

GENERAL CONDITIONS

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GENERAL CONDITIONS

- A. These General Conditions apply to each section of these Specifications and must be carefully read by the Contractor and his Subcontractors, as the Contractor and all his Subcontractors are subject to the provisions contained herein.
- B. These General Conditions are intended to define the relationship of the Owner, Consultant, if any, and the Contractor, thereby establishing certain rules and provisions governing the operation and performance of the Work so that the Work may be continued and completed in a safe, orderly, expeditious and work-manlike manner.

ARTICLE 1 - DEFINITIONS

- A. As used in these Contract Documents, the following terms shall have the meanings and refer to the Parties designated in these definitions:

1. "CONSULTANT": shall refer to the Architect or Engineer specified and defined in the Supplementary Conditions, or his duly authorized representative, retained by the Owner to act as the Owner's agent for all or portions of the Work.
2. "CONTRACT DOCUMENTS": shall consist of the executed Contract, the General Conditions, the Supplementary Conditions, the Advertisement for Bids, the Instructions to Bidders, the Proposal, the Prevailing Wage Determination, the Specifications and Drawings, including all modifications as set forth in Addenda or Change Orders to any of

the above, the required Certificates of Insurance and Performance/Payment bond, Notice to Proceed and Certificate of Substantial Completion.

3. "CONTRACTOR": shall mean the Party or Parties who have entered into a contract with the Owner to furnish work under these specifications and drawings.
4. "JOINT VENTURE": shall mean an association of two (2) or more businesses legally combined to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge.
5. "MBE": Minority Business Enterprise
6. "MINORITY":
 - (a) "Black Americans," which includes persons having origins in any of the black racial groups of Africa;
 - (b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin regardless of race;
 - (c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - (d) "Asian-Pacific Americans," which includes persons whose

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- origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, or the Northern Marianas; or
- (e) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan or Bangladesh.
7. "MINORITY BUSINESS ENTERPRISE": A business concern which is at least fifty-one percent (51%) owned by one (1) or more minority as defined in A above or in the case of any publicly-owned business, fifty-one percent (51%) of the stock of which is owned by one (1) or more minority as defined in A above AND whose management and daily business operations are controlled by one (1) or more minority as defined herein.
8. "OWNER": shall mean Southeast Missouri State University acting by and through the Director of the Facilities Management Department, or the Director's authorized representative.
9. "PROJECT": shall mean the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.
10. "PROJECT MANUAL": The Project Manual is the volume usually assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.
11. "SUBCONTRACTOR": shall mean Party or Parties who contract under, or for the performance of part or all of, the Contract between the Owner and the Contractor. The subcontract may or may not be direct with the Contractor.
12. "WORK": shall mean all labor, material, supplies, plant and equipment required to perform and complete the service agreed to by the Contractor, in accordance with the Contract Documents, in safe, expeditious, orderly and workmanlike manner so that the project shall be complete and finished in the best manner known to each respective trade.
13. "WBE": Women Business Enterprise.
14. "WOMEN BUSINESS ENTERPRISE": A business concern which is at least fifty-one percent (51%) owned by one (1) or more women or in the case of any publicly-owned business at least fifty-one percent (51%) of the stock of which is owned by one (1) or more women AND whose management and daily business operations are controlled by one (1) or more women.
15. "WRITTEN NOTICE": Any notice to the Contractor from the Owner relative to any part of this contract shall be in writing and considered delivered and service thereof

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complete when said notice is posted by registered or certified mail to said Contractor at his last given address, or delivered in person to said Contractor or his authorized representative on the work. Written notice to the Owner from the Contractor shall be made in a like manner, directed to the Owner.

case of conflict between structural and mechanical drawings, structural drawings shall govern.

ARTICLE 2 - DRAWINGS AND SPECIFICATIONS

- A. Drawings are portions of the Contract Documents, intended to show general arrangements, design and extent of work and are partly diagrammatic. As such, they are not intended to be scaled for roughing-in measurements or to serve as shop drawings.
- B. Specifications are portions of the Contract Documents, delineating the written requirements for systems, materials, equipment, standards, performance criteria, and workmanship for the Work. Specifications are separated into titled divisions for convenience of reference only and to facilitate letting of contracts and subcontracts. Such separations shall not, however, operate to make the Owner an arbiter to establish limits of subcontracts or to establish jurisdiction.
- C. Figured dimensions take precedence over scaled measurements and details over smaller scale general drawings.
- D. In case of discrepancy between drawings and specifications, specifications shall govern. Should discrepancies in architectural drawings, structural drawings and mechanical drawings occur, architectural drawings shall govern and, in
- E. Anything shown on drawings and not mentioned in these specifications or vice versa, as well as any incidental work which is obviously necessary to complete the project within the limits established by the drawings and specifications, although not shown on or described therein, shall be performed by the Contractor as a part of his contract.
- F. Data concerning lot size, ground elevations, present obstructions on or near the site, locations and depth of sewers, conduits, pipes, wires, etc., position of sidewalks, curbs, pavements, etc., and nature of ground and subsurface conditions have been obtained from sources the Owner believes to be reliable, although accuracy of such data is not guaranteed.
- G. Upon encountering conditions differing materially from those indicated in the contract documents, the Contractor shall promptly notify the Consultant before such conditions are disturbed. The Consultant shall promptly investigate said conditions and report to the Owner, with a recommended course of action. If conditions do materially differ and cause an increase or decrease in contract cost or time required for completion of any portion of the work, a Change Order will be initiated as outlined in Article 26 of these General Conditions.
- H. Only work included in the Contract Documents is authorized, and the Contractor shall do no work other than that described therein or in accordance

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with appropriately authorized and approved change orders.

be required to avoid unnecessary and unwarranted delay.

ARTICLE 3 - RIGHTS AND RESPONSIBILITIES OF OWNER

- A. The Consultant shall give all orders and directions contemplated under the contract relative to the execution of the work. The Owner shall determine the amount, quality, acceptability and fitness of kind of work and materials which are to be paid for under this contract. In the event any questions shall arise between the parties hereto, relative to the contract or specifications, determination or decision of the Owner shall be a condition precedent to the right of the Contractor to receive any money or payment for work under the contract affected in any manner or to any extent by such question.
- B. When no Consultant is specified, the Owner shall give all orders and directions contemplated under the contract relative to the execution of the work.
- C. The Owner may file a written notice to the Contractor to dismiss forthwith any of his subcontractors, superintendents, foremen, workmen, watchmen or other employees whom the Owner may deem incompetent, careless or a hindrance to proper or timely execution of the work, and Contractor shall comply with such notice as promptly as practicable without detriment to the work or its progress.
- D. If Contractors refuse to cooperate with the instructions and reasonable requests of other Contractors in the overall coordinating of the work, the Owner may take such appropriate action and issue such instructions as in his judgment may

- E. If in the judgment of the Owner it becomes necessary at any time to accelerate work, the Contractor, when ordered by the Owner in writing, shall cease work at any point and transfer his men to such point or points and execute such portions of his work as may be required to enable others to hasten and properly engage and carry out their work, all as directed by the Owner.

ARTICLE 4 - INSPECTION OF THE WORK

- A. The Owner shall at all times have access to the work whenever it is in preparation or progress, and Contractors shall provide proper facilities for such access and for inspection and supervision.
- B. During progress of the Work, the Owner may be represented at the project by the Consultant, or by a person authorized by the Owner, whose duty it will be to assure the Owner that the contract is properly fulfilled.
- C. The inspection of the work is for the purpose of assuring the Owner that the Drawings and Specifications are being properly executed. Although the Owner's representative is instructed to confer with the Contractor regarding interpretation of Drawings and Specifications, such assistance shall not relieve the Contractor of any responsibility for the work.
- D. The fact that the Consultant or Owner has failed to observe faulty work, or work done which is not in accordance with the Drawings and Specifications, shall not relieve the Contractor from responsibility

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for correcting such work without additional compensation.

E. The Owner shall have the right to direct the Contractor to uncover any completed work.

1. If the Contractor fails to adequately notify the Owner's Representatives, as required by the Contract Documents, the Contractor shall upon written request uncover the work. The Contractor shall bear all costs associated with uncovering and again covering the work exposed.
2. If the Owner directs work to be uncovered, which was not otherwise required to be inspected, and the work is found to be defective in any respect, no compensation shall be allowed for this work. If such work is found to be defective in any respect, due to fault of the Contractor or his Subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the actual cost of labor and material necessarily involved in the examination and replacement plus 10% shall be allowed the Contractor.

F. If the Contractor fails to proceed at once with the correction of rejected defective materials or workmanship, the Owner may by contract or otherwise have the defects remedied or rejected, materials removed from the site and charge the cost of the same against any monies which may be due the Contractor without prejudice to any other rights or remedies of the Owner on the premises.

G. The Contractor must notify the Owner at least one working day before placing concrete or burying underground utilities, pipelines, etc.

ARTICLE 5 - COMPLIANCE WITH LAWS, PERMITS, REGULATIONS AND INSPECTIONS

A. Since the Owner is Southeast Missouri State University, municipal or political subdivision ordinances, zoning ordinances, construction codes and other like ordinances are not applicable to construction on the Owner's property, and the Contractor will not be required to submit Drawings and Specifications to any municipal or political subdivision authority for review, obtain construction permits or any other licenses or permits from, or submit to inspections by any municipality or political subdivision relating to the construction of this project; except that the Contractor shall be subject to all permits, fees or licenses required by municipality or political subdivision for operation on property not belonging to the Owner or for connection to utility services. The Contractor shall comply with all applicable laws, ordinances, rules and regulations, as it is not the intent of the Owner to arbitrarily dismiss the authorities identified above.

B. All Work shall be performed per the following codes and standards:

1. International Building Code as adopted by the City of Cape Girardeau;
2. International Plumbing Code as adopted by the City of Cape Girardeau;

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3. International Mechanical Code as adopted by the City of Cape Girardeau;
4. National Fire Protection Association (NFPA) Code;
5. National Electric Code (NEC);
6. Williams-Steiger Occupational Safety and Health act of 1970 (OSHA);
7. American National Standard Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks as published by the American Society of Mechanical Engineers (ASME), American National Standards Institute (ANSI) A17.1;
8. Air Moving and Condition Association (AMCA);
9. American Concrete Institute (ACI);
10. American National Standards Institute (ANSI);
11. American Refrigeration Institute (ARI);
12. American Society for Testing and Materials (ASTM);
13. American Standards Association (ASA);
14. Cooling Tower Institute (CTI)
15. Institute of Electrical and Electronics Engineers (IEEE);
16. Insulated Power Cables Engineers Association (IPCEA);
17. Missouri Standard Specification for Highway Construction, Missouri State Highway Commission;
18. National Board of Fire Underwriters (NBFU);
19. National Bureau of Standards (NBS);
20. National Electrical Manufacturers Association (NEMA);
21. National Petroleum Institute (NPI);
22. Sheetmetal and Air Conditioning Contractors National Associations, Inc. (SMACNA), duct manual and sheetmetal construction for ventilation and air conditioning systems;
23. Underwriter's Laboratories, Inc. (UL), Federal Specifications;
24. Safety Standard for Architectural Glazing Material (16 CFR 1201);
25. Guide for Care and Use of Laboratory Animals (AAALAC);
26. Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG)

ARTICLE 6 - NONDISCRIMINATION IN EMPLOYMENT

- A. The Contractor and his Subcontractors shall not discriminate based on affected group status unless with respect to sex, age, or handicapped status such restrictions relate to the bona fide

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occupational qualifications. Specifically, the Contractor and his Subcontractors shall not discriminate:

1. Against recipients of service on the basis of race, color, religion, national origin, sex, handicap or age.
2. Against any employee or applicant, for employment on the basis of race, color, religion, national origin, sex or otherwise qualified disability status.
3. Against any applicant for employment or employee on the basis of age, where such applicant or employee is between ages 40 and 70 and where such contractor employs at least 20 persons.
4. Against any applicant for employment or employee on the basis of that person's status as a disabled or Vietnam-era veteran.

The Contractor and his Subcontractors shall take affirmative action to insure applicants are employed and employees are treated during employment without regard to the above considerations. Such action shall include, but not be limited to, the following: employment, upgrading, demotion and transfer; recruitment or recruitment advertising; and selection for training, including apprenticeship. The Contractor and Subcontractors will give written notice of their commitments under this clause to any labor union with which they have bargaining or other agreements.

- B. The Contractor and his Subcontractors shall develop, implement, maintain and submit in writing to the Owner an affirmative action program if at least fifty (50) persons in the aggregate and

employed under this contract. If less than fifty (50) persons in the aggregate are to be employed under this contract, the Contractor shall submit, in lieu of the written affirmative action program, a properly executed Affidavit for Affirmative Action in the form as included in the Contract Documents. For the purpose of this clause, an "affirmative action program" means positive action to influence all employment practices (including, but not limited to, recruiting, hiring, promoting and training) in providing equal employment opportunity regardless of race, color, sex, national origin, religion, age where the person affected is between age 40 and 70), disabled and Vietnam-era veteran status, and handicapped otherwise qualified status. Such "affirmative action program" shall include:

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

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5. Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.

In the enforcement of this non-discrimination clause, the Owner may use any reasonable procedures available, including, but not limited to: requests, reports, site visits and inspection of relevant documents of contractors and subcontractors.

- C. In the event of the Contractor's or a Subcontractor's noncompliance with any provisions of this Article of the Contract, the Owner may cancel this contract in whole or in part or require the Contractor to terminate his contract with the Subcontractor.

ARTICLE 7 - ANTI-KICKBACK

- A. No representative or employee of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part hereof. No officer, employee, consultant, attorney, or lobbyist of or for the Owner who is authorized in such capacity and on behalf of the Owner to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this contract, any material supply contract, subcontract, insurance contract,

or any other contract pertaining to the project.

ARTICLE 8 - PATENTS AND ROYALTIES

- A. The Contractor shall hold and save the Owner and its officers, agents, servants and employees harmless from liabilities of any nature or kind, including cost and expenses, for or on account of, any patented or unpatented invention, process, article or appliance manufactured or used in the performance of the contract, including its use by the Owner, unless otherwise specifically stipulated in the contract documents.
- B. If the Contractor uses any design, device or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copyrighted design, device or material. It is mutually agreed and understood, without exception, that the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with work agreed to be performed under this contract and shall indemnify the Owner for any cost, expense or damage it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

ARTICLE 9 - STATUTORY PREFERENCE

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- A. By virtue of statutory authority a preference will be given to Missouri labor and to products of mines, forests and quarries of the State of Missouri when they are found in marketable quantities in the state, and all such materials shall be of the best quality and suitable character that can be obtained at reasonable market prices, all as provided for in Section 8.280, RSMo as amended.
- B. Furthermore, pursuant to Section 34.076 RSMo as amended, a preference shall be given to those persons doing business as Missouri firms, corporations, or individuals, or which maintain Missouri offices or places of business, when the quality of performance promised is equal or better and the price quoted is the same or less. In addition, in order for a non-domiciliary bidder to be successful, his bid must be that same percentage lower than a domiciliary Missouri bidder's bid, as would be required for a Missouri bidder to successfully bid in the non-domiciliary's state.
- B. The Contractor shall conduct pre-installation conferences at the work site for the construction activities for which a conference is specified in the contract documents. The installer and representatives of manufacturers and fabricators involved in or affected by the installation, and its coordination or integration with other materials and installations that have preceded or will follow, shall attend the meeting.
- C. The Contractor shall conduct on-site progress and coordination meetings, as specified in the contract documents, but no less than once a month.

ARTICLE 11 - DUTIES OF CONTRACTOR

- A. The Contractor shall supply sufficient labor, material, plant and equipment and pay when due any laborer, subcontractor or supplier for supplies furnished and otherwise prosecute the work with diligence to prevent work stoppage and insure completion thereof within the time specified. The Contractor and any of his Subcontractors shall pay not less than the prevailing hourly rate of wages for work of a similar character in the locality in which the Work is performed, as determined by the Department of Labor and Industrial Relations of the State of Missouri and as set out in the Contract Documents. A copy of the Wage Determination issued for the project and included as a part of the Contract Documents shall be posted in a prominent and easily accessible location at the site of construction. The Wage Rate notice shall remain posted during the full time that any workman shall be performing work included in this construction Contract.

ARTICLE 10 - COMMUNICATIONS

- A. All notices, requests, instructions, approvals and claims must be in writing. All papers required to be delivered to the Owner shall, unless otherwise specified by the Owner in writing to the contrary, be delivered to the Office of the Director, Facilities Management Department, Southeast Missouri State University, One University Plaza, MS7700, Cape Girardeau, MO 63701. Any such notice shall be deemed to have been given as of the time of actual receipt.

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- B. The Contractor or any of his Subcontractors found guilty of one or more prevailing wage violations will be disqualified from doing business with state institutions in accordance with Section 290.330 RSMo as amended.
- C. The Contractor and each of his Subcontractors shall submit to the Owner such schedules of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data as the Owner may request concerning work performed or to be performed under the contract.
- D. The Contractor shall give access to, upon written request from the Owner, all time cards, material invoices, payrolls, profit and loss statements, and all other direct or indirect costs related to this work.
- E. The Contractor shall be responsible for laying out his own work and for any damage which may occur to work of any other contractor because of errors or inaccuracies, 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 Contractor or others. Layout of mechanical and electrical work shall be coordinated with layouts of Contractor for general construction work. Unless otherwise directed by Owner, salvage materials, waste and scrap resulting from such work shall be promptly removed from the site by the responsible Contractor, except for salvaged materials identified by the Owner to be turned over to the Owner after removal by the Contractor.
- F. The Contractor shall limit operations and storage of materials to the area designated by the Owner, except as necessary to connect to existing utilities, and shall not encroach beyond the construction limit.
- G. The Contractor shall prearrange time with the Owner in case it becomes necessary for the interruption of any service to make connections, alterations or relocations and shall fully cooperate with Owner in doing work so as to cause the least annoyance and interference with the continuous operation of the Owner. Unless otherwise specified in these documents, all connections, alterations or relocations as well as all other portions of the work will be performed during normal working hours.
- H. The Contractor shall coordinate all work so there shall be no prolonged interruption of existing equipment. Any existing plumbing, heating, ventilating, air conditioning or electrical disconnections necessary which affect portions of this construction or building or any other building must be scheduled with the Owner to avoid any disruption of operation within the building or construction or other building or utilities. In no case, unless previously approved in writing by the Owner, shall utilities be left disconnected at the end of a workday or over a weekend. Any interruption of utilities either intentionally or accidentally shall not relieve the Contractor responsible for the interruption from repairing and restoring the utility to normal service. Repairs and restoration shall be made before the workmen responsible for the repair and restoration leave the job.
- I. The Contractor shall be responsible for repair of his damage to property on or off the Project occurring during construction

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- of project as a result of action or inaction of the Contractor or any of his Subcontractors, and all such repairs shall be made to the satisfaction of the Owner.
- J. The Contractor shall not overload, or permit others to overload, any part of any structure during building operations.
- K. The Contractor shall be responsible for shoring required to protect his work or property adjacent to the Project and shall be responsible for shoring or for giving any required notice to Owner and shall pay for any damage caused by failure to shore or by improper shoring or by failure to give proper notice. Shoring shall be removed only after completion of permanent supports.
- L. During the performance of work the Contractor shall be responsible for providing and maintaining warning signs, lights, signal devices, barricades, guard rails, fences and other devices appropriately located on site which will give proper and understandable warning to all persons of danger of entry onto the Project site, structure or equipment. Such warning and protective devices shall be removed only when approved by the Owner.
- M. 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.
- N. The Contractor shall be responsible for care of his finished work and must protect same from damage or defacement until final acceptance by the Owner. If the work is damaged by any cause, the Contractor shall immediately begin to make repairs in accordance with the drawings and specifications. Contractor shall be liable for all damages or loss unless attributable to the acts or omissions of the Owner or Consultant. Any claim for reimbursement shall be submitted in accordance with Article 26.
- O. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.
1. In the event the Contractor encounters on the site material reasonable believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop work in the area affected and report the condition to the Owner and Consultant 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 asbestos or PCB and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or PCB, or when it has been rendered harmless, by written agreement of the Owner and Contractor, or in accordance with final determination by the Consultant.
 2. The Contractor shall not be required pursuant to Article 26 to perform, without the Contractor's consent, any work relating to asbestos or PCB.
 3. The Contractor shall take responsible precautions for the safety of, and

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shall provide reasonable protection to prevent damage, injury or loss to:

- (a) Employees on the work site and other persons who may be affected thereby;
 - (b) The work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Sub-contractors or sub-subcontractors; and
 - (c) Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
4. The Contractor shall give notices and comply with applicable State and Federal laws, ordinances, rules, regulations and lawful orders bearing on safety of persons or property or their protection from damage, injury or loss.
 5. 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 and his representatives.
 6. In an emergency affecting safety of persons or property, the Contractor

shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 26.

- P. The Contractor, at his own option, may employ a man or men for watchman service at all times outside of regular working hours, and at such times during working hours when work is not in progress at the building, from the time the excavation work is started until the entire work is complete. This watchman service will in no way relieve the Contractor of his responsibility for replacing or making good any theft or damage.
- Q. Any and all trucks, passenger cars, or other mechanical or motorized vehicles, or equipment used by the Contractor or his Subcontractors in the course of the building operations, when parked on the grounds of the Owner and unattended, shall be parked in accordance with the Owner's parking policy and regulations. Under no circumstances shall any vehicle or equipment be left unattended with the motor or engines running while on the Owner grounds. This requirement is applicable not only to the Contractor, his employees, and Subcontractors, but to material suppliers and others involved in the construction.
- R. Before commencing work, the Contractor shall confer with the Owner and ascertain full knowledge of all rules and regulations affecting the Project working conditions. Rules and regulations in force at the institution shall take precedence over rules and regulations that exist outside of the Owner's jurisdiction. If the

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Contractor observes that the drawings and specifications are at variance therewith, he shall promptly notify the Owner in writing, and any necessary changes shall be adjusted as provided in the contract for changes in the work. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations and without such notice, he shall bear all costs arising therefrom and save the Owner "harmless."

- S. No project signs shall be erected without the written approval of the Owner, unless said sign complies with a specific requirement of these specifications.
- T. The Contractor shall verify all measurements. No extra charges or compensation will be allowed as a result of failure to verify dimensions before ordering materials or fabricating items.
- U. The Contractor shall provide at the proper time such material as is required for support of his work. If openings or chases are required, whether shown on drawings or not, he shall see that they are properly constructed by the Contractor or Subcontractor whose duty is to construct same.
- V. The Contractor shall remove all rubbish, debris and dirt resulting from the work and legally dispose of it. The premises shall at all times be kept in a clean, safe and workmanlike manner.
- W. The Contractor shall, prior to requesting final inspection, remove manufacturer's advertising labels from windows, fixtures, and equipment, and shall leave his work "broom clean" or its equivalent, unless more exactly specified in the Contract Documents. Prior to receiving final

payment, the Contractor shall remove all rubbish, tools, scaffold, etc., from the site of the Work, and restore disturbed or damaged adjacent areas to pre-construction condition, to the satisfaction of the Owner.

- X. If any work is required to be specially tested or approved, Contractor shall give the Owner timely notice of date for such inspection.
- Y. Information Regarding disqualified bidders at Southeast Missouri State University may be obtained by calling Facilities Management at (573) 986-6728.
- Z. The Contractor shall be responsible for all keys issued to him/her and any subcontractor. Failure to return any key for any reason shall result in the Contractor being charged the actual cost to recore the door or doors affected by the lost key(s).

ARTICLE 12 - BOND

- A. The Contractor shall furnish a performance bond in an amount at least equal to 100% of the Contract Sum as security for the faithful performance of his Contract, and a payment bond in an amount at least equal to 100% of the Contract Sum for the payment of all persons performing labor on the project and furnishing materials in connection therewith under this Contract as set forth in the standard form of performance/payment bond included in the Contract Documents. The Surety on such bond shall be a duly authorized surety company, authorized by the State of Missouri to issue bonds.

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ARTICLE 13 - COMMENCEMENT AND COMPLETION OF WORK

- A. Contract period begins on the date of the “Notice of Award”. Eighteen (18) calendar days have been allocated in construction schedule for receiving contract documents noted below. Before a “Notice to Proceed” with the Work will be issued, the Contractor must submit the following properly executed instruments to the Owner.
1. Contract;
 2. Performance/payment bond as described in Article 12;
 3. Certificates of Insurance, or the actual policies themselves, showing that the Contractor has obtained the insurance coverage required by Article 21. If provided, the certificates of insurance shall comply with the requirements of Article 21 (D), and;
 4. Written Affirmative Action Plans as required in Article 6.

These items must be received by the Owner within EIGHTEEN (18) consecutive calendar days of the date of the written “Notice of Award.” If not, the Owner may, at his option, treat the failure to timely submit them as a refusal by the Contractor to accept a contract for this work and may retain as liquidated damages the Contractor’s bid bond, cashier’s check or certified check as provided in the Instructions to Bidders. Contractor may not enter upon the site of the Work until such documents are provided and a “Notice to Proceed” is issued.

- B. Within TEN (10) consecutive calendar days of the date of the written “Notice to Proceed”, the Contractor shall submit to the Owner for approval the following:
1. A progress and payment schedule as described in Article 15, and;
 2. A Schedule of Values for the total work giving a complete break down of the Contractor’s proposal, in accordance with specific accounting requirements provided by Owner.
 3. A Submittal Schedule listing items required to be submitted for approval with anticipated dates.

No payments to the Contractor will be made until the Contractor has submitted these items and they have been approved by the Owner; provided, however, that should the Contractor not receive written notification from the Owner of the disapproval of any of these items within twenty-one (21) calendar days, may consider them approved for the purposes of the first monthly Application and Certification for Payment and may proceed accordingly.

- C. Unless mutually agreed upon beforehand, the Contractor shall commence work within five (5) days of the date of the “Notice to Proceed”. The Contractor shall prosecute the Work with faithfulness and energy, and shall complete the entire Work on or before the completion time stated in the Contract Documents or pay to the Owner the damages resulting from failure to timely complete the work as set out in Article 14.
- D. Extension of time stipulated in the Contract Documents for completion of the

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Work will be made when changes in the Work occur, as provided in Article 26, when the Work is suspended as provided in Article 13 (F); or when the work of the Contractor is delayed on account of conditions which could not have been foreseen, or which were beyond the control of the Contractor, his Subcontractors or suppliers, and which were not the result of their fault or negligence. Extension of time for completion shall also be allowed for any delays in the progress of the Work caused by any act (except as provided elsewhere in the General Conditions) or neglect of the Owner or his employees or by other Contractors employed by the Owner, or for any delay in the furnishing of drawings and necessary information by the Consultant, if any, or delay in return of shop drawings, or for any other cause which in the opinion of the Owner entitles the Contractor to an extension of time, including but not restricted to fires, floods, unusually severe weather, or labor strikes. Time extensions for weather-related delays shall be subject to provisions for the inclusion of a specified number of "bad weather" days when provided for in the Supplementary Conditions.

E. The Contractor shall notify the Owner promptly of any occurrence or conditions which in the Contractor's opinion entitle him to an extension of time. Such notice shall be in writing and shall include all necessary supporting materials and be submitted in ample time to permit full investigation and evaluation of the Contractor's claim. The Owner shall promptly acknowledge the Contractor's notice and, with the Owner's representative, shall provide information and recommendations to the Owner for

decision. Failure on the part of the Contractor to provide such notice shall constitute a waiver by the Contractor of any claim.

F. When conditions at the site of the proposed work are considered by the Owner to be unsatisfactory for prosecution of the work, Contractor may be ordered in writing to suspend the work or any part thereof until reasonable conditions exist. When such suspension is not due to fault or negligence of the Contractor, time allowed for completion of such suspended work will be extended by a period of time equal to that lost due to delay occasioned by ordered suspension.

ARTICLE 14 - LIQUIDATED DAMAGES/ SUBSTANTIAL COMPLETION

A. It is agreed that the Owner may deduct from the Contract Sum and retain as liquidated damages, and not as penalty or forfeiture, the sum stipulated in the Contract for each calendar day, Sunday and holidays excepted, after date specified for completion of the project that the entire Work is not substantially complete.

B. The term "substantially complete" as used herein shall be construed to mean the completion of the entire Work, including the submittal and approval of specified operation manuals, balance reports and parts lists, in strict accord with all requirements of the drawings and specifications except minor items which in the opinion of the Owner will not interfere with complete and satisfactory use of the facilities. However, this does not relieve the Contractor of the

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requirements concerning final completion and of Article 33 - General Guarantee.

- C. Only certificates by the Owner as to substantial completion of the work within the time specified shall be conclusive and binding on the Owner and the Contractor for the purpose of determining whether or not liquidated damages shall be assessed under the terms hereof and the sum total amount due.
- D. Liquidated damages or any matter related thereto shall not relieve the Contractor or his surety of any responsibility or obligation under this contract.
- E. If substantial completion has not been given by the date set forth in the contract for final completion, then the Owner, without prejudice to any other rights, claims, or remedies the Owner may have including the right to liquidated damages, may back charge the Contractor for all additional expenses incurred by the Owner or the Consultant as the result of the extended contract period and through final inspection. However, the Owner may not claim total damages in excess of either liquidated damages or actual damages, whichever is greater.

ARTICLE 15 - PROGRESS AND SCHEDULING

- A. The Contractor shall submit for the Owner's approval, in reproducible form, a progress schedule showing rate of progress he agrees to maintain and order in which he proposed to carry on various phases of work. Schedule shall show percentage of work completed at any time, anticipated monthly payments by Owner, as well as significant dates (such as

completion of excavation, concrete foundation work, underground lines, superstructure, roughing-in, enclosure, hanging of fixtures, etc.) which shall serve as check points to determine compliance with approved schedule. Progress schedule of the Contractor shall be submitted to Subcontractors to permit coordinating their progress schedules to the general construction work.

- B. Values employed in preparation of any schedules will be used only for determining the basis for partial payments and will not be considered as a basis for additions to or deductions from the contract price.
- C. There will be no payments until the progress schedule has been approved by the Owner, and subsequent payments will be suspended if the project schedule has not been adequately updated to reflect actual conditions.
- D. The Contractor shall employ and supply a sufficient force of workmen, material, and equipment and shall pay when due, any workman, Subcontractor or supplier and otherwise prosecute the work with such diligence so as to maintain the rate of progress indicated on the progress schedule, prevent work stoppage, and insure completion of the project within the time specified.

ARTICLE 16 - SUBSTITUTIONS AND "OR APPROVED EQUAL"

- A. Whenever in any of the Contract Documents any article, appliance, device or material is designated by the name of the manufacturer or vendor or by any proprietary or trade name and such name

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is followed by the words “or approved equal,” “or as approved,” or preceded by the words “similar and equal to,” the standard products of manufacturers other than those specified will be accepted when, prior to the ordering or use thereof, it is proven to the satisfaction of the Owner that they are equal in design, strength, durability, usefulness and convenience for the purpose intended.

- B. The Contractor may request at his option use of any article, device, product, material, fixture, form or type of construction which in the judgment of the Owner is equal in all respects to that named. Any changes required in the details and dimensions indicated on the drawings for the substitution of products other than those called for shall be properly made as approved by the Owner at the expense of the Contractor requesting the substitution or change.
- C. In the event the Contractor desires to substitute any article, device, product, material, fixture, form or type of construction for that specified, he shall submit a request for such substitutions in writing to the Owner within thirty (30) days after the date of the “Notice to Proceed.” Thereafter no consideration will be given to alternate forms of accomplishing the work. This article does not preclude the Owner and Owner exercising the provisions of Article 26 hereof.

ARTICLE 17 - SUPERINTENDENCE

- A. The Contractor shall keep on his Work during its progress, a competent superintendent satisfactory to the Owner. The superintendent shall represent the

Contractor in his absence and all directions given to him shall be as binding as if given to the Contractor. He shall carefully study and compare all drawings, specifications and other instruction and shall, at once, report to the Owner and error, inconsistency or omission which he may discover. The superintendent shall not be changed except with the consent of the Owner.

ARTICLE 18 - SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- A. The Contractor shall submit, with such promptness as to cause no delay in his work or in that of any other contractors, all Shop Drawings, Product Data and Samples. Such information shall be submitted to the Consultant in accordance with the section of the specifications “Shop Drawings, Product Data and Samples”, and to meet the requirements for maintenance manuals, etc., as described in Article 32.
- B. Each drawing and/or series of drawings, Product Data and Samples shall be submitted in the quantities as stipulated in the section of the specifications “Shop Drawings, Product Data and Samples.”
- C. All Subcontractors Shop Drawings and similar submittals shall be submitted by the Contractor and shall bear the stamp of approval by the Contractor as evidence that he has checked them. Any Shop Drawings and similar submittals submitted without this stamp, or without having been checked, will be returned to him for resubmission and the drawings and schedules will be considered as never having been submitted.
- D. The Contractor shall include with the shop drawing, a letter indicating all deviations

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from the drawings and/or specifications. Failure to so notify of such deviations will be grounds for subsequent rejection of the related work or materials. If, in the opinion of the Owner, the deviations are not acceptable, the Contractor will be required to furnish the item as specified and indicated on the drawings. In no event shall the deviations change the scope of the drawings and/or specifications that would circumvent the Change Order process.

- E. It is the Contractor's obligation and responsibility to check all of his shop drawings and schedules and to be fully responsible for them and for their coordination with connecting work. Shop drawings and schedules shall indicate in detail all parts of an item of work, including erection and setting instructions and engagements with the work of other trades.
- F. The Owner shall check shop drawings and schedules with reasonable promptness and approve them only in conformance with the design concept of the project and compliance with the information given in the Contract Documents. The approval shall not relieve the Contractor from the responsibility for deviations from the drawings and specifications, unless he has called the Owner's attention to same, in writing, at the time of submission. An approval of any such modification will be given only if it is in the interest of the Owner, to affect an improvement in the work, does not increase the contract sum and/or completion time, is subject generally to all Contract stipulations and covenants, and is without prejudice to any and all rights under the Surety bond.
- G. No extension of time will be granted the Contractor because of his failure to submit shop drawings, product data & samples and schedules in ample time to allow for review, possible resubmittals and approval. Fabrication of work shall not commence until the Contractor has received approval. He shall furnish prints of his approved shop drawings and schedules to all contractors whose work is in any way related to the work under the Contract. Only prints bearing this approval shall be allowed on the site of construction.
- H. All shop drawings, product data & sample must be submitted fourteen (14) calendar days prior to the receipt of the third partial payment request. After the second payment has been made, no further payments will be made without the written consent of the Owner until all shop drawings, product data & samples have been submitted.
- I. The Contractor shall prepare samples of all items requested or required by the specification. Samples shall be properly identified and submitted with such promptness as to cause no delay in his work or in that of any other Contractor and to allow for consideration by the Owner.
- J. No materials shall be delivered to the site of construction or incorporated into the work until the Contractor has received approval. Any materials installed prior to receipt of such approval shall be subject to rejection by the Owner.
- K. Samples shall be labeled to designate material or product represented, grade, place of origin, name of producer and name of Contractor.

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- L. Approval of material is general and shall not constitute waiver of Owner's right to demand full compliance with contract requirements.
 - M. Unless Owner is authorized at the time of submittal to return samples at Contractor's expense, rejected sample will be destroyed.
 - N. On completion of the work, and as a condition precedent to receiving final payment, all shop drawings and schedules of all work for all trades shall be corrected to a true and actual representation of the work actually performed, erected and installed. Drawings showing the actual installation of all underground services, utilities and structures of every description shall be furnished the Owner upon completion of the work. (See Article 31.)
- requirements or to demand and secure such reparation to the Owner from the Contractor as equitable.
 - C. The Owner reserves the right to require Contractor to furnish a certificate guaranteeing that material or equipment as submitted complies with contract requirements. Certificates shall be in notarized affidavit form. If statement originates with manufacturer, Contractor shall endorse all claims and submit statement in his own name.
 - D. All tests required by the specifications shall be paid for by the Contractor to testing laboratories approved by the Owner.

ARTICLE 19 - TESTS AND CERTIFICATES

- A. The Owner may make such tests as he deems necessary with samples required for such tests being furnished and at the cost of the appropriate contractor. If the material, equipment or accessory fails to meet the contract requirements, all costs of testing shall be paid by the Contractor. If the item meets the Contract requirements, costs of testing will be paid by Owner.
- B. On the basis of the test results, materials, workmanship, equipment or accessories may be rejected even though general approval has been given. If items have been incorporated in work, Owner shall have the right to cause their removal and replacement by items meeting contract

ARTICLE 20 - MATERIALS AND WORKMANSHIP

- A. Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the best quality. If required by the Owner, satisfactory evidence shall be furnished as to the kind and quality of the materials and workmanship.
- B. All materials and workmanship used in the work shall be subject to the inspection of the Owner, and any work which is deemed defective shall be removed, rebuilt or made good. The cost of such correction shall be borne by the Contractor. All condemned materials shall be immediately removed from the site of the work.
- C. Failure or neglect on the part of the Owner to condemn or reject bad or inferior materials or workmanship shall not be construed to imply an acceptance of any work.

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- D. Unless otherwise provided and stipulated within these specifications, the Contractor shall furnish, construct, and/or install and pay for materials, devices, mechanisms, equipment, all necessary personnel, utilities including, but not limited to water, heat, light and electric power, transportation services, applicable taxes of every nature, and all other facilities necessary for the proper execution and completion of the work.
- E. All temporary shoring, bracing, etc., required for the removal of existing work and/or for the installation of new work shall be included in this contract. This must be done to the entire satisfaction of the Owner but the Contractor must assume full responsibility for the work. The Contractor shall make good, at no cost to the Owner, and damage caused by improper support or failure of shoring in any respect.
- F. The Contractor shall, at all times, enforce strict discipline and good order among his employees, and shall not employ on the work any unfit person or anyone not skilled in the work assigned to him.
- G. The Contractor shall carefully examine the plans and drawings and shall be responsible for the proper fitting of his material, equipment and apparatus into the building.
- H. The Contractor shall base his proposal only on materials, method of construction and equipment as indicated. Contractor may make a written proposal to Owner to use alternate materials, methods or fixtures, in accordance with Article 16, Substitutions.
- I. The Contractor shall promptly remove at his own expense all rejected materials from site of work.
- J. When a material has been approved no change in brand or make will be permitted unless:
 - 1. Written verification is received from the manufacturer stating they cannot make delivery on the date previously agreed, or
 - 2. Material delivered fails to comply with contract requirements.

ARTICLE 21 - INSURANCE

- A. The Contractor shall not commence work under this contract until he has obtained and submitted to the Owner "Certificate of Insurance" for all insurance required under this Article and such insurance has been approved; nor shall the Contractor allow any Subcontractor to commence on his subcontract until all similar insurance required of the Subcontractor has been obtained and approved.
- B. The Contractor shall provide and maintain during the life of the contract until final acceptance of the work, insurance acceptable to the Owner which will afford protection and coverage in accordance with the requirements set forth below.
 - 1. Workers' Compensation Insurance: Workers' Compensation Insurance for all of his employees at the site of the project, and, in case any work is sublet, Contractor shall require any and/or all Subcontractor(s) similarly to provide Workmen's Compensation Insurance for all his employees

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unless such employees are covered by the protection afforded by Contractor. In case any class of employees engaged in hazardous work under this contract at the site of the project is not covered under the Workers' Compensation Statute, the Contractor shall provide and shall cause each Subcontractor to provide Employer's Liability Insurance. Contractors shall provide coverage under the "Occupational Disease Act" of the State of Missouri, in addition to the above requirements, if the operations of the Contractor or any Subcontractor are applicable thereunder. Workers' Compensation Insurance shall comply in all respects with the requirements of the Statutes of the State of Missouri.

2. Public Liability and Property Damage Insurance: Public Liability and Property Damage Insurance in comprehensive general liability form as shall protect Contractor and any Subcontractor performing work covered by this contract from claims for damages for personal injury, including wrongful death, and from claims for property damage which may arise from the operations under the contract, including all trucks and automobiles used, whether owned or not, and whether such operations be by the Contractor or any Subcontractor or by anyone directly employed by either of them. The amount of insurance shall not be less than the following:

1. Public Liability and Property Damage
Bodily injury:
each person \$100,000

each accident \$1,000,000

Property damage:
each accident \$500,000
aggregate \$500,000

2. Automobile Public Liability and Property Damage

Bodily injury:
each person \$100,000
each accident \$1,000,000

Property damage:
each accident \$100,000

Such policy or policies shall by proper endorsement cover any liability of Contractor under the indemnification provision, Article 25 of these General Conditions.

3. Insurance Covering Special Hazards: The Public Liability and Property Damage Insurance policy of policies of the Contractor shall provide coverage for special hazards such as operation of material hoists, blasting or other use of explosives, and damage to underground property.

4. Owner's Protective Liability Insurance: Owner's Protective Liability Insurance for protection of the Owner and the Consultant, if any, protecting them against the standard hazards, except liability from operation of trucks and automobiles, and with the amount of coverage provided in the Public Liability and Property Damage Insurance of Contractor.

5. Builder's Risk or Installation Floater Insurance: Insurance upon the work and all materials, equipment,

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supplies, temporary structures and similar items which may be incident to the performance of the work and located at or adjacent to the site, against loss or damage from fire and such other casualties as are included in extended coverage in broad comprehensive form, vandalism and malicious mischief, in an amount not less than the replacement cost of the work or the contract price, whichever is greater, with loss payable to Contractor and Owner as their respective interest may appear. Such insurance may be written with Building and Contents Form of Endorsement. In the event Building and Contents Form of Endorsement contains an alterations and repairs permit, Contractor shall maintain sufficient insurance to cover the full value of the work and materials as the work progresses, and shall furnish Owner copies of all endorsements. If Builder's Risk Reporting Form of Endorsement is used, Contractor shall make all reports as required therein so as to keep in force an amount of insurance which will equal to the replacement cost of the work, materials, equipment, supplies, temporary structures, and other property covered thereby; and if, as a result of Contractor's failure to make any such report, the amount of insurance so recoverable shall be less than such replacement cost, Contractor's interest in the proceeds of such insurance, if any, shall be subordinated to Owner's interest to the end that Owner may receive full reimbursement for its loss.

- C. All insurance shall be procured through agencies and be written by insurance companies which are acceptable to and approved by the Owner and shall be obtained and paid for by Contractor.
- D. The Contractor shall furnish certificates showing that the Owner is covered by the required insurance and showing the type, amount, class of operations covered, effective dates and dates of expiration of the policies. All certificates shall contain substantially the statement: "The insurance covered by this certificate will not be canceled or altered except after ten (10) days' written notice has been received by the Owner."
- E. Upon receipt of any notice of cancellation or alteration, Contractor shall within five (5) days procure other policies of insurance similar in all respects to the policy or policies about to be canceled or altered; and if Contractor fails to provide, procure and deliver acceptable policies of insurance or satisfactory certificate or other evidence thereof, Owner may obtain such insurance at the cost and expense of Contractor without notice to Contractor.
- F. It is understood and agreed that the insurance required by the provisions of this Article is required in the public interest and that Owner does not assume any liability for acts of Contractor, and Subcontractor or their employees in the performance of the contract.

ARTICLE 22 - SEPARATE CONTRACTS AND COOPERATION

- A. The Owner reserves the right to let other contracts in connection with this work. The Contractor shall afford other contractors reasonable opportunity for the

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introduction and storage of their materials and the execution of their work and shall properly connect and coordinate his work with theirs.

- B. The Contractor shall consult the drawings for all other Contractors in connection with this work. Any work conflicting with the above shall be brought to the attention of the Owner before the work is performed. If the Contractor fails to do this, he shall remove any part so conflicting and rebuild same, as directed by the Owner at no additional cost to the Owner.
- C. No Contractor shall delay any other Contractor by neglecting to perform his work at the proper time. Each Contractor shall be required to coordinate his work with other Contractors so as to afford other reasonable opportunity for execution of their work.
- D. The Contractor shall be responsible for damage to Owner's or other Contractor's property done by him or men in his employ through his or their fault or negligence.
- E. Should a Contractor sustain any damage through any act or omission of any other Contractor having a contract with the Owner, the Contractor so damaged shall have no claim or cause of action against the Owner for such damage, but shall have a claim or cause of action against the other Contractor to recover any and all damages sustained by reason of the acts or omissions of such contractor. The phrase "acts or omissions" as used in this section shall be defined to include, but not be limited to, any unreasonable delay on the part of any such contractors.

ARTICLE 23 - SUBCONTRACTS

- A. Subcontractor assignments as identified in the bid proposal shall not be changed without written approval of the Owner.
- B. The Contractor agrees that he is as fully responsible to the Owner for the acts and omissions of his Subcontractors and of persons either directly or indirectly employed by them as he is for the acts and omissions of persons indirectly employed by him.
- C. Every Subcontractor shall be bound by the applicable terms and provisions of the Contract Documents, but no contractual relationship shall exist between any Subcontractor and the Owner unless the right of the Contractor to proceed with the work is suspended or the Contract is terminated as herein provided, and the Owner in writing elects to assume the Subcontract.

ARTICLE 24 - ASSIGNMENT OF CONTRACT

- A. No assignment by the Contractor of any amount or any part of the Contract or of the funds to be received thereunder will be recognized unless such assignment has had the written approval of the Owner and the Contractor's Surety has been give due notice of such assignment and has furnished written consent thereto. In addition to the usual recitals in assignment contracts, the following language must be set forth: "It is agreed that the funds to be paid to the assignee under this assignment are subject to performance by the Contractor of the Contract and to claims or liens for services rendered or materials

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supplied for the performance of the work called for in said Contract in favor of all persons, firms or corporations rendering such services or supplying such materials.”

ARTICLE 25 - INDEMNIFICATION

- A. The Contractor agrees to indemnify and save harmless Owner and Consultant, if any, their agents, servants and employees, from and against any and all liability for damage arising from injuries to persons or damage to property occasioned by any acts or omissions of Contractor, Contractor’s subcontractors, agents, servants or employees, including any and all expense, legal or otherwise, which may be incurred by Owner or Consultant, if any, its agents, servants or employees, in defense of any claim, action or suit, subject to any claims that an act, omission or negligence of Owner or Consultant, if any, its agents, servants or employees contributed to such injury or damage.
- B. The obligations of the Contractor under this paragraph shall not extend to the liability of the Owner, his agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, design or specifications, or (2) giving of or the failure to give directions or instructions by the Owner, his agents or employees as required by the Contract Documents provided such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 26 - CHANGES IN THE WORK

- A. The Owner and no other person may order extra work or make changes by altering, adding to or deducting from the Work, the Contract Sum being adjusted accordingly. These changes shall not invalidate the Contract and the Owner need not give notice to the surety. All such work shall be executed under the conditions of the original Contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.
- B. The amount of any adjustment in the Contract Sum for authorized changes or the use of Contract allowances shall be agreed upon before such changes or authorizations become effective, in the form of a written Change Order, and shall be determined, as follows:
1. By an acceptable unit price or lump sum proposal from Contractor and Subcontractor. Proposal shall include all takeoff sheets of each Contractor and Subcontractor. Breakdown shall include a listing of each item of material with unit prices and number of hours of labor for each task. Labor costs per hour shall be included with labor burden identified, which shall be not less than the prevailing wage rate, etc. Overhead and profit shall be shown separately for each Subcontractor and the Contractor.
 2. By a cost-plus-fixed-fee (percentage) basis with maximum price, total cost not to exceed said maximum. Breakdown shall include a listing of each item of material with unit prices and number of hours of labor for each task. Labor costs per hour shall be included with labor burden

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identified, which shall be not less than the prevailing wage rate, etc. Overhead and profit shall be shown separately for each Subcontractor and the Contractor.

3. By unit prices contained in Contractor's original proposal and incorporated in the construction contract.

C. Overhead and Profit on Change Orders, Work Authorizations and Field Work Authorizations shall be applied as follows:

1. The overhead and profit charge by the Contractor shall be considered to include, but is not limited to: payment and performance bond, job site office expense, incidental job burdens, truck expense including mileage, small hand tools, project supervision including field supervision, company benefits and general office overhead. The percentages for overhead and profit charged on Change Orders and Work Authorizations shall be negotiated and may vary according to the nature, extent and complexity of the work involved, but in no case shall exceed twenty-two percent (22%) regardless of the number of tiered Subcontractors. The contractor actually performing the work shall receive no more than fifteen percent (15%) total overhead and profit.
2. On proposals covering both increases and decreases in the amount of the contract, the application of overhead and profit shall be on the net change in the cost of the work.
3. The percentages for overhead and profit credit to the owner on Change

Orders that are strictly decreases in the quantity of work or materials shall be negotiated, and may vary according to the nature, extent and complexity of the work involved, but in no case shall be less than fifteen percent (15%). Change Orders that are strictly decreased in the contract amount for credit of unused allowance money, will not include a credit for overhead and profit.

- D. No claim for an addition to the contract sum shall be valid unless authorized as aforesaid in writing by the Owner. In the event that none of the foregoing methods are agreed upon, the Owner may order work performed by force account or accounts. The cost of such work shall be determined by the Contractor's actual labor and material cost to perform the work plus overhead and profit as outlined in paragraph C above. The Owner shall approve the Contractor's daily time and material invoices for the work involved.

- E. If the Contractor claims that any instruction involve extra cost under this contract, he shall give the Owner written notice thereof within a reasonable time after the receipt of such instructions, and in any event before proceeding to execute the work. No such claim shall be valid unless so made and authorized by the Owner, in writing.

- F. In an emergency affecting the safety of life or of the structure or of adjoining property, the Contractor, without special instruction or authorization from the Owner, is hereby permitted to act at his discretion to prevent such threatened loss or injury. Any compensation claimed by the Contractor on account of such

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emergency work shall be determined by agreement with the Owner.

ARTICLE 27 - PAYMENT TO CONTRACTORS

A. PAYMENTS:

1. For contracts in excess of \$5,000.00, payments on account of this Contract will be made monthly in proportion to the work which has been completed. The Contractor shall submit to the Owner, in the manner and form prescribed, an Application and Certification for Payment for each payment and, if requested, receipts or other vouchers showing his payments for materials and labor, including payments to Subcontractors. The Owner will make partial payments within thirty (30) days after it is received by the Owner's fiscal officer, for work done during the preceding calendar month on amounts certified to the Owner subject to the approval of the Owner. The Owner shall retain ten (10) percent of the amount of each such payment application until final completion and acceptance of all Work covered by the Contract. The Owner, at his option, may refrain from withholding any additional retainage once the project reaches 50% completion. However, the full ten percent may be reinstated at any time.
2. For contracts, the cost of which is \$5,000.00 or less, paragraph 1 of this article shall not apply. Contracts falling within this category shall merit but a single payment which

shall become due and payable on completion and acceptance of all work specified thereunder. The terms and provisions of this paragraph shall be executed in strict accord with Section 8.270 RSMo as amended.

3. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor and all material and work covered by paid partial payment shall thereupon become the sold property of the Owner. No such payment shall be deemed to be approval for any item or items for which such payment is made, and this provision shall not be construed as relieving the Contractor from sole responsibility for care and protection of materials and work upon which payments have been made or restoration of any damaged work or as a waiver of the right of the Owner to require fulfillment of all terms of the contract.
4. Materials delivered on site of the Work and not incorporated in the Work, if suitably stored on the site, will be allowed in the Application and Certification for Payment on the basis of one hundred (100%) percent of value, subject to the retainage in effect, providing:
 - (a) Material has previously been approved through submittal and acceptance of shop drawings conforming to requirements of Article 18 of these General Conditions.

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- (b) Delivery is made in accordance with the time frame on the approved schedule.
- (c) Materials, equipment, etc., are properly stored and protected from damage and deterioration and remain so. If not, previously approved amount will be deleted from subsequent pay applications.
- (d) The payment request is accompanied by a breakdown identifying the material equipment, etc. in sufficient detail to establish quantity and value.

B. PAYMENTS WITHHELD: The Owner may withhold or nullify in whole or part any certificate to such extent as may be necessary to protect the Owner from loss on account of:

1. Defective work not remedied.
2. Failure of the Contractor to make payment properly to Subcontractor for material or labor.
3. Claims filed or reasonable doubt that the Contract can be completed for the balance then unpaid.
4. A reasonable doubt that the Contract can be completed for the balance then unpaid.
5. Damage to another Contractor.

When the Owner is satisfied the Contractor has remedied above grounds, payment shall be made for amounts withheld.

C. FINAL PAYMENT:

1. Final payment shall be due at such time as the work is fully completed and all provisions of the contract have been satisfactorily fulfilled.
2. Upon receipt of written notice from the Contractor to the Owner that the work is ready for final inspection and acceptance, the Owner shall promptly make such inspection. If the work is acceptable and the contract fully performed, the Contractor will be directed to submit a final Application and Certification for Payment. If the Owner approves the same, the entire balance shall be due and payable.
3. Where the Specifications provide for the performance by the Contractor of certain tests for the purpose of balancing and checking the air conditioning and heating equipment and the Contractor shall have furnished and installed all such equipment in accordance with the specifications, but said test cannot then be made because of weather conditions, such test shall be considered as required under the provisions of the specifications, Article 19 of General Conditions, and the contract may be certified as satisfactorily completed and the work accepted and full payment made, even though tests have not been made.
4. Neither the final payment nor any part of the retained percentage shall become due until the Contractor delivers to the Owner:

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- (a) a complete file of releases, on a standard form prescribed by the Owner and included in the Contract Documents as “Final Receipt of Payment and Release Form,” from Subcontractors and material suppliers evidencing payment in full for services, equipment and materials, as the case may require,
 - (b) an Affidavit of Compliance with Prevailing Wage Law, in the form as included in the Contract Documents, properly executed by each Subcontractor, and the Contractor, and
 - (c) certified copies of all payrolls, consisting of name, occupation and craft as recognized by Missouri Division of Labor Standards, number of hours worked and actual wages paid for each individual, of the Contractor and all Subcontractors working on the project.
- D. If any lien or claim remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all monies that the latter may be compelled to pay in discharging such a lien or claim including all costs and a reasonable attorney’s fee.
- E. Missouri statute requires prompt payment from the Owner to the Contractor within thirty days and from the Contractor to his Subcontractors within fifteen days. Failure to make payments within the required time frame entitles the receiving party to charge interest at the rate of one and one-half percent per month calculated from the expiration of the statutory time period until paid.

ARTICLE 28 - PARTIAL OCCUPANCY/ SUBSTANTIAL COMPLETION

- A. The Owner may fully occupy the facility as soon as it is substantially completed. No provision in the Document shall be construed to prevent partial occupancy by the Owner so long as the partial occupancy does not materially affect the construction process.
- B. The Contractor agrees that the Owner, upon advance notification to the Contractor in writing, will be permitted to occupy and use any completed or partially completed portions of the project when such occupancy and use is to the Owner’s best interest.
- C. If such prior occupancy increases the cost of the work or delays its completion, provided that the same occur prior to the completion date fixed by the “Notice to Proceed,” and as amended by contract change orders, and provided the contractor submits written notification of such cost increase or time delay, the Contractor shall be entitled to extra compensation or extension of time, or both.

ARTICLE 29 - DISPUTES AND DISAGREEMENTS

- A. In order to prevent all disputes or disagreements between the parties aforesaid in relation to the performance

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hereof on the part of this Contractor, it is hereby expressly agreed and understood that in case any controversy or difference of opinion shall arise as to the quantity or value of the work, or material, the interpretation of plans, specifications and provisions of the Contract Documents, or any other matter connected with the work, or the performance of the covenants and agreements herein contained, the decision of the Owner shall be final and binding on all parties. If a Consultant is identified, the Owner may direct that the Consultant's interpretation be the basis for final decision.

ARTICLE 30 - RIGHTS OF THE OWNER ON BREACH OF CONTRACT

- A. If the Contractor shall be judged legally insolvent, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should persistently or repeatedly refuse or fail to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to Subcontractors or for material or labor, or persistently disregard laws, ordinances or the instructions of the Owner, or otherwise be guilty of a substantial violation of any provision of the contract, then the Owner may serve notice on the Contractor and his surety setting forth violations and demanding compliance with the contract. Unless within ten (10) consecutive calendar days after serving such notice, such violations shall cease and satisfactory arrangements for correction be made, the Owner may suspend the Contractor's right to proceed with the work or terminate the contract.
- B. In the event the Owner suspends the Contractor's right to proceed with the Work or terminates the Contract, the Owner may demand that the Contractor's Surety take over and complete the Work on the Contract, after the Surety submits a written proposal to the Owner and receives written approval and upon the Surety's failure or refusal to do so within ten (10) consecutive calendar days after demand therefore, the Owner may take over the work and prosecute the same to completion by bid or negotiated contract, or the Owner may elect to take possession of and utilize in completing the work such materials, supplies, appliances and plant as may be on the site of the work, and all Subcontractors, if the Owner elects, shall be bound to perform their contracts.
- C. The Contractor and his Surety shall be and remain liable to the Owner for any excess cost or damages occasioned to the Owner as a result of the actions above set forth.
- D. The Contractor in the event of such suspension or termination shall not be entitled to receive any further payments under the contract until the work is wholly finished. Then if the unpaid balance under the contract shall exceed all expenses of the Owner, such excess shall be paid to the Contractor; but, if such expenses shall exceed the unpaid balance, the Contractor and his Surety shall be liable for and shall pay the difference and any damages to the Owner.
- E. In exercising the Owner's right to secure completion of the work under any of the provisions hereof, the Owner shall have the right to exercise the Owner's sole discretion as to the manner, methods and reasonableness of costs of completing the work.

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F. The rights of the Owner to suspend or terminate as herein provided shall be cumulative and not exclusive and shall be in addition to any other remedy provided by law.

G. The Contractor in the event of such suspension or termination may be declared ineligible for Owner contracts for a minimal period of twelve (12) months. Further, no contract will be awarded to any Contractor who lists in his proposal any Subcontractor whose prior performance has contributed, as determined by the Owner, to be a breach of Contract. In order to be considered for Contracts after this period of ineligibility, the contractor/Subcontractor will be required to forward acceptance reports to the Owner regarding successful completion of non-state projects during the intervening twelve (12) months from the date of default. No Contracts will be awarded to a Subcontractor/contractor until the ability to perform responsibly in the private sector has been proven to the Owner.

ARTICLE 31 - RECORD DRAWINGS

A. The Contractor shall, at the completion of the work and prior to submission of request for final payment, complete and turn over to the Owner a marked up set of the drawings provided for construction. The corrections shall show all field changes that were made to adopt to field conditions, changes resulting from contract change orders and all buried installations of piping, conduit, and utility services. All buried and concealed items both inside and outside shall be accurately located as to depth and referenced to two permanent features such as interior or

exterior wall faces and dimensions shall be given in a neat and legible manner in a contrasting colored pencil or ink.

ARTICLE 32 - WARRANTIES AND OPERATING INSTRUCTIONS

A. **WARRANTIES:** Warranties of various items shall be delivered in three (3) copies to the Owner at least two (2) weeks prior to Contractor's request for final punch list.

B. **OPERATING INSTRUCTIONS, SERVICE MANUALS AND PARTS CATALOGS:** At least two (2) weeks prior to the Contractor's request for final punch list, the Contractor shall provide to the Owner four (4) volumes of operating instructions and service manuals, containing the following:

1. **Start-up and Shut-down Procedures:** Provide a step-by-step write up of all major equipment. When manufacturer's printed start-up, trouble shooting and shutdown procedures are available, they may be incorporated into the operating manual for reference.

2. **Operating Instructions:** Written operating instructions shall be included for the efficient and safe operation of all equipment.

3. **Equipment List:** List of all major equipment as installed shall include model number, capacities, flow rate, name plate, shop drawings and air and water balance reports.

4. **Service Instructions:** The Contractor shall be required to provide the

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following information for all pieces of equipment:

- (a) Recommended spare parts including catalog number and name of local suppliers or factory representatives;
 - (b) Belt sizes, types and lengths;
 - (c) Wiring diagrams.
5. Manufacturer's Certificate of Warranty: Manufacturer's certificates of warranty shall be obtained for all equipment. Warranty shall be obtained for at least one (1) year as defined in Article 33 - General Guarantee. Where longer period is called for in the specific equipment specifications, the longer period shall govern.
6. The Contractor shall furnish the required copies of parts catalogs for each piece of equipment furnished by the Contractor on the Project with the components identified by number for replacement ordering.

C. SUBMISSION:

- 1. Materials shall be bound into volumes of standard 8 1/2" x 11" hard binders. Large drawings too bulky to fold into 8 1/2" x 11" shall be separately bound or folded and in brown envelopes, cross-referenced and indexed with the manuals.
- 2. The manuals shall identify the project, project number and include the name and address of the Contractor and major subcontractors of any tier who were involved with

the activity described in the particular manual.

- 3. Internally subdivide the binder contents with permanent page dividers, logically organized with tab titling clearly printed under reinforced laminated plastic tabs.
- 4. Contents: Prepare a Table of Contents for each volume, with each product or system description identified.

ARTICLE 33 - GENERAL GUARANTEE

- A. Neither the final certificate of payment nor any provision in the Contract Documents nor partial use or 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 or his Sureties of liability in respect to any express warranties or responsibility for faulty materials, workmanship or liquidated damages.
- B. The Contractor or his Sureties shall remedy any defects in the work and pay for any damage to other work resulting therefrom which shall appear within a period of one (1) year from the date of final acceptance unless a longer period is otherwise specified or a differing warranty period has been established in the substantial completion certification. The Owner will give notice of observed defects with reasonable promptness.
- C. In case of default on the part of the Contractor in fulfilling this part of the Contract, the Owner may correct the work or repair the damage and the cost and

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expense incurred in such event shall be paid by or recoverable from the Contractor.

- D. Should the Contractor be required to perform tests that due to climatic conditions must be delayed, it is understood that such tests will be accomplished by the Contractor at the earliest possible date with the provisions of the General Guarantee beginning upon satisfactory completion of said test. The responsibility of the Contractor under this section will not be abrogated if the Owner should elect to initiate final payment.

ARTICLE 34 - DOMESTIC PRODUCTS PROCUREMENT

- A. In accordance with the Missouri Domestic Products Procurement Act (Senate Bill 74, 84th General Assembly, First Regular Session), any manufactured goods or commodities used or supplied in the performance of this Contract or any Subcontract thereto shall be manufactured, assembled or produced in the United States, unless the specified products are not manufactured, assembled or produced in the United States or cannot be manufactured, assembled or produced in the United States within the necessary time in sufficient quantities to meet the contract requirements, or if obtaining the specified products manufactured, assembled or produced in the United States would increase the cost of the contract for purchase of the product by more than ten percent.
- B. The Contractor shall certify, through each pay application, that all manufactured goods or commodities used or supplied in the performance of the work for which

payment is requested were manufactured, produced or assembled in the United States. If the goods used or supplied in the performance of the work for which payment is requested were not manufactured, produced or assembled in the United States, the Contractor must certify that the goods needed:

1. are not manufactured in the United States, or
2. are not manufactured in sufficient quantities to meet the needs of the Contract, or
3. cannot be manufactured, assembled or produced in the United States within the necessary time to meet the requirements of the Contract, or
4. would increase the cost of the Contract for the purchase of the product by more than ten percent (10%) if purchased from a manufacturer or producer in the United States.

ARTICLE 35 - MBE/WBE REQUIREMENTS

- A. If required in Supplementary Conditions, the following provisions shall apply:
1. The Contractor is bound to subcontracting not less than the dollar amount indicated in the awarded contract to MBE/WBE(s) unless amount is revised in writing by the Director.
 2. If the Contractor fails to meet or maintain stated percent, he/she must satisfactorily explain to the Director why the requirement cannot be

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achieved and why meeting the requirement was beyond the Contractor's control.

3. If the Director finds the Contractor's explanation unsatisfactory, the Director may declare the Contractor ineligible for this project.
4. If a MBE/WBE is replaced during the course of this contract, the Contractor shall make a good faith effort to replace it with another MBE/WBE. All substitutions shall be approved by the Director.
5. The Contractor shall provide the Director with regular reports on its progress in meeting its MBE/WBE obligations. As a minimum, the dollar-value of work completed by each MBE/WBE subcontractor during the preceding month and as a cumulative total shall be reported with each monthly application for payment. A final report shall include the total dollar-value of work completed by each minority subcontractor during the total contract.

Section 292.675 RSMo any person signing a contract to work on the construction of public works for any public body shall provide a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for their on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the department which is at least as stringent as an approved OSHA program. All employees are required to complete the program within sixty days of beginning work on such construction project, unless such employees have previously completed the required program.

END OF SECTION

ARTICLE 36 - EMPLOYMENT OF UNAUTHORIZED ALIENS

- A. For any contract in excess of five thousand dollars paragraph 10 (ten) of the Proposal Form will apply in its entirety.

ARTICLE 37 - HEALTH AND SAFETY OF EMPLOYEES

- A. In accordance with the provisions of