8. Fire Alarm
9. Sprinkler and Standpipe
10. Emergency Lighting
11. Back-up Power Sources
12. Fire Pump
13. Elevator
14. Roof inspections (including tear-off, insulation, membrane placement, flashing)
15. Emergency Power
16. Smoke Control Systems
17. Pressure testing of all piping
18. Locking systems
19. Final Inspections (including exit path and ADAAG verification)

(This information is also outlined on the Occupancy Checklist form located on our website at <http://www.admin.ks.gov/offices/ofpm/dcc>).

The required code inspections shall be coordinated with OFPM inspector via individual cell telephones. Telephone contact is to be a minimum of 3 work days prior to anticipated inspection. Inspection confirmation may occur via e-mail after telephone coordination. Failure to coordinate a scheduled inspection with a minimum of 3 work days may result in no inspection and subsequent denial of a Certificate of Occupancy.

An **Inspection Record** will be issued by OFPM inspectors for each required inspection. The Inspection Record will indicate when the inspection is approved. If a deficiency is noted, it will be the responsibility of the contractor to coordinate solution of the deficiency with the Owner's Design Consultant and to correct all noted deficiencies as directed by the Owner's Design Consultant. Issuance of the Certificate of (Partial) Occupancy is dependent on resolution of all deficiencies.

(Please note: The inspector, noted above, is to be notified of each required inspection. The inspector, at his discretion, may defer this inspection. The inspector will inform the contractor and agency representative regarding who will be performing the inspection.)

10. When requested by the Owner's Design Consultant, Construction Representative, and the Owner's Representative, the Contractor, at no extra charge, shall provide a safe means for examination of work in progress or completed.
11. No project signs shall be erected without the approval of the Owner's Representative.

12. The Contractor shall verify all measurements. No extra charges or compensation will be allowed as a result of the failure to verify dimensions before ordering materials or fabricating items.
13. 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 by the Contractor, the Contractor shall provide them at the Contractor's own expense, but only as directed by the Owner's Design Consultant.
14. 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 to make the place of work safe and free from avoidable danger, and as may be required by safety provisions of applicable laws, ordinances, rules, regulations, and building and construction codes.
15. The Contractor shall be responsible for removal of all rubbish, debris, and dirt resulting from the Work and shall clean up as requested by the Owner's Design Consultant, Construction Representative, and the Owner's Representative. The Contractor shall be responsible for the cost of clean-up and removal from premises. All debris resulting from said removal shall be disposed of off State owned property at an authorized dump site. The building and premises shall be kept clean, safe, in a workmanlike manner, and in compliance with OSHA standards at all times. At completion of 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. In detention facility projects, the contractor shall return all security related shop drawings to the Owner.
16. The Contractor shall accurately record on blue line prints all changes to the original plans made during the installation of the work. The Contractor shall also record all changes to the original specifications made during the installation of the work. The Contractor shall maintain an updated set of Record Documents (both drawings and specifications) at the job site throughout construction (if there is an on-site office). This set of Record Documents shall include all addenda, change orders, field revisions, changes, and alterations that occur during construction and shall be furnished, in good condition, to the Owner prior to completion of the project.
17. The Contractor shall establish and be responsible for wall and partition locations. Other Contractors and Subcontractors of any tier shall observe these locations and be responsible for setting their sleeves, openings, or chases.
18. The Contractor for construction work shall pump, bail, or otherwise keep general excavations free of water. Subcontractors of any tier shall keep their individual excavations free of water in an approved manner. The Contractor shall keep all areas free of water before, during, and after concrete placement.
19. The Contractor shall be responsible for cutting, fitting or patching required to complete the work or to make its parts fit together properly.
20. 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 such separate contractor, such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or separate contractor the Contractor's consent to cutting or otherwise altering the Work.
21. The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the Contract Documents, and shall complete the entire Work to the extent of quality and workmanship implied by the Contract Documents and in a manner which will warrant acceptance by the Owner's Design Consultant, the Owner, and the Office of Facilities and Property Management.
22. Contractors and Subcontractors employed upon Work shall be required to conform to labor and employment laws of the State of Kansas and various acts amendatory and supplementary thereto and to other laws, ordinances and legal requirements applicable thereto.
23. The Contractor shall be responsible for the conduct of Contractor's employees and the employees of subcontractors and suppliers on the work site. The Contractor shall take immediate steps to remedy

any activity which may be construed as discriminatory or which creates a hostile work environment. Activities covered by this provision include, but shall not be limited to, signs or language that are vulgar, profane or racially or sexually derogatory.

24. The contractor shall inspect the building and complete deficiencies before the Owner's Design Consultant's final inspection in order to avoid long and multiple punch lists. The building shall be cleaned before the final inspection to allow all defects to be noticed at the final inspection and reduce late additions to the punch list.

I. RECEIVING AND STORING MATERIALS AND EQUIPMENT

1. Upon receipt of materials and equipment at the job site or another authorized point of delivery, Contractor shall have an authorized person present to check all items for in-transit damage and to make arrangements to replace any damaged materials or equipment in ample time to prevent delay to its scheduled installation.
2. At the point of receipt of materials and equipment, the Contractor shall have sufficient experienced personnel present to unload all items and prepare and locate them for proper storage prior to their installation.
3. Wherever possible, deliver materials and equipment in manufacturers' original crates, boxes or packages, keeping identifying labels intact until installation and final acceptance and cleaning. Where items are to be job-assembled, label, tag, mark or otherwise properly identify each component part until incorporated in the Work.
4. Provide waterproof, well-ventilated enclosures for storage of materials and equipment subject to damage by dampness, frost, freezing, etc. Location for said enclosures shall be where approved by the Owner.
5. Storage of materials and equipment outside on pallets with any type of covering material over them will not be allowed, unless permission to do so has been documented in writing by the Architect or Engineer.
6. Remove from the premises and replace with new, any materials and equipment determined, in writing, by the Owner's Design Consultant to be in any condition not acceptable for use on the Project.

J. SAFETY

1. The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner's Representative and Architect.
2. Precaution shall be exercised at all times for the protection of persons (including employees) and property. The safety provisions of applicable laws and building and construction codes shall be observed. Machinery, equipment and hazardous conditions shall be guarded, including warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities or eliminated in accordance with the safety provisions of the Manual of Accident Prevention in Construction, published by the Associated General Contractors of America; and Occupational Safety and Health Standards, published by Occupational Safety and Health Administration, U.S. Department of Labor; or their successor publications., latest and best edition, amendments or addenda.
3. All contractors/suppliers hereby agree to comply with all applicable occupational safety, health and environmental laws, regulations, standards, codes and/or ordinances at all times from inception through completion of this Contract. This includes, but is not limited to, the Hazard Communication Standard under the Occupational Safety and Health Act (for information and free assistance, contact the Kansas Department of Labor, Division of Industrial Safety and Health, 512 S.W. 6th Street, Topeka, Kansas 66603-3150, telephone 913-296-4386); and the Emergency Planning and Community Right-to-Know Act (for information and free assistance, contact the Kansas Department of Health and Environment Right-to-Know Program, 109 S.W. 9th Street, Suite 501, Topeka, Kansas 66612-1290, telephone (785-296-1690).
4. The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of authorities having jurisdiction bearing on safety of persons or property or their protection from damage, injury, or loss.

5. 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 utmost care and carry on such activities under supervision of properly qualified personnel.
6. The Contractor shall be responsible for the safety of all persons while on the construction site. The Contractor shall maintain construction area safety which may include 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, entry onto land, structure, or equipment as required by code and all other regulatory requirements.
7. If the Contractor encounters on the site, material believed 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 in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is hazardous and has not been rendered harmless. Hazardous materials are those as defined by Kansas Department of Health and Environment's response list.
8. 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 any such hazardous conditions and shall be solely responsible for correction of any such conditions.
9. It shall be the sole responsibility of the Contractor to enforce or direct safety rules or procedures. It shall not be the responsibility of the Owner or Owner's Design Consultant to enforce or direct safety rules or procedure.
10. Contractor shall hold harmless and indemnify the Owner and Owner's Design Consultant from damages and expenses from any and all claims related to this Article for bodily injury or property damage or expenses incurred by any person or firm.
11. The Contractor shall properly execute the work before proceeding to the next step in sequence so as not to endanger the safety of all persons while on the construction site.

K. CONSTRUCTION SCHEDULE AND REPORTS

1. At the Pre-construction conference, the Contractor shall present to the Owner's Design Consultant a construction schedule and a Schedule of Values. The Contractor (or designated prime contractor) shall coordinate each contractor's or subcontractor's schedule and establish a mutually acceptable schedule for the entire progress of the Work and shall deliver the schedule to the Owner's Design Consultant in a form satisfactory to the Office of Facilities and Property Management and the Owner. Schedule shall be coordinated with and approved by the Owner's Design Consultant, the Owner, and Office of Facilities and Property Management.
2. Include in the construction schedule the number of allowed adverse weather days as noted in this Agreement.
3. The construction progress schedule shall include as a minimum the following detail:
 - a) The proposed schedule for tasks identified in the Schedule of Values in bar chart form.
 - b) Important milestones which may impact the construction progress schedule shall be identified by a critical path schedule using either bar chart or the Critical Path Method. Projects with construction costs below \$250,000 shall require a bar chart schedule. Projects with construction costs above \$250,000 shall require both a bar chart schedule and a Critical Path Method schedule.
 - c) Anticipated monthly payments for the duration of the project by the Owner based on the rate of progress proposed by the Contractor upon request.
 - d) Submission dates of all details and shop drawings.
 - e) Procurement and delivery dates for all equipment and material.
 - f) Weekly breakdown of work and activities for each major component of work. Define special items

as directed by the Owner's Design Consultant.

- g) Intended time for starting and completing each activity including indication of float time.
4. There will be no payment of any periodic estimate until the Contractor's list of Material Suppliers, Construction Progress Schedule, and Schedule of Values have been approved by the Owner's Design Consultant.
5. The construction progress schedule shall be maintained current at all times by the Contractor (or the designated prime contractor). Revisions shall be made in the same detail as the original and shall be accompanied by written explanation of the reasons for the revision and shall be subject to the approval of the Owner's Design Consultant. Copies of the revised construction progress schedule shall be delivered to the Owner's Design Consultant, Owner, and the Office of Facilities and Property Management monthly during the course of the Work.
6. The Contractor (or designated prime contractor) shall submit monthly to the Owner's Design Consultant progress reports showing actual percentage of each activity completed, estimated future progress and anticipated completion time of such activity.
7. Should the Contractor fail to meet completion dates required by the progress schedule, the Owner's representative may issue a written notice to the Contractor requiring the Contractor to submit a written plan for expediting the Work to comply with the progress schedule. The plan shall be submitted to the owner's representative within ten (10) days after the Contractor's receipt of such notice. The Contractor's plan shall specify the dates and means by which the Contractor will bring the work back on schedule. Means may include, but are not limited to, hiring additional workers, working additional hours, utilizing additional equipment, or expediting delivery of materials. If the Contractor fails to submit a written plan or fails to comply with dates specified in the plan for bringing the Work back on schedule, the owner's representative may, by written notice, require that additional workers, plant and equipment be placed on the Work or require that hours, in addition to regular hours, be worked until progress is as scheduled, with no additional cost to the Owner. The Contractor shall immediately implement requirements of the notice.

L. TIME FOR COMPLETION

1. Time limits stated in the Contract Documents are of the essence of the Contract. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for the completion of the Work, described in the Contract is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industry conditions prevailing in this locality. Unless otherwise provided in the Contract, the time for completion is measured by calendar days, not work days.
2. If the Contractor's schedule provides for an earlier completion date than the established contract completion date, and the agency desires to change the contract completion date to the earlier date, this may be done through a change order to the contract. This change order does not require the approval of the Contractor.
3. Except in cases of emergency or by agreement or instruction of the Owner's Design Consultant in writing, the Contractor shall not knowingly, prematurely commence operations on the site or elsewhere prior to the effective date of insurance as required to be furnished by the Contractor, and by the effective date of the Notice to Proceed.
4. The Contractor shall proceed expeditiously with adequate forces and shall achieve Final Completion within the time specified on Contract Documents. A delay in the delivery to the site of any materials or equipment will not be considered as a valid reason for a time extension to the Contract.
5. At the end of the time for completion, all equipment and systems shall be fully operational and functioning as required by the specifications. Testing shall be completed and all defects discovered as a result of this testing shall be corrected before the completion date.
6. It is further agreed that time is of the essence of each and every portion of this Contract wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this Contract. These are not compensable delays. Time extensions, only if they impact the progress of the Work in a negative manner, may be granted if the

delay is due:

- a) To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including, but not limited to, acts of God, or of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes or embargoes. For weather delays, see (G) below.
 - b) To any delays of subcontractors or suppliers occasioned by any of the causes specified in subsection a) of this article.
 - c) The Contractor shall, within ten (10) days from the beginning of such delay, notify the Owner's Design Consultant, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of his decision in the matter.
7. Claims for delay due to "unusually severe weather" affecting the completion time shall only be considered when meeting the following criteria:
- a) Definitions:
 1. "Adverse weather" – weather conditions during a definite time and place that are unfavorable to construction activities.
 2. "Unusually severe weather" – weather that is more severe than the "adverse weather" anticipated for the season at the location of the construction project.
 - b) The weather experienced at the project site during the contract period must be found to be unusually severe, that is, more severe than the adverse weather to be anticipated for the project location during any given month.
 - c) The delay must be related to the unusually severe weather and not due to the Contractor's fault, negligence, or his failure to maintain the approved construction schedule.
 - d) The unusually severe weather must cause actual delay to the completion time of the project. A claim for unusually severe weather delay must document actual delay to a scheduled critical path construction activity for at least 50% or more of the Contractor's scheduled workday. On projects without critical path scheduling, the Owner may withhold final determination of the delay claim until the Contractor submits an updated construction schedule for approval.
 - e) Anticipated "adverse weather" days. The Contract includes and anticipates that adverse weather conditions, including rain, snow, wind and extreme temperatures, will occur during the period of the Contract and will delay the Work. The schedule of monthly anticipated "adverse weather" delay days shall be incorporated in the "Time of Completion" for the project.
 - f) To meet the criteria for an unusually adverse weather delay day, one of more or the following requirements must be met within the work day and cause and delay a scheduled critical path construction activity, as noted in G4 above.
 1. Rainfall equal to or greater than 0.10 inches.
 2. Average temperatures less than 20 degrees Fahrenheit.
 3. Snowfall in excess of 1.0 inches.
 4. Sustained wind speed in excess of 25 mph.
 - g) Evaluation of a claim for delay caused by unusually severe weather shall be as follows:
 1. Claims for delay shall be submitted no later than ten (10) days after the end of the month to be evaluated.
 2. The Contractor shall submit documentation indicating cause, affect and delay including the weather criteria on each adverse weather delay day that occurred during the month to be evaluated. Any day that is submitted that does not meet the criteria shall be deemed not to qualify as an adverse weather delay day.

3. Documentation of adverse weather criteria shall be submitted in their original form from a recognized weather recording station, newspaper, computer information service, or other Owner approved source. In the event there is no weather recording source at or near the project location, the contractor shall record the daily weather information in a format meeting the criteria in G6 above. The weather documentation source will be determined at the pre-construction meeting.
4. In order to calculate the delay from the supplied tables, deduct the number of anticipated adverse weather delay days listed for the month being evaluated.
5. If the monthly total of qualifying adverse weather delay days exceeds the number of anticipated adverse weather delay days, the net difference in qualifying delay days will constitute unusually severe weather. The number of qualifying delay days will be added to the Contract as an adjustment to the "Time of Completion". There shall be no change in the Contract amount for this type of claim.
8. Acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, that will cause delay to this Contractor, shall be brought to the attention of the Owner's Design Consultant in writing within ten (10) calendar days. Failure to notify the Owner's Design Consultant immediately will cause the Contractor to waive his right to extra days or damages therefrom.
9. Permitting the Work or any part of it to continue after the time fixed for its completion, or after the date to which the time for completion may have been extended, shall in no way operate as a waiver on the part of the Owner of any of his rights under the Contract.
10. Liquidated damages are prescribed in this Agreement, and are hereby agreed to by all parties.
11. The Contractor, and any of its subcontractors, suppliers, material men or any other such party, shall have no claim for monetary compensation, monetary claims, or damages, of whatever kind or nature, for delay, hindrance, or inefficiency. The Contractor's only claim and the Contractor's only remedy for such delay, hindrance or inefficiency shall be for an extension of time as provided in this Agreement unless the claim is the result of (a) an unforeseeable site condition materially differing from that shown in the construction documents; or, (b) a negligent act or omission or breach of contract by the Owner. In these cases the Contractor shall receive compensation as provided in this Agreement.
12. At such time as the Contractor believes the project to be substantially complete, the Contractor shall notify the Owner's Design Consultant and request an inspection. The Owner's Design Consultant shall conduct an inspection and prepare a list of all items that have not been completed (if the Owner's Design Consultant determines that the construction is not complete and ready for the inspection, he shall so inform the Contractor). The Contractor shall complete all the items listed by the Owner's Design Consultant before the adjusted completion date in the contract (contract completion date with change orders adjustments). Upon completion of all such items, the Contractor shall request a final inspection which shall be conducted by the Owner's Design Consultant.
13. If the Owner's Design Consultant determines that any of the items listed have not been completed by the adjusted completion date of the contract, the Contractor shall be responsible for the cost of the additional Owner's Design Consultant's services beyond the adjusted completion date of the contract. The Contractor shall not be responsible for the cost of any additional inspections if the failure to complete listed items is caused by the Owner's Design Consultant or Owner. Such costs shall be covered by a change order and shall be paid to the Owner's Design Consultant. Such change order shall not require the approval of the Contractor.

M. RIGHT OF OWNER TO SUSPEND CONTRACT

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.
2. An adjustment will be made for increases in the cost of performance of the Contract caused by suspension, delay or interruption. No adjustment will be made to the extent:
 - a) 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
 - b) that an equitable adjustment is made or denied under another provision of this Contract.

3. Should the Owner be prevented or enjoined from proceeding with the work either before or after the start of construction by reason of any litigation, act of God, or other reason beyond the control of the Owner, the Contractor shall not be entitled to make or assert claim for damage by reason of said delay; but time for completion of work will be extended to such reasonable time as the Owner may determine will compensate for time lost by such delay; such determination to be set forth in writing. The Contractor will not be required to hold his bid price for longer than three months. The Owner may either negotiate a Change Order with the Contractor for any additional costs, or terminate the Contract following the three-month period. Should the Contract be terminated, the Contractor will be compensated for all work performed to date on the Contract.

N. RIGHT OF OWNER TO TERMINATE CONTRACT - CAUSE AND CONVENIENCE

1. In the event that any of the provisions of this Contract are violated by the Contractor, or by any of his subcontractors, the Director of the Office of Facilities and Property Management, on behalf of the Secretary of Administration, may serve written notice upon the Contractor and the surety of their intention to terminate the Contract for cause. Such notice shall contain the reasons for such intention, and unless within ten (10) days after the serving of such notice upon the Contractor, such violation or delay shall cease and satisfactory arrangement or correction be made the Contract shall upon expiration of said ten (10) days, cease and terminate.
2. In the event of any such termination for cause the Director of the Office of Facilities and Property Management shall immediately serve notice thereof upon the surety and the Contractor, and the surety shall have the right to take over and perform the Contract, provided, however, that if the Surety does not commence performance thereof within ten (10) days from the date of the mailing to such surety of notice of termination, the Owner may take over the Work and prosecute the same to completion by Contract at the expense of the Contractor, and the Contractor and his surety shall be liable to the Owner for any excess cost above the original Contract amount occasioned the Owner thereby. In such event, the Owner may take possession of and utilize in completing the Work, such materials, appliances and plant as may be on the site of the Work and necessary therefore.
3. The Director of the Office of Facilities and Property Management, on behalf of the Secretary of Administration may, at any time, terminate the contract for convenience and without cause. Upon service of written notice the contractor shall:
 - a) cease operations as directed by the Director in the notice,
 - b) take actions necessary or as directed in the notice for the protection and preservation of the Work, and
 - c) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts or purchase orders.
4. All materials previously paid for by the Owner shall be delivered to or remain on the construction site.
5. In case of termination for convenience the contractor shall be entitled to payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed, not to exceed 10% for each.

O. BONDS

1. A Performance Bond shall be furnished to the Owner by the Contractor in an amount equal to one hundred percent (100%) of the Contract price as security for the faithful performance of this Contract and as security for the payment of all persons performing labor and furnishing materials in connection with this Contract. Bonds are to cover all claims discovered during construction or prior to the end of the warranty period.
2. A Public Works Bond as required by K.S.A. 60-1111 shall be furnished to the Owner by the Contractor in the amount of one hundred percent (100%) of the contract price and shall be filed with the Clerk of the District Court in the county where the Project is being constructed. A Public Works Bond is **not** required for projects with a contract price below \$100,000.
3. Bonds shall be issued by a surety company authorized by Kansas law and returned within 15 calendar days.

P. SUBSTITUTE BONDS

1. If at any time the Owner for justifiable cause, shall become dissatisfied with the surety bound by the Performance and Public Works Bond, the Contractor shall within fifteen (15) days after notice from the Owner so do to, substitute an acceptable bond in such form and sum and signed by such other surety as may be satisfactory to the Owner.
2. No further payments shall be deemed due nor shall be made until the new surety shall have furnished such an acceptable bond to the Owner.
3. The credit due on premiums for unused portion of canceled bond shall be applied to premiums on the substitute bond and the difference for remaining premium cost will be paid by the Owner.

Q. SALES TAXES

1. If the project is exempt, the Owner will secure a project exemption certificate for the project in accordance with the rules of Kansas Department of Revenue. The Contractor shall refer to the Form of Bid and Supplementary Conditions to determine the tax exemption status of the project.
2. If the project is tax exempt, the Owner shall obtain a project exemption certificate, and furnish a copy of the same to the Contractor. The Contractor shall furnish a copy of the project exemption certificate to all suppliers from whom purchases are made, and to all subcontractors. Suppliers who supply materials for the project shall execute invoices covering the same bearing the project number from such certificate. Upon completion of the Project, each Contractor, and each Subcontractor who used the project exemption certificate to claim exemption, shall furnish to the Owner a sworn statement, on a form provided by the Director of Taxation, that all its purchases made exempt under the project exemption certificate were entitled to exemption. All invoices shall be held by the Contractor and Subcontractors for a period of five (5) years and shall be subject to audit.
3. If a project is not exempt, the Contractor and each Subcontractor shall pay all sales tax required by law on labor and materials purchased to perform the contract. The Contractor shall include in his bid all such sales tax that is required to be paid on the material and labor needed to perform the contract. The type of project, the status of its owner, and the existence of a project exemption certificate will determine whether the contractor and subcontractor are required to pay sales tax on labor or material or are exempted for paying tax on labor or material or on both.

R. QUANTITIES OF ESTIMATES

1. Wherever the estimated quantities of work to be done and materials to be furnished under this Contract are shown in any of the documents including the proposal, they are given for use in comparing bids and the right is especially reserved to increase or diminish them as they may be deemed reasonably necessary or desirable to complete the Work contemplated by this Contract, and such increase or diminution shall in no way vitiate this Contract, nor shall any such increase or diminution give cause for claims or liability for damages.

S. PAYMENTS TO CONTRACTOR

1. The Owner will make partial payments to the Contractor for the value, proportionate to the amount of the Contract, of all labor and material incorporated in the work during the preceding calendar month upon receipt of certification from the Owner's Design Consultant and approval of the Owner and the Office of Facilities and Property Management. No payment will be made to the Contractor until Procurement and Contracts has received all documentation required to be submitted by the Contractor.
2. The Contractor shall submit to the Owner's Design Consultant a request for certification for each payment, on current AIA documents G702 and G703. Contractors shall be responsible for securing their own AIA forms. Each item identified on the Schedule of Values shall be broken down into material and labor as separate items on the G703. This request for certification shall be submitted in the number of copies directed, and shall include the Contractor's detailed estimate of all items and activities of work to be performed, in the space provided on the form. If requested, the statement shall be supported by such evidence as may be required, showing the Contractor's right to the payment claimed.
 - a) Owner's Design Consultant will review, approve and forward undisputed requests to the Owner within seven (7) days of receipt.

3. Periodic estimates of Work completed shall be correlated with the schedule of values and furnished to the Owner's Design Consultant with requests for partial payment.
4. Request for payment for preparatory work and materials delivered and suitably stored at the site to be incorporated into the work at some future period, will be given due consideration. The Owner's Design Consultant may, under certain circumstances, approve payment up to ninety percent (90%) of the value of manufactured products delivered to a suitable warehouse at or near the locale of the project. Stored products shall be insured to one hundred percent (100%) of their value. Proof of said insurance shall be given to the Owner's Design Consultant. A bill of sale and their costs, including an itemized inventory of all stored products, shall be obtained and provided the Owner's Design Consultant. Approval of the surety company of the Contractor shall also be obtained and provided to the Owner's Design Consultant before these items are stored. Insurance for stored materials shall include transportation from the warehouse to the job site.
5. Payments by the Owner will be due within thirty (30) days after receipt of certified request for payment from the Owner's Design Consultant.
6. Ten percent (10%) of the Work Completed to Date will be retained on each payment request until final completion and acceptance of all Work covered by the Contract.
 - a) Upon 50% completion, the Office of Facilities and Property Management, Owner and Owner's Design Consultant **may** reduce retainage to a minimum of 5% of the total project cost upon the following conditions:
 1. Reduction of retainage is not automatic. Any reduction must be requested. Approval may be withheld for a variety of reasons, to include progress not on schedule, concerns about quality of work, etc. Applications for payment that assume a reduction before it is approved will be returned for correction, thus delaying payment.
 2. Retainage of 10% is mandatory if the critical path progress of the work is not on schedule, including previously agreed upon change order days. If retainage had been reduced on previous applications for payment, and work falls behind the critical path schedule, retainage will revert back to the full 10% of the total invoiced cost to date on all applications until the work is back on schedule.
 - b) Retainage will be released on any undisputed payment within thirty (30) days after Substantial Completion of the project. When a subcontractor continues to work on the project after Substantial Completion, the Owner may withhold that portion of the retainage attributed to the subcontractor until thirty (30) days after the work is completed.
7. All material and work covered by partial payments shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and adequate protection from weather, damage, vandalism, theft, and fire of materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of the Owner to require the fulfillment of all of the terms of the Contract.
8. If overpayment occurs, the Owner has the right to stop payment applications until the actual Work completed is equal to the payment applications and certified by the Owner's Design Consultant to be in compliance with the contract documents.
9. Final payment will be made within thirty (30) days after final completion of the work.
10. Prior to the issuance of final payment, the Contractor shall submit a certification that all debts and claims against this project have either been paid in full or otherwise satisfied in the form of an Affidavit of Contractor.
11. No recourse shall be had against any individual employee or agents of the State of Kansas, or officer thereof, for any payment under the contract or any claim based thereon.

T. PAYMENTS BY CONTRACTOR

1. The Contractor shall pay within seven (7) days of receipt of payment from the Owner, each subcontractor out of the amount paid to the Contractor on account of each subcontractor's work, the amount to which said subcontractor is entitled, reflecting the percentage actually retained, if any, from

payments to the Contractor on account of each subcontractor's work. The Contractor shall, by an appropriate agreement with each subcontractor, require each subcontractor to make payments to his sub-subcontractors in similar manner.

U. SUBCONTRACTOR PAYMENT INDEMNIFICATION

1. The Contractor agrees that he will indemnify and save the Owner harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, material suppliers, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, incurred in the furtherance of the performance of this Contract.

V. ACCEPTANCE OF FINAL PAYMENT AS RELEASE

1. The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:
 - a) unsettled liens
 - b) faulty or defective work appearing after Final Project Completion
 - c) failure of the Work to comply with the requirements of the Contract Documents, or
 - d) terms of any special guarantees or warranties required by the Contract Documents.
2. The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and still unsettled.

W. USE AND OCCUPANCY PRIOR TO ACCEPTANCE

1. If the construction schedule is current, the Contractor agrees to the Owner's use and occupancy of a portion or unit of the Project before the date of final completion, provided:
 - a) The Owner assumes all costs for maintenance of heat, electricity and water, and provides custodial care and maintenance of the occupied portions.
 - b) The Owner accepts all work as fully complete within that portion or unit of the Project to be occupied, at time of occupancy.
2. If the Construction schedule is not current, the Contractor agrees to the Owner's use and occupancy of all or a portion of the project:
 - a) Contractor is responsible for completing scheduled Work as noted on inspection report listing any incomplete work and Work as defined in the Contract Documents.
 - b) Contractor is responsible for cleaning up dust and debris caused by work completed in the occupied areas.
 - c) Contractor is responsible for a final clean-up in all areas where occupancy has occurred prior to final completion.

X. GENERAL GUARANTEE

1. The Contractor shall remedy and make good all defective workmanship and materials and pay for any damage to other work or property resulting therefrom, which appear within a period of one year from the date of final project completion, providing such defects are not clearly due to abuse or misuse by Owner. The Owner will give notice of observed defects with reasonable promptness. The one (1) year period will not apply to defective workmanship and materials not discovered within the one year period.
2. Neither the final certificate for payment nor any provision in the Contract Documents nor partial or entire occupancy of the premises by the Owner shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any expressed warranties or responsibility for faulty materials or workmanship.
3. The guarantee on all work covered under this contract shall begin on the date of Final Project Completion or substantial completion if applicable. If the building is partially occupied, the date of partial

occupancy shall establish the beginning date for the guarantee period for that section of the building and for all equipment in place, operable and used for this area. Any additional work in this area shall be considered warranty work by the Contractor.

4. Where guarantees or warranties are required in sections of specifications for periods in excess of one year, such longer terms shall apply.
5. Within nine months after official acceptance of a Project, the Owner, the Contractor, the Owner's Design Consultant and the Office of Facilities and Property Management shall conduct a full inspection of the completed project and the Contractor shall promptly correct all items noted.
6. If, within one year 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 accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner's Design Consultant to do so unless the Owner's Design Consultant has previously given the Contractor a written acceptance of such condition.
7. Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of time period of one year relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time with 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 his obligations other than specifically to correct the Work.

Y. ARBITRATION, DAMAGES AND WARRANTIES

1. Notwithstanding any language to the contrary, no interpretation of this Contract shall be allowed to find the State or any agency thereof has agreed to binding arbitration, the payment of damages or penalties upon the occurrence of a contingency, or to permit disclaimer of any or all warranties.

Z. PATENTS AND ROYALTIES

1. The Contractor shall pay all royalty and license fees. The Contractor shall defend suits or claims for infringement of patent or copyright rights and shall hold the Owner, its officers, agents and employees and the Owner's Design Consultant harmless from all loss and expense on account thereof.
2. If the Contractor uses any item covered by a patent or trademark, he shall reach an agreement with the holder of the patent or copyright.

AA. INDEMNIFICATION

1. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and the Owner's Design Consultant and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense 1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and 2) is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.
2. In any and all claims against the Owner or the Owner's Design Consultant or any of their agents or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
3. The obligations of the Contractor shall not extend to the liability of the Owner's Design Consultant, his agents or employees, arising out of 1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or 2) the giving of or the failure to give directions or

instructions by the Owner's Design Consultant his agents or employees provided such giving or failure to give is the primary cause of the injury or damage.

BB. ASSIGNMENTS

1. The Contractor shall not assign the whole or any part of this Contract or any moneys due or to become due hereunder without written consent of the Owner; Office of Facilities and Property Management; Director of Procurement and Contracts and the Director of Accounts and Reports. In case the Contractor assigns all or any part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the work called for in this Contract.
2. Such assignment shall not be made without the consent of the surety unless the surety has waived its right to notice of assignment.

CC. REQUIRED PROVISIONS DEEMED INSERTED

1. 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 application of either party the Contract shall forthwith be physically amended to make such insertion or correction.

DD. KANSAS ACTS AGAINST DISCRIMINATION

1. The Contractor hereby agrees and covenants as a condition of the Contract that he will comply with the Kansas Act Against Discrimination, (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the Americans With Disabilities Act (42 U.S.C. 12101 et seq.), and that his failure to do so may be deemed to be a breach of Contract and may subject the Contract to be terminated.

EE. ANTITRUST

1. For good cause, and as consideration for executing this Contract, the Contractor, acting herein by and through its authorized agent, hereby conveys, sells, assigns and transfers to the State of Kansas all right, title and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of Kansas pursuant to this Contract.

FF. OPTIONAL PERFORMANCE AND PAYMENT GUARANTEE

1. The Contractor may elect to use a certificate of deposit as a performance and payment guarantee in lieu of providing a Performance Bond and Public Works Bond. The certificate of deposit shall have a value of not less than the amount of the Contract, and shall serve the purpose of the Performance and Public Works Bonds as defined in this Agreement.
2. The Director of Procurement and Contracts may accept a certificate of deposit payable to the State of Kansas, without condition, in lieu of any required surety bond from a bidder or contractor in the case of any contract for construction, repairs or improvements under K.S.A. 75-3739, 75-3741 or 60-1111 and amendments thereto.
3. The certificate of deposit shall be subject to forfeiture to the State of Kansas and shall be in a form and under such conditions as may be prescribed by the Director of Procurement and Contracts for surety bonds in accordance with K.S.A. 60-1112 and amendments thereto.
4. Each such certificate of deposit shall be retained by the State for at least six (6) months after the final acceptance of the work for which the contract was entered into. At the end of such time period, the certificate of deposit may be endorsed back to the Contractor if there are no claims by the State under the Contract or by any person making a claim against the certificate of deposit.
5. All interest accruing under any such certificate of deposit shall belong to the contractor unless the certificate of deposit is forfeited to the State of Kansas.

GG. SIMULTANEOUS EXECUTION OF CONSTRUCTION CONTRACTS

6. In order to expedite the processing of Construction Contracts, bidders agree to the simultaneous execution of a copy of this document by all parties. After the execution of their copy of the agreement, the parties shall submit them to the State of Kansas, Procurement and Contracts, for assembly and may make a copy for their files if they wish. Upon receipt of all executed copies, and the submittal of the required bonds and insurance certificates, Procurement and Contracts shall date and assemble the copies and it shall constitute a binding agreement as of the date of assembly. The assembled copies shall be retained in Procurement and Contracts, and a fully-executed set of contracts shall be delivered to the Contractor and State agency.
7. It is further agreed that if any party wishes to change any part of the Contract, they shall notify the Procurement and Contracts prior to signature. Procurement and Contracts shall review the request and if the changes are acceptable, a new contract shall be prepared and resubmitted to all parties for their signatures and processing as mentioned above.

HH. EVALUATION

1. Bidders are advised that if awarded the Project, their performance will be evaluated by the Office of Facilities and Property Management with input from the State agency for whom the project is completed. This evaluation will remain on file and will be considered before the award of future projects. The Contractor, upon request, may receive a copy of the evaluations and prepare a response to the same. Responses will also be kept on file and considered in the same manner as the evaluations.

II. DRUG TESTING

1. Bidders are advised that in some circumstances federal regulations require drug testing of employees who install or maintain pipelines. Bidders should determine if drug testing is required on this project and include in its bid the complete cost for all such testing. Questions concerning these requirements should be directed to the Kansas Corporation Commission, Natural Gas Operations, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604-4027, (785) 271-3100.

JJ. LICENSURE

1. All plumbing, electrical and heating, ventilation and air conditioning work on the job site shall be performed or supervised by a journeyman, with a current license in that particular trade. Licenses shall be available for inspection at the work site, and if a license is not available, work of that particular trade shall cease. Licenses from any state or political subdivision will be recognized. Licenses that require passage of Block/Experion tests are preferable.

SUPPLEMENTARY CONDITIONS – PART D

A. SALES TAX DETERMINATION

1. This project has been determined by the Kansas Department of Revenue to be subject to Kansas sales tax. The cost of said Tax must be **INCLUDED IN** all Bid and Contract prices. Sales tax includes all applicable state, county and city sales taxes.
 - a. A general contractor or other contractor who contracts directly with the state of Kansas or one of its agencies shall pay tax as follows:
 - (1) Labor: No tax will be assessed since the labor is purchased directly by the State or one of its agencies.
 - (2) Materials: Taxes will be assessed on material purchased for the project.
 - b. A subcontractor on this project shall pay tax as follows:
 - (1) Labor: Taxes will be assessed because this labor is not purchased directly by the state or one of its agencies. (However, labor will not be taxed on projects calling for the original construction of a building or for repair or remodeling of a residence.)
 - (2) Materials: Taxes will be assessed on materials purchased for the project.
 - c. Whether sales tax should be paid to the Department of Revenue by a subcontractor on the subcontractor's labor services will depend upon whether the project qualifies as the original construction of a building or facility or as the repair or remodeling of a residence. The contractor and each subcontractor will be responsible for determining whether labor services for the project qualifies for such exemption and for including the correct amount of state, county and city sales tax applicable to this project. Contractors and subcontractors must include all sales tax due on materials, which are not exempt on this project. Any questions should be addressed to the Kansas Department of Revenue, Division of Taxation, Taxpayer Assistance Center, (785) 368-8222.
2. A general contractor or other contractor that contracts directly with the State of Kansas shall obtain copies of the Kansas Retailers Sales Tax Registration certificates from all its subcontractors on this project and have them available at the jobsite upon request.

B. KANSAS FALSE CLAIMS ACT, KSA 75-7501

1. Kansas False Claims Act is applicable to this project. Those knowingly presenting false or fraudulent claim(s) for payment from the State shall be liable per conditions of this act.

C. LIQUIDATED DAMAGES

1. The Owner shall be entitled to liquidated damages to cover the costs of alternate facilities, extra observation, the salaries of contingent forces and other expenses incurred by the Owner due to delays in completion of the work caused by the Contractor.
2. Liquidated damages shall be assessed in an amount per day as indicated below for each calendar day between the adjusted contract completion date and the date of substantial completion of the project. After substantial completion if final project completion is not achieved prior to the adjusted contract completion date the Contractor shall pay for the Owner's Design Consultant's services. The above amounts shall be deducted from the contract by contract change order prior to final payment. Such change order will not require approval of the Contractor.
3. Liquidated damages are established at the rate of **One Thousand (\$1,000.00) Dollars** per calendar day.

D. WEATHER DAY DATA

1. The following table indicates the number of weather days assumed for the area of the state in which this project is being completed. Reference this Agreement for further information concerning weather days and scheduling.

WEATHER ZONE 3

Counties included in this zone are:

Anderson	Coffey	Geary	Lyon	Nemaha	Riley
Brown	Douglas	Jackson	Marshall	Osage	Shawnee
Chase	Franklin	Jefferson	Morris	Pottawatomie	Wabaunsee

MONTHLY ANTICIPATED ADVERSE WEATHER DELAY DAYS

January	5 days	May	11 days	September	7 days
February	5 days	June	9 days	October	6 days
March	8 days	July	8 days	November	5 days
April	10 days	August	7 days	December	

E. LAND SURVEYOR

1. The Contractor shall retain the services of a registered land surveyor for construction staking and layout for this project.

SUPPLEMENTARY CONDITIONS – PART E

A. ECONOMIC PRICE ADJUSTMENT

1. A fixed-price contract with economic price adjustment provides for upward and downward revision of the stated contract price (the Stipulated Sum) upon the occurrence of specified contingencies.
2. Adjustments based on actual costs of material. These price adjustments are based on increases or decreases in specified costs of material that the contractor actually experiences during contract performance.
3. Price adjustments based on material costs shall be limited to contingencies beyond the Contractor's control.

B. ECONOMIC PRICE ADJUSTMENT - MATERIAL

1. Upon the one-year anniversary of the Contract Date and each subsequent anniversary, the Contractor shall notify the Owner if the prices for material shown in the Schedule of Values either increase or decrease. The notice shall include the Contractor's proposal for an adjustment in the Stipulated Sum to be negotiated under paragraph (2) of this clause, and shall include, in the form required by the Owner, supporting data explaining the cause, effective date, and amount of the increase or decrease and the amount of the Contractor's adjustment proposal.
2. Promptly after the Owner receives the notice and data under paragraph (1) of this clause, the Owner and the Contractor shall negotiate a price adjustment in the Stipulated Sum and its effective date. The Owner shall modify this contract (1) to include the price adjustment and its effective date and (2) to revise the prices of material as shown in the Schedule of Values to reflect the increases or decreases resulting from the adjustment. The Contractor shall continue performance pending agreement on, or determination of, any adjustment and its effective date.
3. Any price adjustment under this clause is subject to the following limitations:
 - a) Any adjustment shall be limited to the effect on prices for material shown in the Schedule of Values. There shall be no adjustment for-
 - (i) Supplies for which the production cost is not affected by such changes;
 - (ii) Changes prices other than those shown in the Schedule; or
 - (iii) Changes in the quantities of material used from those shown in the Schedule for each item.
 - b) No upward adjustment shall apply to materials that are required to be procured, delivered or performed before the effective date of the adjustment, unless the Contractor's failure to deliver or perform according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of the Default clause.
 - c) The aggregate of the increases in any annual material price made under this clause shall not exceed annual accrual rate of 6 percent of the original material price. There is no percentage limitation on the amount of decreases that may be made under this clause.
4. The Owner may examine the Contractor's books, records, and other supporting data relevant to the cost material during all reasonable times until the end of 3 years after the date of final payment under this contract.

**SUPPLEMENTARY CONDITIONS – PART F
FORM OF PERFORMANCE BOND**

PERFORMANCE BOND

We, _____

as Principal, hereinafter called Contractor, and _____, a corporation organized under the laws of the State of _____, with its home office in the city and state of _____, as Surety and hereinafter referred to as Surety, are held and firmly bound unto the State of Kansas, as Obligee, hereinafter called the State, in the sum of _____ dollars (\$ _____) for the payment of which sum we as Contractor and Surety bind ourselves and our legal representatives and successors, jointly and severally, by this instrument.

WHEREAS, Contractor has by written agreement dated _____, 201____, entered in to a contract with the State of Kansas for

in accordance with plans and specifications set forth in the State of Kansas, project # _____ and RFQ # _____, and which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

IT IS THEREFORE the condition of the above obligation that whenever Contractor shall be in default and is declared by the State to be in default under the Contract, the State having performed the State's obligations under the Contract, the Surety will promptly remedy the default by completion of the Contract and correction of defective work in accordance with the terms and conditions of the Contract. This includes repairs required by the guarantees and warranties called for in the Contract. It also includes additional legal, design professional, delay costs and liquidated damages resulting from the Contractor's default. The Surety waives notice of any change, including changes of time to complete the Contract.

If surety does not promptly remedy the default, the Surety shall be liable to the State for funds sufficient to pay the cost of completion and other obligations in the above paragraph, less the balance of the contract price. Balance of contract price shall mean total amount payable by the State to Contractor under the Contract, less amounts previously paid to Contractor by the State. If Contractor faithfully, promptly and accurately completes the Contract and complies with all the conditions thereof, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

IN WITNESS WHEREOF, we have hereunto set our hands this _____ day of _____, 201_____.

Principal _____

By: _____
(Title)

Surety _____

(Kansas Resident Agent - if required)

Address _____

Address _____

By: _____
(Attorney in Fact)

**SUPPLEMENTAL CONDITIONS – PART G
FORM OF PUBLIC WORKS BOND**

**CONTRACTOR'S PUBLIC WORKS BOND TO THE STATE
(Pursuant to K.S.A. 60-1111 as amended)**

We, _____
Name

Address

_____, as Principal,

and _____

as Surety, are held firmly bound unto the STATE OF KANSAS, in the sum of _____
_____ DOLLARS,

well and truly to be paid, to which payment we hereby bind ourselves, our heirs, executors, administrators, successors or assigns, jointly and severally.

The condition of the above obligation is that the Principal and Surety agree to pay all indebtedness incurred for labor, materials, equipment or supplies furnished in the performance of the construction contract by the contractor and his subcontractors for the following public building or improvement,

in accordance with plans and specifications of Project No. _____ on file in the Department of Administration, Office of Facilities and Property Management. The surety waives notice of any change, including changes of time to complete the contract.

NOW, THEREFORE, if the said contractor and all sub-contractors, if any, of said contractor shall pay all indebtedness incurred for labor furnished, materials, equipment or supplies used or consumed in connection with, or in or about the construction of said public building or making said public improvements, then the above obligation shall be void, otherwise it shall remain in full force and effect.

IN WITNESS WHEREOF, We have hereunto set our hands this _____ day of _____, 201____ .

Principal: _____

By: _____

(Title) _____

Surety: _____

By: _____

END OF DOCUMENT