GENERAL CONDITIONS

DEFINITIONS

ARTICLE 1 – DEFINITIONS

Wherever used in any of the Contract Documents, the following meanings shall be given the terms as herein defined:

A. “Administrative Review” means a non-judicial dispute resolution mechanism. Advisory arbitration conducted by an independent third party, as further described in the Resolution of Claims and Disputes Article contained herein, unless the parties agree in writing to an alternative mechanism.

B. "Agreement" means the contract executed by the Owner and the Contractor.

C. "Bidder" means an individual, firm, association or corporation submitting a bid proposal for the Work contemplated.

D. “Claim” shall mean a demand or assertion by the Contractor seeking, as a matter of right adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and the Contractor arising out of or relating to the Agreement.

E. “Contract Documents” consist of the Agreement between the Owner and the Contractor (hereinafter the Agreement), the conditions of the Agreement (General, Supplementary and other Conditions), Advertisement for Bids, Notice to Contractors, Instructions to Bidders, Drawings, Specifications, Addenda issued prior to execution of the Agreement, Notice to Proceed, other documents listed in the Agreement, and Modifications issued after execution of the Agreement. A Modification is (1) a written amendment to the Agreement signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Consultant.

F. "Contractor" is the party or parties who have been awarded an Agreement to furnish work under these Contract Documents.

G. “Consultant” shall refer to the Architect, Engineer, or other design professional when employed by the University, or their duly authorized representative. When a consultant is not employed the Owner shall act as the Consultant.

H. “Debarment Official” shall mean the Vice President for Administration and Finance or appointed representative of Missouri State University, Springfield, Missouri.

I. “Designated Representative” shall mean the person appointed by Owner to represent Owner on the Project.

J. “Director” shall mean the Director of Planning, Design and Construction or appointed representative of Missouri State University, Springfield, Missouri.

K. "Drawings” are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

L. “Final Completion” shall mean the date of the Owner’s acceptance of the Work from the Contractor upon confirmation from the Consultant and the Contractor that the Work is entirely complete in accordance with the Contract Documents.

M. “Governing Law” – The law of the State of Missouri shall govern the construction of this Agreement, without regard to conflict of law principles.

N. "Owner" shall mean the Board of Governors, Missouri State University, acting by and through its duly appointed representatives in the department of Planning, Design and Construction, also referred to as “Missouri State University” or “University.”

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

P. “Project” –is the term meant to identify the Designer’s work as identified in the Contract Documents.

Q. “Project Manual” is a volume or volumes assembled for the Work that may include the bidding requirements, sample forms, conditions of the Agreement, and Specifications.

R. “Provide” shall mean furnish and install.

S. “Samples” are physical examples of actual materials, finishes, assemblies, trim, hardware, detailing, equipment, workmanship, etc. and establish a standard by which the Work will be judged.

T. “SDVE” – Service-Disabled Veteran Business Enterprise, a business concern classified as a SDVE by the State of Missouri, or another federal, state, or local government agency.

U. “Shop Drawings” are drawings, diagrams, schedules, and other data specifically for the Work by the Contractor or a Subcontractor, manufacturer, supplier, or distributer to illustrate some portion of the Work.

V. "Similar" shall be used in its general sense and not as meaning identical, and all details shall be worked out in relation to their location and their connection to other parts of the Work.

W. "Specifications” are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

X. "Subcontractor" as employed herein, includes all those having a direct agreement with a Contractor for the furnishing of materials, labor, equipment and services to be used on this project.

Y. “Substantial Completion” or “Substantially Complete” shall mean the date when the Owner agrees that the Work, or specific portion thereof, is sufficiently complete in accordance with the Contract Documents, so that it can be utilized by the Owner for the purposes for which it was intended. The Owner at its sole discretion may take beneficial occupancy at this time or choose to wait to occupy until after Final Completion is achieved.

Z. “Superintendent” shall mean the person designated by Contractor to represent Contractor on the Project.

AA. “Time” – Time limits stated in the Contract Documents are of the essence of the Agreement.

AB. “Unit Prices” shall mean an amount included on the Bid Form which includes full compensation for all required labor, products, tools, equipment, plant, transportation, services and incidentals; erection, application or installation of an item of the Work; overhead and profit.

AC. "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project.

GENERAL PROVISIONS

ARTICLE 2 – STATUTORY PREFERENCE

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 Sections 8.280 and 34.359 RSMo., and cumulative supplements, incorporated herein by reference.

B. The President of Missouri State University certifies that it is the policy of the University that no Contractor or vendor providing goods, commodities or services for purchase or lease will knowingly include or supply products manufactured outside the United States. Exceptions to this requirement are where it can be documented that said products are not manufactured in the United States in sufficient quantities to meet the contract requirements within the necessary time, or where obtaining products manufactured or assembled or produced in the United States would increase the cost of the Agreement by more than 10 percent. Any vendor or Contractor knowingly violating this provision shall be in violation of the terms and conditions of the Agreement, and subject to termination of the Agreement.

ARTICLE 3 – 'ANTI-KICK BACK'

A. The Contractor shall comply with all provisions of the Copeland 'Anti-Kick Back' Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 C.F.R., Part 3), incorporated herein by reference.

B. The Contractor hereby certifies that no person employed on the Work has been induced to or required to give up any part of the compensation to which he or she is otherwise entitled. The Contractor further certifies that it has not sought by collusion, payment to any person, or otherwise to obtain any advantage over the Owner or made any payment or promise of other consideration to the Owner or its agents to cause award of this Agreement to the Contractor.

ARTICLE 4 – TRANSIENT EMPLOYERS

A. Contractors must be registered and bonded with the Department of Revenue and Division of Employment Security. If requested, Contractors must provide proof of compliance with these conditions.

ARTICLE 5 – UNIVERSITY NON-DISCRIMINATION STATEMENT

A. The University emphasizes the dignity and equality common to all persons and adheres to a strict nondiscrimination policy regarding the treatment of individual faculty, staff, and students. In accord with federal law and applicable Missouri statutes, the University does not discriminate on the basis of race, color, national origin (including ancestry, or any other subcategory of national origin recognized by applicable law), religion, sex (including marital status, pregnancy, sexual orientation, gender identity, gender expression, or any other subcategory of sex recognized by applicable law), age, disability, veteran status, genetic information, or any other basis protected by applicable law in employment or in any program or activity offered or sponsored by the University. Sex discrimination encompasses sexual harassment, which includes sexual violence, and is strictly prohibited by Title IX of the Education Amendments of 1972.

B. This policy shall not be interpreted in a manner as to violate the legal rights of religious organizations or military organizations associated with the Armed Forces of the United States of America.

C. The University maintains a grievance procedure incorporating due process available to any person who believes he or she has been discriminated against. Missouri State University is an Equal Opportunity/Affirmative Action/Minority/Female/Veterans/Disability/Sexual Orientation/Gender Identity employer. Inquiries concerning the complaint/grievance procedure related to sex discrimination, including sexual harassment and sexual assault, should be addressed to the Title IX Coordinator, Carrington Hall 205, 901 S. National Ave., Springfield, Missouri 65897 or to the Office for Civil Rights. All other inquiries concerning the grievance procedure, Affirmative Action Plan, or compliance with federal and state laws

and guidelines should be addressed to the Equal Opportunity Officer, Office for Institutional Equity and Compliance, Carrington Hall 205, Springfield, Missouri 65897, equity@missouristate.edu, 417-836-4252, or to the Office for Civil Rights.

ARTICLE 6 – OWNERSHIP OF DRAWINGS

A. Drawings, specifications and other documents, including those in electronic form, prepared by the Consultant and/or their Consultants are Instruments of Service for use solely with respect to the Work. The Consultant and their Consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

ARTICLE 7 – CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

A. The Contract Documents are complementary and what is called for by any one document shall be as binding as if called for by all. The intention of the Contract Documents is to include all labor, materials, equipment, transportation, and everything else necessary to properly execute the Work. Materials or Work described in words that have a well-known technical or trade meaning shall refer to such recognized standards.

ARTICLE 8 – DRAWINGS, DETAILS, AND INSTRUCTIONS

A. The general character of the Work is shown on the Drawings. Where, on any Drawing, a portion of the Work is drawn out and the remainder of the Work is indicated in the Specifications, the parts drawn out shall apply to all other like portions of the Work. Where ornament or other detail is indicated, such detail shall be continued throughout the courses or parts of the Work in which it occurs and shall also apply to all other similar parts in the Work, unless otherwise indicated. In case of differences between small and large-scale Drawings, the larger scale Drawings shall take precedence. In the event of differences between the Specifications and the Drawings, the more restrictive shall take precedence.

ARTICLE 9 – ACCESS TO RECORDS AND REPORTS

A. Contractor agrees to provide Owner or any of Owner's duly appointed representatives with access to any books, documents, papers and records which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.

ADMINISTRATION OF THE AGREEMENT

ARTICLE 10 – COMMUNICATIONS

A. All correspondence, notices, invoices, demands, requests, instructions, approvals and claims must be in writing. All such documents shall include Missouri State University's project number. This number is listed within the Contract Documents. All papers required to be delivered to the Owner shall, unless otherwise specified by the Owner in writing to the contrary, be delivered to Planning, Design and Construction, Missouri State University, Springfield, Missouri. Notices shall be deemed to have been given at of the time of actual receipt of the notice.

ARTICLE 11 – RIGHTS AND RESPONSIBILITIES OF CONSULTANT

A. The Consultant may, through the Owner's Designated Representative, give orders and directions relative to the execution of the Work, including deciding the meaning and intent of any portion of the Contract Documents which may be found obscure or in dispute, and all such directions, estimates, and decisions shall be final and conclusive. The Consultant shall determine the amount, quality, and acceptability of the Work and materials which are to be paid to the Contractor under this Agreement. In case any question shall arise between the parties hereto relative to the Contract Documents, determination or decision of the Consultant shall be a condition precedent to the right of the Contractor to receive any money or payment for Work under the Agreement affected in any manner or to any extent by such question.

B. The Consultant, through the Director, may by written notice request a Contractor to remove from the Project any Contractor or Subcontractor's employees whom the Consultant or Director may deem incompetent, careless, or a hindrance to proper timely execution of the Work. The Contractor shall comply with such notice promptly and without detriment to the Work.

C. The Consultant, through the Director, or the Director may take appropriate action and issue instructions which, in their judgment, may be required to avoid unnecessary and unwarranted delay if the Contractors refuse to cooperate with the instructions and reasonable requests of the other Contractors performing work for the Owner under separate agreements.

ARTICLE 12 – CONTRACTOR PERFORMANCE EVALUATION

A. Planning, Design and Construction tracks Contractor performance related to contracts bid and work managed by this department. Contractors shall be recognized for outstanding performance as well as less than satisfactory performance. Each Contractor performing services for Missouri State University shall be subject to performance evaluations. Performance evaluations are a key component in determining Contractor responsiveness and may be used by Missouri State University in the review of a Contractor's suitability as the lowest, responsive, responsible bidder for future work.

B. The performance criteria are included in the Contractor Performance Evaluation form following in Appendix A so that all Contractors are aware of the criteria prior to beginning a project. Upon Final Completion of a project, the Project Manager, along with other University personnel, shall complete a performance evaluation for all prime Contractors.

C. At the discretion of the Project Manager, a periodic evaluation may be completed for any Contractor when a serious concern regarding their performance on the Project exists.

ARTICLE 13 – CLAIMS AND DISPUTES

A. Claims must be formally submitted to Planning, Design and Construction. The responsibility to substantiate Claims shall rest with the Contractor.

B. Claims, including those alleging an error or omission by the Consultant shall be referred initially to the University's Designated Representative for action. A recommendation by the Consultant shall be required as a condition precedent to Administrative Review or litigation of a Claim between the Contractor and the Owner as to all such matters arising prior to the date final payment is due, regardless of any of the following:

(1) Whether such matters relate to execution and progress of the Work.

(2) The extent to which the Work has been completed.

The recommendation by the Consultant in response to a Claim shall not be a condition precedent to Administrative Review or litigation in the event:

(1) The position of Consultant is vacant,

(2) The Consultant has not received evidence or has failed to render a recommendation within agreed time limits,

(3) The Consultant has failed to take action required under the Resolution of Claims and Disputes Article within thirty (30) calendar days after the Claim is made,

(4) Forty-five (45) calendar days have passed after the Claim has been referred to the Consultant.

C. Claims must be made within twenty-one (21) calendar days after occurrence of the event

giving rise to such Claim or within twenty-one (21) calendar days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered.

D. Pending final resolution of a Claim including Administrative Review, unless otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Agreement and the Owner shall continue to make payments in accordance with the Contract Documents.

E. The making of final payment shall constitute a waiver of Claims by the Owner except those arising from any of the following:

(1) Claims, security interests or encumbrances arising out of the Agreement and unsettled;

(2) Failure of the Work to comply with the requirements of the Contract Documents;

(3) Terms of special warranties required by the Contract Documents.

F. If concealed or unknown conditions are encountered at the site which are:

(1) Subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or

(2) Unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents,

then notice by the Contractor shall be given to the Consultant through the Director promptly before conditions are disturbed and in no event later than twenty-one (21) calendar days after first observance of the condition. The Consultant will promptly investigate such conditions and, if they differ materially will recommend an equitable adjustment in the Agreement. If the Consultant determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Agreement is justified, the Consultant shall so notify the Director and Contractor through Director in writing, stating the reasons. Claims by the Contractor in opposition to such determination must be made within twenty-one (21) calendar days after the Consultant has given notice of the recommendation.

G. If the Contractor wishes to make Claim for an increase in the contract time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and/or probable effect of delay on progress of the Work in the case of a continuing delay only one Claim is necessary. If unusual weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and weather conditions had an adverse effect on the scheduled construction.

H. The Contractor waives any claim for consequential damages, incidental damages, indirect or special damages, punitive damages, and claims for specific performance, unjust enrichment, and/or quantum meruit arising out of or relating to the agreement. This waiver is applicable, without limitation, to all consequential damages related to termination in accordance with Article 56. Nothing contained in this subpart (H) shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

ARTICLE 14 – RESOLUTION OF CLAIMS AND DISPUTES

A. The Consultant through the Director will review Claims and take one or more of the following preliminary actions within thirty (30) calendar days of receipt of a Claim:

(1) Request additional supporting data from the claimant,

(2) Submit a schedule to the Contractor indicating when the Consultant expects to take action,

(3) Reject the Claim in whole or in part, stating reasons for rejection,

(4) Recommend approval of the Claim or

(5) Suggest a compromise.

The Director may also, but is not obligated to, notify the surety of the nature and amount of the Claim.

B. If a Claim has not been resolved, the Contractor shall, within fourteen (14) calendar days after the Consultant's preliminary response, take one or more of the following actions:

(1) Submit additional supporting data requested,

(2) Modify the initial Claim, or

(3) Notify the Director that the initial Claim stands.

C. If a Claim has not been resolved after consideration of further evidence as presented by the Contractor, the Director's decision will be made within thirty (30) calendar days following the Contractor's response. During that 30-day period, the Director may request a supplemental recommendation from the Consultant, considering the Contractor's response. Any such decision shall be final, but subject to Administrative Review. Upon expiration of such time period, the Director will render to the Contractor the Consultant's written decision relative to the Claim, including any change in the Agreement. If there appears to be the possibility of a Contractor's default the Director may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

D. In order to prevent all disputes or disagreements between the parties aforesaid in relation to the performance 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 between the parties aforesaid as to the quality or 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, on the part of this Agreement, the decision of the Director shall be final and binding on all parties subject to Administrative Review.

E. Request for Administrative Review may be made by any party, in writing, to the other party within thirty (30) calendar days following the decision of the Director. The request for review shall include a statement of reasons of disagreement with the decision of the Director, as well as the statement of the requested relief or remedy. Within thirty (30) calendar days after the request for Administrative Review, the parties will select an Arbitrator to hear the dispute. A panel of arbitrators will be obtained from the Federal Mediation Conciliation Service, American Arbitration Association, or other recognized Dispute Resolution body. The parties will alternatively strike the panel of arbitrators until one arbitrator remains. The party requesting the Administrative Review will make the first strike. The parties may agree to terms of procedures of the arbitration before the neutral Arbitrator. If terms cannot be agreed, the applicable procedures of the American Arbitration Association will be followed.

F. The parties will share equally the expenses of arbitration, consisting primarily of the Arbitrator's fee and expenses, and the arrangements and fees for the presentation and location of the arbitration hearing, as well as any fees charged by the Dispute Resolution body. Either party may make, at its own expense, a transcript or recording of the arbitration hearing. If the other party desires access to such transcript, it will pay one-half (1/2) of the expense incurred in preparing the transcript. The parties may be represented by legal counsel, and each party is responsible for its own legal expenses. The location of an arbitration hearing will be mutually agreed upon by the parties, if no agreement is possible, then arbitration shall be held in a conference room at the University Plaza Hotel and Convention Center in Springfield, Missouri.

G. The Arbitrator will issue his/her decision in writing, within thirty (30) calendar days after the close of the hearing, unless the parties agree otherwise. The parties may request to submit briefs

following the hearing, which may extend the time period, as determined by the Arbitrator. The decision of the Arbitrator shall be final except as appeal is permitted pursuant to the agreed terms of procedures of the arbitration before the neutral Arbitrator or the applicable procedures of the American Arbitration Association if the parties cannot agree on terms of procedure of the arbitration.

ARTICLE 15 – DEBARMENT

A. The Owner will consent to the use of Subcontractors and award contracts to only responsible Contractors. Debarment is a discretionary action of a serious nature and imposed only in the public interest for the Owner's protection and not as a punitive measure.

B. The Owner will consider the Contractor's past performance with projects both for the University and with other Owners in determining if the Contractor is responsive. Included in this consideration will be if Contractor has:

(1) provided false or misleading information as part of any qualification statement, bid or contract;

(2) refused or failed to supply enough properly skilled workers, Superintendents, foremen or managers;

(3) refused or failed to supply sufficient or proper materials;

(4) failed to make payment to Subcontractors for materials or labor in accordance with the respective Agreements between the Contractor and the Subcontractors;

(5) disregarded laws, ordinances, rules, or regulations or orders of a public authority having jurisdiction;

(6) disregarded the authority of the Owner's Designated Representative or Consultant;

(7) breached any warranty or representations made by the Contractor under or pursuant to the Contract Documents;

(8) failed to furnish the Owner with assurances satisfactory to the Owner evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;

(9) failed after commencement of the Work to proceed continuously with the construction and completion of the Work for more than ten (10) days, except as permitted under the Contract Documents;

(10) failed to maintain a satisfactory rate of progress with the Work or comply with approved progress schedules;

(11) violated in any substantial way any provisions of the Contract Documents; or

(12) has been debarred from contracting by any other federal or state body.

C. Debarment shall be imposed for a specified time not to exceed five (5) years unless reasons for a longer period are stated in the notice of debarment.

D. The Owner may extend debarment for an additional specified period at any time before a debarment expires upon adequate evidence in addition to that which supported the original debarment in accordance with the procedure for debarment.

E. The Owner may reduce the period of debarment upon the Bidder's or Contractor's written request supported by adequate evidence:

(1) that corrective action will be taken to assure that past performance issues will be prevented;

(2) bona fide change in ownership or management of the Bidder or Contractor; or

(3) elimination of other causes for which debarment was imposed.

F. The Owner shall begin debarment proceedings by the Debarment Official giving notice of intent to debar to the Contractor by certified mail, return receipt requested, stating:

(1) the intent to debar for a specified period.

(2) the cause for debarment with a summary of the information on which the findings of causes are based.

(3) the debarment is effective immediately and the decision will become final within twenty-one (21) calendar days unless the Contractor submits a written response to the Debarment Official within that time opposing the debarment, including information raising a genuine dispute as to the facts on which it is based.

G. If a Contractor timely opposes debarment, the Debarment Official shall:

(1) Schedule an informal hearing within fifteen (15) days, with written notice to the parties, at which the Owner and the Contractor may present evidence on issues raised by the notice of debarment and the response thereto;

(2) Issue a written decision within fifteen (15) days of the hearing, either sustaining or over-ruling the debarment, and stating;

(a) a summary of the evidence presented;

(b) conclusions applying these conditions to the facts, serving this decision on the Contractor by certified mail, return receipt requested.

H. The Debarment Official's decision shall be final.

I. The Owner may continue in effect any Agreements with debarred persons which have not been fully performed at the time of debarment in accordance with their terms.

J. When a debarred Contractor is proposed as a Subcontractor for any subcontract subject to Owners approval, the Owner shall not approve such Subcontractor unless the Contractor states in writing the compelling reasons for such approval.

K. The Debarment Official shall maintain records of all persons debarred for the purpose of enforcing these conditions.

CONTRACTORS EXECUTION AND SUPERVISION

ARTICLE 16 – PREVAILING WAGE

A. Missouri's Prevailing Wage Law establishes a prevailing hourly wage rate and a public works contracting minimum wage, and whichever rate is applicable must be paid to workers on public works construction projects in Missouri, such as bridges, roads, and government buildings, for which the Agreement awarded is in the amount of seventy-five thousand dollars or more. The prevailing hourly wage rates and public works contracting minimum wage rates differ by county and for different types of work.

B. The Prevailing Wage Law applies to all public works projects constructed by or on behalf of state and local public bodies for Agreements in the amount of seventy-five thousand dollars or more. Not

less than the prevailing hourly rate of wages or public works contracting minimum wage, whichever is applicable, shall be paid to all workers performing work under such Agreements. Section 290.250, RSMo. The following provisions apply only to construction of public works for Agreements of seventy five thousand dollars or more.

(1) The Contractor and each Subcontractor engaged in construction of public works shall keep full and accurate records clearly indicating the names, occupations and crafts of every worker employed by them in connection with the public work together with an accurate record of the number of hours worked by each worker and the actual wages paid therefore. The payroll records required to be so kept shall be open to inspection by any appointed representative of the contracting public body or of the department at any reasonable time and as often as may be necessary and such records shall not be destroyed or removed from the state for the period of one year following the completion of the public work in connection with which the records are made. Contractors shall submit certified copies of their payrolls to the contracting public body on a monthly basis.

(2) For any construction of public works, each Contractor and Subcontractor shall file with the contracting public body upon completion of the public work and prior to final payment the enclosed wage rate affidavit included in Appendix A stating that they have fully complied with the provisions and requirements of this chapter and as set forth in the Department of Labor and Industrial Relations Prevailing Wage Section 290.290, RSMo., and no public body shall be authorized to make final payment until such affidavit is filed therewith in proper form and order.

(3) Each Contractor and Subcontractor engaged in construction of public works for Agreements in the amount of two hundred fifty thousand dollars or more shall have its name, acceptable abbreviation or recognizable logo and the name of the city and state of the mailing address of the principal office of the company, on each motor vehicle and motorized self-propelled piece of equipment which is used in connection with such public works project during the time the Contractor or Subcontractor is engaged on such project. The sign shall be legible from a distance of twenty feet but the size of the lettering need not be larger than two inches. In cases where equipment is leased or where affixing a legible sign to the equipment is impractical, the Contractor may place a temporary stationary sign, with the information required pursuant to this subsection, at the main entrance of the construction project in place of affixing the required information on the equipment so long as such sign is not in violation of any state or federal statute, rule or regulation. Motor vehicles which are required to have similar information affixed thereto pursuant to requirements of a regulatory agency of the state or federal government are exempt from the provisions of this subsection.

C. Per Section 290.265, RSMo., a clearly legible statement of all prevailing hourly wage rates to be paid to all workers employed in order to execute the Agreement and employed on the construction of the public works is kept posted in a prominent and easily accessible place at the site thereof by each Contractor and Subcontractor engaged in the public works project under the provisions of this law and such notice shall remain posted during the full time that any worker shall be employed on the public works.

D. Per Section 290.250, RSMo., the Contractor shall forfeit as a penalty to the public body on whose behalf the contract is made or awarded one hundred dollars for each worker employed, for each calendar day, or portion thereof such worker is paid less than the specified wage rates for any work done under said Agreement, by the Contractor or by any Subcontractor under the Contractor.

E. The Owner, and its agents and officers, shall take cognizance of all complaints of all violations of the provisions of Sections 290.210 to 290.340 RSMo. committed in the course of the execution of the contract, and, when making payments to the contractor becoming due under the contract, shall withhold and retain therefrom all sums and amounts due and owing as a result of any violation of sections 290.210 to 290.340 RSMo.

ARTICLE 17 – SDVE REQUIREMENTS

For all agreements, the following provisions shall apply:

A. The Contractor is bound to subcontracting not less than the percent indicated in the awarded contract to Service-Disabled Veteran Enterprises (SDVE)(s).

B. If the Contractor fails to meet or maintain stated percent, they must satisfactorily explain to the Director why the requirement cannot be achieved and why meeting the requirement was beyond the Contractor's control.

C. If the Director finds the Contractor's explanation unsatisfactory, the Director will notify the Commissioner. The Commissioner may take any appropriate action including, but not limited to:

(1) Declaring the Contractor ineligible to participate in any state contracts administered through the Office of Administration for a period not to exceed six (6) months; and

(2) Directing that the Contractor be declared in breach of the Agreement.

D. If a SDVE is replaced during the course of the Agreement, the Contractor shall make a good faith effort to replace it with another SDVE. All substitutions shall be approved by the Director.

E. The Contractor may provide the Director with regular reports on its progress in meeting its SDVE obligations. As a minimum, the dollar-value of work completed by each SDVE Subcontractor during the preceding month and as a cumulative total may be reported with each monthly application for payment. A final report may include the total dollar-value of work completed by each SDVE Subcontractor during the total Agreement.

ARTICLE 18 – NONDISCRIMINATION IN EMPLOYMENT

A. The Contractor and their Subcontractors will not discriminate based on affected group status unless with respect to sex, age, or disability status such restrictions relate to the bona fide occupational qualifications. Specifically, the Contractor and their Subcontractors shall not discriminate:

(1) Against recipients of service on the basis of race, color, religion, national origin, sex, disability, 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 that person's status as a disabled or Vietnam-era veteran.

B. The Contractor and Subcontractors will 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 advertising; and selection for training, including apprenticeship. The Contractor and Subcontractor will give written notice of their commitments under this clause to any labor union with which they have bargaining or other agreements.

C. Facilities provided for employees will be provided in such a manner that segregation on the basis of race, color, religion, or natural origin cannot result.

D. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, age, sex or national origin.

E. The Contractor will send to each labor union or representative of workers with which he or

she has a collective bargaining agreement or other contract or understanding, a notice advising that the labor union or workers' representative of the Contractor's commitments under Section 202 of the Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

F. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of rules, regulations and relevant orders of the Secretary of Labor, and shall also comply with the Missouri Fair Employment and Public Accommodation Practices Act, Chapter 213 RSMo., any applicable provisions of the Americans with Disabilities Act of 1990, Titles VI and VII of the Civil Rights Act of 1964, all incorporated herein by reference, and will hold harmless MSU from any violation or claimed violation of law, ordinance or regulation arising from this Agreement.

G. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by an appropriate agency of the Federal government and by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

H. Each prime Contractor and Subcontractor shall file annually, on or before the 31st day of March, complete and accurate reports on Standard Form 100 (EEO-1) promulgated jointly by the Office of Federal Contract Compliance Programs, the Equal Employment Opportunity Commission and Plans for Progress or such form as may hereafter by promulgated in its place if such prime Contractor or Subcontractor (i) is not exempt from the provisions of the regulations in accordance with 60-1.5; (ii) has 50 or more employees; (iii) is a prime Contractor or first tier Subcontractor; and (iv) has a contract, subcontract or purchase order amounting to $50,000 or more or serves as a depository of Government funds in any amount, or is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes: Provided, that any Subcontractor below the first tier which performs construction work at the site of construction shall be required to file such a report if it meets requirements of paragraphs (i), (ii), and (iv) of this section.

I. In the event of the Contractor's noncompliance with the Equal Opportunity conditions of this contract or with any such rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part, and the Contractor may be declared ineligible for further government contracts, or federal assisted contracts, in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation or Order of the Secretary of Labor, or as otherwise provided by law.

J. The Contractor will include this paragraph and the above paragraphs in this Article in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any Subcontractor or vendor as the appropriate agency of the Federal Government may direct as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the appropriate agency of the Federal Government, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

K. Exemptions to the requirements of the above Equal Opportunity conditions are contracts and subcontracts not exceeding $10,000.00, and contract and subcontracts with regard to work performed outside the United States by employees who were not recruited in the United States.

L. The Contractor and their Subcontractors shall develop, implement, maintain and submit in writing to the Director an affirmative action program if at least fifty (50) persons in the aggregate are to be employed under this Agreement. 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 Certificate for Affirmative Action in the form as included in the contract specifications. For the purpose of this section, an "affirmative action program" means positive action to influence all employment practices (including, but not limited to, recruiting, hiring, promotion and training) in providing equal

employment opportunity regardless of race, color, sex, national origin, religion, age (where the person affected is between 40 and 70), disabled and Vietnam-era veteran status, and handicapped otherwise qualified status. Such "affirmative action program" shall include:

(1) A written policy statement committing the total organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;

(2) The identification of a person designated to handle affirmative action;

(3) The establishment of non-discriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure, and standards applicable to lay-off, recall, discharge, demotion and discipline;

(4) The exclusion of discrimination from all collective bargaining agreements; and

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

M. 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 to the Contractors and Subcontractors.

N. In the event of the Contractor's or a Subcontractor's noncompliance with any provisions of this Article, the Director may cancel this Agreement in whole or in part or require the Contractor to terminate the contract with their Subcontractor.

O. The Contractor and their Subcontractors may provide the Director accurate information for quarterly and final reports of the number and percentage of SDVE workers, classified by trade, and a list of all SDVE Subcontractors involved on this construction project. The Contractor shall be responsible for obtaining and reporting this information with respect to their firm and for all Subcontractors. The reports may include:

(1) The total number of service-disabled veterans, working on the construction project, classified by trade, that were employed during the three months preceding and including the last regular working day of the month of March, June, September or December, as applicable. The final report shall reflect all service-disabled veterans, occurring since the last quarterly report or the overall service-disabled employment if there was no prior report due.

(2) The percentage of service-disabled veterans classified by trade as reported in (1).

(3) A list of all service-disabled veteran Subcontractors including the trade classification and mailing address of each firm working on the project.

(4) An estimate of the dollar-value of work completed by each service-disabled veteran Subcontractor during the quarterly reporting period and as a cumulative total through the reporting period. The final report may include an estimate of the dollar-value of work completed by each service-disabled veteran Subcontractor during the last quarterly report or the overall dollar-value for the contract if there was no prior report due.

P. The quarterly reports may be submitted with the application for payment throughout the project until completed. The final report may be due upon submission of the final payment request.

Q. Missouri State University abides by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in

employment without regard to race, color, religion, sex, national origin, protected veteran status or disability. The Contractor is responsible for compliance of the above requirements. When requested, the Contractor shall provide documentation of good faith efforts and the necessary proof of compliance.

ARTICLE 19 – PAYMENT AND PERFORMANCE BOND

A. The Contractor shall execute the Performance and Payment Bond as prepared by the Owner and included in Appendix A, or another form similar in form and content, in an amount equal to one hundred percent (100%) of the Agreement sum as security for the faithful performance of this Agreement and as security for the payment of all persons performing labor on the project under this Agreement and furnishing materials in connection with this Agreement. This bond shall be in effect through the duration of the one-year warranty period.

ARTICLE 20 – CONTRACTOR'S INSURANCE

A. The successful Contractor shall procure and maintain for the duration of the Agreement a policy or policies of insurance for the protection of both the Contractor and the Owner and their respective officials. The Contractor shall not commence Work under this Agreement until the Contractor has obtained and submitted to the Owner a "Certificate of Insurance" for all insurance required under this Article and such insurance has been approved by the Owner; nor shall the Contractor allow any Subcontractor to commence work on any subcontract until all similar insurance required of the Subcontractor has been obtained and approved. Please carefully review the requirements outlined below.

It is highly recommended that you confer with your insurance broker/agent or other insurance company representative, <u>prior</u> to submitting your bid, to determine availability and applicable cost, if any, of certificates, endorsement, coverages, and limits required.

B. <u>WORKERS' COMPENSATION INSURANCE</u> – Workers' Compensation Insurance for all of their employees doing work on the project, and, in case any work is sublet, Contractor shall require any and/or all Subcontractor(s) similarly to provide Workers' Compensation Insurance for all their employees unless such employees are covered by the protection afforded by Contractor. In case any class of employees engaged in hazardous work under this Agreement 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 covering these employees. 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 and limits of the Statutes of the State of Missouri.

C. <u>COMMERCIAL GENERAL LIABILITY INSURANCE</u> – The Contractor shall obtain one or more occurrence-based policies of Commercial General Liability Insurance which provide coverage for the Work and shall protect the Contractor, the Owner, and any Subcontractor performing work covered by this Agreement from claims for damages for personal injury, bodily injury, including wrongful death, and from claims for property damage which may arise from the operations under the Agreement.

(1) Commercial General Liability Insurance, including coverage for Premises, Operations, Products and Completed Operations, Broad Form General Liability, and Contractual Liability, shall apply to Bodily Injury and Property Damage on an "Occurrence Form Basis" with minimum limits of **$1,000,000** each bodily injury or property damage occurrence, and **$2,000,000** general aggregate with a per project endorsement.

D. <u>COMMERCIAL AUTOMOBILE LIABILITY INSURANCE</u> – The Contractor shall obtain one or more occurrence-based policies of auto liability insurance, which provide coverage for all vehicles that will be used on University property in conjunction with the Work whether they are owned, non-owned or hired vehicles of every type and description.

(1) Automobile Liability Insurance covering Bodily Injury and Property Damage on an

"Occurrence Form Basis" with minimum limits of **$1,000,000** combined single limit.

E. UMBRELLA/EXCESS LIABILITY – Contractor shall provide an Umbrella Policy of Insurance to protect the University, the Board of Governors for Missouri State University, its members, agents, and employees from the performance of this Agreement with a minimum limit of coverage of **$5,000,000** in excess over the CGL policy. The University shall be named as additional insured on the policy. The policy shall provide for coverage of occurrences from which the University, its officers and employees are not immune under the doctrines of sovereign, official and governmental immunity.

F. ADDITIONAL INSUREDS – Each policy of commercial liability insurance shall name Missouri State University, the Board of Governors of Missouri State University, its members, agents and employees as additional insureds. The insurance afforded by the Contractor shall be primary insurance.

G. ALL RISK BUILDER'S RISK OR INSTALLATION FLOATER INSURANCE – The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the State of Missouri, as an admitted carrier, Builder's Risk or Installation Floater Insurance on the entire Work. Such insurance shall be written on a completed value form for the entire Work. The insurance shall apply on a replacement cost basis.

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

(2) The insurance as required herein shall cover the entire Work, including reasonable compensation for Consultant's services and expenses made necessary by an insured loss. Insured property shall include portions of the Work located away from the site but indebted for use at the site, and shall also cover portions of the Work in transit, including ocean transit. The policy shall include as insured property scaffolding, false work, and temporary buildings located at the site. The policy shall cover the cost of removing debris, including demolition as may be made legally necessary by the operation of any law, ordinance or regulation. The policy shall also contain an endorsement to include permission for partial occupancy.

(3) The insurance required herein shall be on an all risk form and shall be written to cover all risks of physical loss or damage to the insured party and shall insure at least against the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, lightening, frost, water damage, windstorm and freezing.

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

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

(a) The date which all persons and organizations who are insured under the policy agree in writing that it shall be terminated;

(b) The date on which final payment of this Contact has been made by Owner to Contractor; or

(c) The date on which the insurable interests in the property of all insureds other than the Owner have ceased.

(6) The Owner and Contractor waive all rights against (1) each other and any of their subcontracts of any tier, suppliers, agents and employees, each of the other, (2) the Consultant and Consultant's consultants, and (3) separate Contractors described in the Separate Contracts Article, if any, and any of their Subcontractors of any tier, suppliers, agents and employees, for damages caused by fire or other perils to the extent covered

by property insurance obtained pursuant to this Article or other insurance applicable to the Work, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require of the Consultant, Consultant's consultants, separate Contractors described in the Separate Contracts Article, if any, and the Subcontractors of any tier, suppliers, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, was at fault or was negligent in causing the loss and whether or not the person or entity had an interest in the property damaged.

(7) A loss insured under Contractor's property insurance shall be adjusted by the Owner in good faith and made payable to the Owner for the insureds, subject to the requirements of the Contract Documents. At its option, Owner may instead allow the proceeds to be placed in escrow or with an independent adjuster. The Contractor shall pay Subcontractors of any tier their just shares of insurance proceeds received by the Contractor, any appropriate agreements, written where legally required for validity, shall require Subcontractors of any tier to make payments to their Sub-subcontracts in similar manner.

H. INSURANCE COVERING SPECIAL HAZARDS – If applicable, the Commercial General Liability Insurance policy or policies of the Contractor shall provide coverage for special hazards such as, but not limited to, operation of material hoists, blasting or other use of explosives, earthquake, flood, pollution, PCB transformers and damage to underground property.

I. SATISFACTORY COVERAGE – Such insurance coverage shall be written by a company authorized to do business in the State of Missouri and the form and content of the policies and the companies issuing the same shall be subject to the approval of the Owner. In the event that the form of any policy or certificates or the amount of the insurance or the companies writing same are not satisfactory to the Owner, the Contractor shall secure other policies or certificates in form and amount and with companies satisfactory to the Owner. The Contractor shall not cause any policies to be cancelled or permit them to lapse and all insurance policies shall include a clause to the effect that the policy shall not be cancelled or changed until thirty (30) days after the Owner has received written notice.

(1) It is understood and agreed that the insurance required by the provisions of this Article is required in the public interest and that the Owner does not assume any liability for acts of the Contractor, any Subcontractor or their employees in the performance of the Agreement.

(2) If Owner is damaged by delay or failure of Contractor to maintain insurance as required in this Article, then Contractor shall bear all reasonable costs properly attributable to that delay or failure.

J. PROOF OF INSURANCE COVERAGE – Certificates of Insurance shall be provided, authenticated by the proper officer of the insurer, evidencing in particular those insured, the extent of the insurance, the exclusions and endorsements, the location and operations to which the insurance applies, the effective date and expiration date and the notice of cancellation clause mentioned herein before. Owner shall have a right to see the entire policy upon request.

K. Notwithstanding any other provision of these Contract Documents to the contrary, no insurance procured by Contractor shall be construed to constitute a waiver of any sovereign immunity as set forth in § 537.600 *et seq.,* RSMo., or any other governmental or official immunity, nor provide coverage for any liability or suit for damages which is barred under said doctrines of sovereign, governmental, or official immunity available to Owner, its officers or employees, nor constitute waiver of any available defense; and neither shall such insurance provide coverage for any sums other than those which Owner, its officers or employees, may be obligated to pay as damages. The Contractor shall cause all policies of insurance procured pursuant to this Article to be endorsed in accord with this

paragraph. Contractor shall further require the upper limits of such policies to be adjusted on an annual basis to be at least equal to the limits of liability set forth in §§ 537.610.2 and 537.610.5, RSMo., as may be amended from time to time.

ARTICLE 21 – INDEMNIFICATION

A. To the extent that the following does not void or make voidable any insurance coverage or waive any monetary limits, sovereign, governmental, or official immunity or any other rights, immunities and protections provided by the United States or the State of Missouri, Contractor agrees to defend, indemnify and hold harmless to the fullest extent possible the Owner, its agents, servants and employees, representatives (hereinafter "Owner") from and against any and all liability for claims, damages, punitive damages, penalties and civil fines unless expressly prohibited by law, losses and expenses, including, but not limited to, attorneys' fees, arising out of or in any manner connected with this Agreement, to the extent the foregoing is caused or claimed to be caused in whole or in part by the act, omission, error, professional error, mistake, negligence or willful act of Contractor, any Subcontractor of the Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by the negligent acts or omissions or other fault of a party indemnified hereunder. The Contractor's obligations hereunder are in addition to and shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that the Owner may possess. The Contractor agrees to investigate, handle, respond to, and provide defense for and defend against, any such liability, claims, and demands at the sole expense of the Contractor, or at the option of Owner agrees to pay to or reimburse Owner for the defense costs incurred by Owner in connection with any such liability claims, or demands. The defense and indemnity required herein shall be a binding obligation upon Contractor whether or not Owner has made such demand. Even if a defense is successful to a claim or demand for which Contractor is obligated to indemnify the Owner under this Paragraph, Contractor shall remain liable for all costs of defense.

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

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

ARTICLE 22 – ROYALTIES AND PATENTS

A. The Contractor shall pay all royalties and license fees, shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof.

ARTICLE 23 – TAXES

A. The Owner is exempt from payment of State of Missouri, County, and City sales or use taxes on the purchase of all building materials and equipment made on behalf of the University. Therefore, the Bidder shall not include sales or use taxes in the proposal.

B. The Owner shall furnish the Contractor an exemption certificate authorizing purchases of tangible personal property and materials to be incorporated into or consumed in the construction of the Project. Such certificate is renewable for a given project at the option of the Owner only for the purpose of revising the certificate expiration date as necessary to complete the Project.

C. The Contractor shall furnish the exemption certificate to all Subcontractors, and any Contractor purchasing materials shall present such certificate to all material suppliers as authorization to purchase, on behalf of the Owner, all tangible personal property and materials to be incorporated into or consumed in the construction of this Project and no other on a tax-exempt basis. Such suppliers shall execute to the purchasing Contractor invoices bearing the name of the exempt entity and the Project identification number. Nothing in this Article shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in constructing, repairing or remodeling facilities for the Owner. All invoices for all personal property and materials purchased under a Project exemption certificate shall be retained by the purchasing Contractor for a period of five years and may be subject to audit by the Missouri Director of Revenue as provided by Missouri law.

D. Any excess resalable tangible personal property or materials which were purchased for the project by a Contractor under a Project exemption certificate but were not incorporated into or consumed in the construction of the Project shall be returned to the supplier for credit. If unreturned, the appropriate sales or use tax on such excess property or materials shall be reported by the Contractor on a return and paid by such Contractor not later than the due date of the Contractor's Missouri sales or use tax return following the month in which it was determined that the materials were not to be used in the Project.

ARTICLE 24 – SURVEYS, PERMITS, AND REGULATIONS

A. The Owner shall furnish all surveys unless otherwise specified. The Contractor shall obtain and pay for all permits, licenses, certificates, inspections and other legal fees required by all applicable municipal ordinances and state and federal laws. Easements for permanent installations shall be secured and paid for by the Owner, unless otherwise specified.

B. All Contractors performing work on the Project shall be licensed in the City of Springfield, Missouri and all personnel involved in the Project shall be certified in their trade in accordance with the City of Springfield, Missouri requirements.

C. The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the Work as drawn and specified. If the Contractor observes that the drawings and specifications are at variance therewith, he or she shall promptly notify the Owner in writing, and any necessary changes shall be adjusted as provided in the Contract Documents 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 to the Owner, Contractor shall bear all costs arising there from.

ARTICLE 25 – SUPERINTENDENT

A. The Contractor shall keep on the Project during its progress a competent Superintendent satisfactory to the Owner. The Contractor shall not change the Superintendent during the course of the Project without written approval from Owner.

B. The Superintendent shall represent the Contractor. The Superintendent shall give efficient supervision to the Project, using the Superintendent’s best skill and attention. The Superintendent shall carefully study and compare all drawings, specifications and other instruction and shall, at once, report to the Owner any error, inconsistency or omission which the Superintendent discovers.

ARTICLE 26 – MEASUREMENTS

A. Before ordering any material or doing any Work the Contractor or Subcontractors shall verify all measurements at the Project and shall be responsible for the correctness of same. No extra charge shall be allowed on account of the difference between actual dimensions and the dimensions indicated on the drawings; any differences that may be found shall be reported to the Owner’s appointed representative for consideration before proceeding with the Work.

ARTICLE 27 – MATERIALS AND WORKMANSHIP

A. Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of good 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 the decision of its representatives as to what conforms to the specifications shall be final and conclusive on all parties, and any Work which they shall decide to be defective shall be removed, rebuilt or made good, the cost of such correction to be borne by the Contractor. All condemned materials shall be immediately removed from the vicinity 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. The Work herein specified to be done is not to be considered as finally accepted until it is so stated in writing by the Owner.

ARTICLE 28 – MATERIALS, EQUIPMENT, AND LABOR

A. Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation services, taxes, insurance and use taxes and other facilities necessary for the execution and completion of the Work. See the Article on Taxes for an explanation of the taxes to be included.

ARTICLE 29 – UNIVERSITY REGULATIONS

A. The Contractor shall be aware of the following rules and recommendations regarding Contractor's employees at Missouri State University:

(1) No intoxicating beverages shall be carried or consumed on University property.No narcotics shall be carried or used on University property.

(2) No firearms shall be allowed on University property.

(3) The use of vulgar or obscene language on University property is prohibited.

(4) Smoking or use of tobacco products (defined as smoking via cigarettes, smokeless tobacco, cigars, pipes, or the use of devices or products that may be used to smoke or mimic smoking including bongs, hookahs, vaporizers, e-cigarettes, etc.) is prohibited on University property. Refer to the Tobacco Use/Smoking Policy at www.missouristate.edu/tobacco for more information and for designated smoking areas around the perimeter of campus.

(5) The Contractor's storage and work areas shall be tightly secured during non-working hours.

(6) The University will not be responsible for the Contractor’s tools, equipment, or materials.

(7) The use of campus waste receptacles and dumpsters is prohibited. In case of dispute, the Owner may cause the removal of any rubbish and charge the cost to the Contractor(s).

(8) The Contractor shall not load or permit any part of a structure to be loaded with a weight that will endanger its safety.

(9) The Contractor shall, at all times, enforce strict discipline and good order among their employees, and shall not employ on the Work any unfit person or anyone not skilled in the Work assigned to them.

(10) All areas within the limits of the construction site shall be maintained in a clean and orderly manner.

ARTICLE 30 – KEY POLICY

A. Keys shall be requested through Planning, Design and Construction. The Contractor shall

provide Planning, Design and Construction advance notice of the need for access to a space and allow at least 72 hours for processing. The Contractor shall provide the name and contact information of the person authorized to pick up the key(s), the length of time the key(s) will be needed, and the specific location(s) where access is necessary.

B. The Contractor shall be financially responsible for the cost of any lost or stolen keys in accordance with University policies and procedures.

C. Final payment will not be made until it is verified that all keys checked out to the Contractor for the Project have been returned.

ARTICLE 31 – CONTRACTOR PARKING

A. Parking in or on campus parking lots requires a parking permit. These permits will be provided to the Contractor at no cost. Application for the required parking permits shall be by use of the Construction Parking Permit Application form provided in Appendix A. Failure to display a proper parking permit may lead to the issuance of a parking ticket. These tickets will be the Contractor's responsibility to pay and shall be paid prior to the issuance of the final payment due on the Project.

B. Parking along the street, lawn, entrances to facilities, bike paths, or sidewalks is prohibited unless the Contractor is delivering materials and no other option exists. If a vehicle space is not available in the immediate area of where material is being delivered, the Contractor may park the vehicle in an area that is deemed safe to unload. Once the vehicle has been unloaded, it must be immediately moved to valid parking space. Bicycles must be parked in designated bike racks and motorcycles/scooters must be parked in designated parking lot with an authorized parking pass.

ARTICE 32 – PROJECT SITE MAINTENANCE

A. The Contractor shall confine their apparatus, the storage of materials, and the operations of their workmen, to limits indicated by law, ordinance, permits or direction of the Owner's appointed representative and shall not unreasonably encumber the premises with their material.

B. The Contractor shall enforce the Owner's instructions regarding signs, advertisements, and smoking.

C. The Contractor shall at all times keep the premises free from accumulations of waste material or rubbish caused by the Contractor's employees or Work, and at the completion of the Work they shall remove all rubbish from and about the building and all tools, scaffolding and surplus materials and shall leave the Work "broom clean" or its equivalent, unless more exactly specified. Rubbish shall be removed in an approved manner. Each Contractor is responsible for their waste removal.

D. It is the responsibility of the Contractor to maintain the construction area in a neat and orderly appearance. No grass or ground cover shall be allowed to grow in excess of 12". Should the Contractor fail to maintain the construction area in accordance with the requirements, the Owner may cause the maintenance of the area to occur and charge the cost to the Contractor(s).

ARTICLE 33 – PROTECTION OF WORK AND PROPERTY

A. The Contractor shall continuously maintain adequate protection for all the Work from damage and shall protect the Owner's property from injury or loss arising in connection with this Agreement. The Contractor shall make good any such damage, injury or loss.

B. The Contractor shall take all necessary precautions for the safety of employees on the Work, and shall comply with all applicable provisions of Federal, State, and Municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workmen and the public and shall post danger signs warning against the hazards created by such features of construction as protruding nails, hod hoists, well holes, elevator hatchways, scaffolding, window openings, stairways

and falling materials; and whose duty shall be the prevention of accidents.

ARTICLE 34 – CUTTING, PATCHING, AND DIGGING

A. The Contractor shall do all cutting, fitting or patching that may be required to make its several parts come together properly and for it to receive or be received by Work or other Contractors shown upon, or reasonably implied by, the Contract Documents for the completed structure, and he or she shall make good after them as the Director may direct.

B. Any cost caused by defective Work shall be borne by the Contractor responsible therefor.

C. The Contractor shall not endanger any Work by cutting, digging or otherwise, and shall not cut or alter the Work of any other Contractor except with the written consent of the Owner's appointed representative.

ARTICLE 35 – UTILITIES

A. The Contractor shall take every precaution to protect existing utilities on the campus. The Contractor is responsible for contacting Missouri811 to initiate a utility locate on campus. A minimum of three (3), and not more than ten (10), business days' notice must be given and a utility locate conducted before digging on campus can occur. Contact may be made by calling 811 or 1-800-DIG-RITE (344-7483) or submitting an online request at https://missouri-811.org/. Missouri811 will send an email notification for routine locate requests.

B. The Contractor shall not interrupt any utility service to the university without prior written approval. Should the project dictate the need for temporary utility interruption, the Contractor shall complete the Request for Utility Interruption form included in Appendix A. The general Contractor or prime Contractor shall fill out this form in order to request a utility interruption. Once it is filled out, the request shall be sent to Planning, Design and Construction so arrangements can be made for the interruption of services. A minimum of 5 business days must be given prior to the need for the request.

C. Depending upon the extent or complexity of the request, additional time may be needed to fulfill the request. The Contractor shall take this into account when making the request and shall allow ample time for the Work to be completed.

ARTICLE 36 – INSPECTION OF WORK

A. Requests for Owner to inspect and approve Work shall be made in writing by use of the attached Request for Inspection form following the General Conditions in Appendix A. The general Contractor or prime Contractor shall fill out this form in order to request an inspection. This form shall be used for inspections such as general, rough-in, or final inspections. Once it is filled out, the request shall be sent to Planning, Design and Construction in order to schedule an inspection. By requesting this inspection, the Contractor is certifying that the Project is ready for inspection. If at the time of inspection it is found that the Work is not ready for inspection, the Owner may charge the Contractor for all expenses related to the inspection and subsequent inspections. A minimum of 5 working days' notice must be given prior to the need for the request.

B. Owner may also inspect at its discretion, with or without notice, at any time during the course of the Project.

C. If any Work is covered up without approval or consent of the Owner, it must, if requested by the Owner, be uncovered at the expense of the Contractor. Should it be considered necessary or advisable by the Owner any time before final acceptance of the entire Work to make an examination of the Work already completed, by removing or tearing out same, the Contractor shall, on request, promptly furnish all necessary facilities, labor, and material. If such Work is found to be defective in any material respect, due to fault of the Contractor or their Subcontractor, Contractor shall pay for all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Agreement, the actual cost of labor and material necessarily involved in the examination and replacement plus 10 percent shall be allowed the Contractor.

D. All materials and workmanship (if not otherwise designated by the specifications) shall be subject to inspection, examination and test by the Owner at any and all times during manufacture or construction and at any and all places where such manufacture or construction are carried on. The Owner shall have the right to reject defective material and workmanship or require its correction. Rejected workmanship shall be satisfactorily corrected. Rejected material shall be promptly segregated and removed from the Project, and satisfactorily replaced with proper material without charge therefor. If the Contractor fails to proceed at once with the correction of rejected defective materials or workmanship, the Owner may by agreement 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.

E. In response to request by interested citizens for legitimate reasons, as determined by Owner, the Owner and the Contractor will permit limited access to construction sites. Access by concerned citizens will be to assist the University in its stewardship responsibility of assuring taxpayer dollars and student fee monies are being expended in accordance with the intent of the Project. In no case will any such access permit interfere with the Work, or create additional Work, unless permitted by the Owner. The Contractor's employees and Subcontractors will not be interrupted, without the consent of the Contractor's Superintendent. Any access will require permission from the Director, and will be accompanied by the supervisor and/or their designee, as well as a representative of the Contractor if the Contractor so desires. Any such access will be scheduled by the Director with the Contractor's Superintendent.

ARTICLE 37 – CORRECTION OF WORK

A. The Contractor shall promptly remove from the Project all materials condemned by the Director as failing to conform to the Agreement, whether incorporated in the Work or not. The Contractor shall promptly replace and re-execute their own Work in accordance with the Agreement, without expense to the Owner and shall bear the expense of making good all work of other Contractors destroyed or damaged by such removal or replacement.

B. Neither the final certificate, nor payment, nor any provision in the Contract Documents shall relieve the Contractor and the Surety of responsibility for faulty materials or workmanship, and, unless otherwise specified, the Contractor or their sureties shall remedy any defects due thereto and pay for any damage to their work resulting therefrom, which shall appear within a period of one year from the date of Substantial Completion and acceptance of the Work. The Owner shall give notice of observed defects with reasonable promptness.

ARTICLE 38 – SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

A. Shop Drawings, Product Data, Samples, and similar submittals (collectively referred to as "Submittals") are not Contract Documents. Their purpose is to demonstrate the way in which the Contractor proposes to conform to the information given and the design concept set forth by the Contract Documents for those portions of the Work for which submittals are required. Informational submittals that do not require response by the Consultant may be identified as such in the Contract Documents. Submittals that are not required by the Contract Documents may be returned to the Contractor without action.

B. The Contractor shall include the cost of providing Shop Drawings, Product Data, Samples, and similar submittals in the bid, including the cost of shipping and delivery to the appropriate location as required by the Contract Documents.

C. Submittals shall be provided on a submittal log and schedule and conveyed to the necessary parties in a manner as agreed upon between the Owner, Contractor, and Consultant. The Contractor shall provide a schedule for submittals within thirty (30) days after the issuance of the Notice to Proceed. Submittals shall be provided in a timely fashion and sequenced during the Project so as to avoid delays to the Work of this Agreement as well the activities of the Owner and any separate contractors.

(1) Digital submittals, log and schedule are preferred unless directed otherwise.

(2) Three (3) samples shall be submitted for review.

D. The Contractor shall review all submittals required by the Contract Documents for compliance with the Contract Documents and shall mark submittals with their approval prior to providing submittals to the Consultant. Each Submittal shall be provided with the cover sheet in Appendix A and shall bear a stamp or specific indication that the submittal has been reviewed by the Contractor and complies with the Contract Documents. Such stamp shall represent that the Contractor has satisfied its obligations under the Contract Documents with respect to Contractor's review and has approved that Submittal. The stamp shall include the Contractor's company name as well as the signature of the representative of Contractor who approved the submittal. In addition to the above stamp, the cover sheet for each submittal shall bear the following:

(1) The Owner's name listed simply as "Missouri State University" for this purpose.

(2) The Owner's Project Title as indicated on the Contract Documents.

(3) The Owner's Project number.

(4) The Owner's lead Consultant for the project.

(5) The applicable specification section number and specification section title.

(6) In instances where the specification section title does not accurately provide a description of the item(s) included in the submittal, a description of the item(s) that are included in the submittal shall be provided below the specification section title.

(7) The company name, address, and contact information of the responsible Subcontractor (if applicable).

(8) The company name, address, and contact information of the manufacturer, supplier, distributor, or fabricator for the submitted item(s) (If applicable).

(9) Any additional information as required by the Contract Documents.

E. By providing Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Consultant the following:

(1) That the Contractor has determined and verified field measurements and field construction criteria related to the submitted item(s).

(2) That the Contractor is responsible for the correctness and accuracy of the dimensions, measurements, and other information contained in the Submittal.

(3) That the submitted items are fit for their intended use.

(4) That the fabrication, shipping, handling, storage, assembly and installation of all materials, systems and equipment are in accordance with best practices in the industry and are in strict compliance with any applicable requirements of the Contract Documents.

(5) That the Contractor is responsible for coordination of each Submittal with other Submittals and has checked and coordinated the information contained within such Submittals with all of the Work required by the Contract Documents.

F. The Contractor shall not perform any portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the Consultant or Owner's appointed representative.

G. The Work shall be in accordance with the approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Consultant's approval of Shop Drawings, Product Data, Samples, or similar submittals unless the Contractor has specifically informed the Consultant in writing of such deviations at the time of the submittal and the Consultant done one of the following:

(1) Provided written approval to the specific deviation as a minor change in the Work.

(2) Issued a Change Order authorizing the deviation.

H. Approval of Shop Drawings, Product Data, Samples, or similar submittals by the Consultant shall not relieve the Contractor of responsibility for any errors or omissions in said Shop Drawings, Product Data, Samples, or similar submittals.

I. The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Consultant on previous Submittals. In the absence of such written notice, the Consultant's approval of a resubmission shall not apply to such revisions.

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

K. There shall be no limitations on reproduction placed on any submittal provided to the Consultant or to the Owner. The Owner retains the right to copy and distribute submittals as necessary. Any such limiting statement placed on a submittal shall not be recognized by the Owner and shall be found to be void. The Contractor shall require the same to any level tier Subcontractor or supplier.

ARTICLE 39 – OPERATION AND MAINTENANCE MANUALS

A. Assemble operation and maintenance data indicating the operation and maintenance of each system, subsystem, and piece of equipment not part of a system. Include operation and maintenance data required in individual specification sections and including, but not necessarily limited to, the following:

(1) Operation Data:

(a) Emergency Instructions and procedures.

(b) System, subsystem, and equipment descriptions, including operating standards.

(c) Operating procedures, including startup, shutdown, seasonal change over, and weekend operations. Operating procedures shall include a written step-by-step guide and/or video for safe and efficient operation of all equipment and shall include trouble shooting guides.

(d) Description of controls and sequence of operations.

(e) Piping and wiring diagrams.

(2) Maintenance Data:

(a) Provide an equipment list of all major equipment as installed. Include information on all lighting fixtures incorporated into the Work. Information shall include manufacturer name, model number, name plate data, capacities, flow rates, electric characteristics, filter size(s), belt size(s), other recommended spare parts (including model numbers), recommended tools for service, etc.

(b) Provide maintenance data for all finish materials used in the Work. Information shall include manufacturer name; model number, name or make; recommended cleaning intervals, cleaning methods, methods for spot cleaning or repairing damage, etc.

(c) Name, address, and telephone number of installer and supplier.

(d) Maintenance procedures.

(e) Maintenance and service schedules for preventive and routine maintenance.

(f) Maintenance record forms.

(g) Parts catalogs and sources of spare parts and maintenance materials. Parts catalogs shall include components identified by number for replacement ordering.

(h) Copies of maintenance service agreements.

(i) Copies of manufacturer's certificates of warranties and bonds. Provide warranties as required by the General Conditions and individual specification sections.

B. Provide two (2) printed copies of Operation and Maintenance Manuals and one (1) electronic copy in PDF format. All materials contained in the Operation and Maintenance Manuals shall be manufacturer's standard, professionally printed or electronically produced material. Photo copies of printed material or scanned copies of electronic documents shall not be acceptable.

(1) Printed copies shall be bound and indexed into heavy-duty, 3-ring, vinyl-covered, loose-leaf binders, in thickness necessary to accommodate contents, with pocket inside the covers to receive folded oversized sheets. Organize hard copies of Operation and Maintenance Manuals into suitable sets of a manageable size. Provide tabs to divide sections within each manual and include a table of contents to reference each sections by tab number. Identify each binder on the spine with the printed title "OPERATION AND MAINTENANCE MANUAL"; Project location and title as listed on the Contract Documents; the Owner's project number as listed on the Contract Documents; and if more than one volume is provided, the volume number of the manual. On the front of each volume of the Operation and Maintenance manual provide a coversheet that includes the information listed below.

(2) Electronic copies shall include a table of contents that matches the printed copy. Each item in the table of contents shall be linked to the appropriate material within the body of the manual.

(3) A coversheet shall be provided for both the electronic copy and any printed copies of the Operation and Maintenance manuals and shall include the following information:

(a) The printed title "OPERATION AND MAINTENANCE MANUAL".

(b) The project title and location as listed on the Contract Documents.

(c) The Owner's project number as listed on the Contract Documents.

(d) The name of the Contractor and their contact information.

(e) For printed copies, if multiple volumes are required the following additional information shall be provided:

1. The volume number

2. The subject matter included in the volume (e.g. Architectural, Plumbing, Fire Protection, Mechanical, Electrical, etc. A more detailed breakdown of the subject matter may be provided as appropriate. For example; Finishes, Doors and Hardware, Elevator, Audio/Visual Systems, Lighting Control, etc.)

C. Upon 80% completion of the total Agreement, the Contractor shall deliver the Operation and Maintenance Manuals to the Owner for review and approval. If a Consultant is employed on the Project, the Operating and Maintenance Manuals shall be submitted directly to the Consultant for review. A copy of the transmittal sent to the Consultant with the Operating and Maintenance Manuals shall be sent to the Owner at the same time.

D. Payment and retainage beyond the limit stated above shall not be due to and owed to the Contractor until the final approved Operation and Maintenance Manuals are delivered to the Owner.

ARTICLE 40 – RECORD DRAWINGS

A. General: The Contractor shall maintain one set of black-line white prints of Record Drawings. Record Drawings shall be kept on site in good condition and shall use a color other than black ink to markup said set with “record information” in a legible manner. Do not use Project Record Drawings for construction purposes. Protect Project Record Drawings from deterioration and loss. Provide access to Project Record Drawings for Owner’s and Consultant’s reference during normal working hours.

(1) Mark Record Drawings to show where installation varies from that shown originally. Require individual or entity who obtained record data, whether individual or entity is installer, Subcontractor, or similar entity, to prepare the marked-up Record Drawings

(a) Record changes to existing conditions or existing conditions found to be different from those shown on the original drawings.

(b) Information indicated on Record Drawings shall include, but not necessarily be limited to, the actual installed position of equipment, piping, conduit, light switches, electric fixtures, ducts, dampers, access panels, control valves, drains, openings, and stub outs.

(c) Indicate actual circuiting of lighting fixtures, receptacles, and other electrical devices and equipment.

(d) Update the project finish schedule to include detailed information of actual finishes selected and installed including, but not necessarily limited to, paint colors, plastic laminate selections, floor coverings, wall coverings, ceiling systems, etc.

(e) Include other information as reasonably requested by either the Owner or the Consultant.

(f) Give particular attention to information on concealed elements that cannot be readily identified and recorded later.

(g) Accurately record information in an understandable drawing technique.

(h) Provide photo documentation where it might provide a better understanding of as-built conditions.

(i) Record data as soon as possible after obtaining it. Record and check the markup before enclosing concealed installations.

(2) Mark record sets with a color other than black ink to provide contrast between recorded information and original prints. Use other differing colors as required to distinguish between changes for different categories of the Work at the same location.

(3) Mark important additional information that was either shown schematically or omitted from original Drawings.

(4) Include changes to the Work incorporated into the project by Addendum, Construction Change Directive, Change Order, etc.

(5) Clearly mark alternates that were accepted and incorporated into the Work and indicate alternates not accepted by prominently noting as such.

(6) Include additional information on Record Drawings as required by individual specification sections included in the Project Manual.

(7) Identify and date each Record Drawing; include the designation "RECORD DRAWING" in a prominent location. Organize into manageable sets; bind each set. Include identification on cover sheets.

B. Upon Substantial Completion of the Work the Contractor shall deliver the Record Drawings to the Owner for review and approval. If a Consultant is employed on the Project, the Record Drawings shall be submitted directly to the Consultant for review. A copy of the transmittal sent to the Consultant with the Record Drawings shall be sent to the Owner at the same time.

C. Final payment and retainage shall not be due to and owed to the Contractor until the final approved Record Drawings marked by the Contractor as required above are delivered to the Owner.

SUBCONTRACTORS

ARTICLE 41 – SUBCONTRACTS

A. The Contractor agrees to be fully responsible to the Owner for the acts and omissions of subcontracts and of persons either directly or indirectly employed by them as is the subcontractor responsible for the acts and omissions of persons directly employed by them. The Contractor will advise all Subcontractors of these General Conditions and all obligations hereunder.

A. Nothing contained in the Contract Documents shall create any contractual relation between any Subcontractor and the Owner.

ARTICLE 42 – ASSIGNMENT

A. The Contractor shall not assign the Agreement or sublet it as a whole without the written consent of the Owner, nor shall the Contractor assign any moneys due or to become due to the Contractor hereunder, without the previous written consent of the Owner.

WORK BY OWNER OR SEPARATE AGREEMENTS

ARTICLE 43 – SEPARATE AGREEMENTS

A. The Owner reserves the right to let other Agreements in connection with this Work. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate his work with theirs.

B. If any part of the Contractor's work depends, for proper execution or results, upon the work of any other Contractor, the Contractor shall inspect and promptly report to the Owner any defects in such work that render it unsuitable for such proper execution and results. His failure to so inspect and report shall constitute an acceptance of the other Contractor's work as fit and proper for the reception of his work except as to defects which may develop in the other Contractor's work after the execution of his

work and which were not discoverable at the time of inspection. To ensure the proper execution of his subsequent work, the Contractor shall measure work already in place and shall at once report to the Owner any discrepancies between the executed Work and the Contract Documents.

ARTICLE 44 – MUTUAL RESPONSIBILITY OF THE CONTRACTORS

A. Should this Contractor cause damage to any other Contractor on the Work, this Contractor agrees, upon due notice, to settle with such Contractor by agreement or arbitration if they will so settle. If such Contractor sues the Owner on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor who shall defend such proceedings; and, if any judgment against the Owner arises therefrom, the Contractor shall pay or satisfy it and pay all costs incurred by the Owner.

SCHEDULE AND PROGRESS OF THE WORK

ARTICLE 45 – CONTRACTOR'S CONSTRUCTION SCHEDULE

A. The Contractor, within fifteen (15) calendar days after the issuance of the Notice to Proceed, shall prepare and submit for the Owner's and Consultant's information a Contractor's construction schedule for the Work and shall set forth interim dates for completion of various components of the Work as defined within the Contract Documents. The schedule shall not exceed time limits defined within the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work, and shall provide for expeditious and practicable execution of the Work.

B. The construction schedule shall be in a detailed format satisfactory to the Owner and the Consultant. If the Owner or Consultant has a reasonable objection to the schedule submitted by the Contractor, the construction schedule shall be promptly revised by the Contractor. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. Additionally, the Contractor shall submit a revised schedule at intervals as requested by the Owner.

C. In the event the Owner or Consultant determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation:

(1) working additional shifts or overtime,

(2) supplying additional manpower, equipment, facilities, and

(3) expediting delivery of materials

Such measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require said measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule. The Contractor shall not be entitled to an adjustment in the Agreement sum concerning said measures required by the Owner. The Owner may exercise the rights furnished by the Owner as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with the completion date set forth in the Contract Documents.

D. The Owner reserves the right to supplement labor in the event the Owner or Consultant, in its sole discretion, determines that supplementation is necessary. Such supplementation will reduce or offset the Agreement price due the Contractor.

ARTICLE 46 – REVIEW OF WORK

A. The Consultant and the Owner shall, at all times, have access to the Work; and the Contractor shall provide proper facilities for such access.

B. The Consultant's review of the Work is for the purpose of assuring the Owner that the

Contract Documents are being properly executed.

C. The fact that the Consultant or the Owner Representative has failed to observe faulty work, or work done which is not in accordance with the Contract Documents, shall not relieve the Contractor from responsibility for correcting such work without additional compensation.

D. If laws, ordinances, any public authority or these Contract Documents require any work to be specifically tested or approved, the Contractor shall give the Owner timely notice of date fixed for testing.

E. The Consultant or the Director may require project coordination meetings that shall be attended by representatives of the Contractor and appropriate Subcontractors. Material suppliers shall attend coordination meetings if required by the Consultant or Director.

CHANGES IN THE WORK

ARTICLE 47 – CHANGES AND ALTERATIONS

A. The Owner, without giving notice to the Surety and without invalidating the Agreement, may order extra work or make changes by altering, adding to or deducting from the Work, the Agreement sum being adjusted accordingly, subject to the limitations of the Agreement. All such work shall be executed under the conditions of the original Agreement.

B. In giving instructions, the Director shall have authority to make minor changes in the Work, not involving extra cost, and not inconsistent with the purposes of the building, but otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless in pursuance of a written change order from the Owner. No claims for an addition to the Agreement sum shall be valid unless so ordered.

C. If changes are ordered, the Owner's representative shall value and appraise such changes and add to or deduct from the amount to be paid to the Contractor the excess of any deficiency. Before such changes are made they shall be stated in writing to the Contractor by the Owner with the approval of the Director and with his endorsed approval, the appraisement shall be binding upon all parties hereto.

ARTICLE 48 – CHANGE ORDERS

A. The Owner, as authorized by its governing body, may authorize written Change Orders regarding changes in, or additions to, Work to be performed or materials to be furnished pursuant to the provisions of the Agreement.

B. The amount of adjustment in the Agreement price for authorized Change Orders will be agreed upon before such Change Orders become effective and will be determined as follows:

(1) By an acceptable unit price or lump sum proposal from the Contractor and the Subcontractors of any tier. Breakdowns shall be of sufficient detail to allow evaluation by the Owner and include a listing of each item of material with Unit Prices and number of hours of labor for each task.

(2) By a time and material basis with or without a specified maximum, including all overhead and profit, total cost not to exceed maximum specified. The Owner's Representative will approve the Contractor's time and material for the Work. Time must be submitted on daily time sheets.

(3) The Contractor shall submit labor rates for all Subcontractors.

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

(1) The overhead and profit charged by the Contractor shall be considered to include, but not limited to, payment and performance bond, builder's risk and public liability insurance, job site office expense, normal hand tools, incidental job supervision, field supervision,

company benefits, and general office overhead, The percentages for overhead and profit charged on Change Orders shall be negotiated and may vary according to the nature, extent, and complexity of the Work involved but in no case shall exceed the following:
Overhead and Profit

15% To the Contractor or the Subcontractor of any tier for Work performed with their respective forces or materials purchased.

5% To the Contractor on Work performed by other than his forces.

5% To first tier Subcontractor on Work performed by his Subcontractor.

Not more than three mark-ups, not to exceed individual maximums shown above, shall be allowed regardless of the number of tier Subcontractors. Overhead and profit shall be shown separately for each Subcontractor of any tier and the Contractor.

(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 direct cost for the Contractor or Subcontractor of any tier performing 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 shall not be less than the following:

Overhead and Profit

7.5% Credit to the Owner from the Contractor or Subcontractor of any tier for Work performed with their respective forces or materials purchased.

2% Credit to the Owner from the Contractor on Work performed by other than his forces.

2% Credit to the Owner from the first tier Subcontractor on Work performed by his Subcontractor of any tier.

D. The Contractor shall provide Change Order pricing and backup in a timely manner. No claim for an addition to the Agreement sum will be valid unless authorized in writing by the Owner. In the event that none of the foregoing methods are agreed upon, the Owner may perform Work by force account or accounts. The cost of such Work will be determined by the Contractor's actual labor and material cost to perform the Work plus applicable overhead and profit as outlined above.

E. No changes or additions to work to be performed, materials to be furnished, or in the provisions of the Agreement will be authorized until execution and delivery by the Owner to the Contractor of the written order referred to in this paragraph. Any work completed by the Contractor outside the original Project scope without written approval from the Owner will be deemed as a waiver by the Contractor for additional compensation for said work.

PAYMENTS AND COMPLETION

ARTICLE 49 – PAYMENT TO THE CONTRACTOR

A. Payments on account of this Agreement will be made monthly as the Work progresses. The Contractor shall submit to the Owner payment applications on the AIA G702 form or its equivalent and each shall have an original signature and notary seal on it. If requested, receipts or other vouchers showing Contractor’s payments for materials and labor including payments to Subcontractors shall be included. The Owner shall retain five (5%) percent of the amount of each such estimate until Final Completion has been established and all closeout documents have been accepted by the Owner.

B. When a Consultant is involved, the Contractor shall submit an electronic payment application

directly to the Consultant for review and approval, including Planning, Design and Construction on the electronic communication. At the same time, the Contractor shall provide to Planning, Design and Construction, Missouri State University, a copy of all lien waivers, and all payroll information. Lien waivers and payroll information do not need to go to the Consultant.

C. The Consultant will review the applications and either modify them as necessary, or when acceptable, approve the request by signing the electronic payment application. The Consultant will then send the approved electronic payment application directly to Planning, Design and Construction, and forward an electronic copy of the approved pay request to the Contractor to keep the Contractor informed of the approval process.

ARTICLE 50 – STORED MATERIALS

A. Payment for stored material will only be made for equipment or materials that are a major item of value and that span multiple applications for payment. Payment will not be made for miscellaneous items that are readily available from suppliers or materials that are delivered as needed on an ongoing basis.

B. No payment may be made for stored material that are not stored within the project limits or on property owned by the Owner. Stored material should be well-organized, stored under cover well protected from weather and vandalism. The Owner and Consultant should have access to inspect the materials as necessary. No payment shall be certified or approved for payment if not accompanied by the following:

(1) Invoices that set forth quantities and price substantiating the Contractor's right to payment for stored materials MUST be submitted with each Application for Payment. If an invoice contains items that are not being requested for stored material payment, then the items for which stored material payment is requested shall be clearly denoted;
(2) An insurance policy rider showing the Contractor has insured the materials against loss or damage by fire (with extended coverage), theft and burglary, with loss payable to the Owner;

(3) Photographs showing the stored materials and its location;

(4) "Schedule of values" shall include payment line items for all stored materials.

C. Exception may be considered for material stored in a third-party, bonded warehouse/storage facility located in the Springfield metropolitan area. The Owner or Consultant must verify that material is stored in a bonded warehouse/facility and that the stored material is segregated from other materials and appropriately identified as Missouri State University property.

D. The risk and responsibility for the safety of materials stored off-site and in transit rests with the Contractor, Subcontractors, and Surety.

ARTICLE 51 – PAYMENTS WITHHELD

A. The Owner may withhold on account of subsequently discovered evidence, nullify in whole or in part any application for payment to such extent as may be necessary to protect the Owner from loss on account of:

(1) Defective work not remedied or damaged work

(2) Failure to supply sufficient skilled workers or suitable materials.

(3) Failure of the Contractor to make payment properly to Subcontractors or for material or labor.

(4) Claims filed or reasonable evidence indicating probable filing of claims.

(5) A reasonable doubt that the Work cannot be completed for the unpaid balance of the Agreement sum.

(6) Damage to the Owner or another Contractor.

(7) A reasonable doubt that the Work will not be completed within the contract time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay.

(8) Repeated failure to carry out the Work in accordance with the Contract Documents.

(9) Failure to submit documents as requested in accordance with the Contract Documents.

(10) Other reasons as permitted by Missouri law.

B. When the above grounds for withholding approval are removed, approval will be made for amounts withheld.

ARTICLE 52 – RELEASES

A. Neither the final payment nor any part of the retained percentage shall become due until the Contractor delivers to the Owner releases or lien waivers on a standard form from all persons supplying material or services for the Work described in the Agreement.

B. For the Contractor's convenience, a Final Waiver of Lien form is attached following the General Conditions in Appendix A. Other forms providing the same information may be used in place of this form.

ARTICLE 53 – ACCEPTANCE AND FINAL PAYMENT

A. Final application for payment shall be due at such time as the Work is fully completed and all provisions of the Agreement satisfactorily fulfilled.

B. When Final Completion has been accepted by the Owner, the Contractor shall submit a final application for payment. If the Owner approves the same, the entire balance found to be due to the Contractor, as noted in such final application for payment, shall be due and payable.

C. Before issuance of the final application for payment under this Agreement, the Contractor shall deliver or cause to be delivered to the Owner the closeout items mentioned below along with a verified copy of the Contractor Closeout Checklist included in Appendix A. The Contractor shall verify completion of each item by indicating on the form, the date that each item was provided and initialing the form in the appropriate adjacent space. The University is very interested in closing construction projects out in a timely manner and Contractors must be aware of and submit the items below. The following list is intended to aid the Contractor in properly gathering and submitting closeout items and is not intended to over-ride the requirement for any additional closeout items that may be required elsewhere in the Contract Documents.

(1) Operation and maintenance manuals (Article 39 – Operation and Maintenance Manuals)

(2) Warranties (Article 39 – Operation and Maintenance Manuals)

(3) Operating and Training Instructions as required by the Contract Documents

(4) Testing and Balancing Reports as required by the Contract Documents

(5) Final Cleaning (Article 32 – Project Site Maintenance)

(6) Request for Final Inspection (Article 36 – Inspection of Work)

(7) Completion of Punch List (Article 54 – Execution and Completion of the Work)

(8) Record Drawings (Article 40 – Record Drawings)

(9) Properly executed final lien waivers or releases from all persons supplying material or services for the Work described in the Contract Documents (Article 52 – Releases)

(10) An Affidavit for Compliance with Prevailing Wage Law, in the form as attached following the General Conditions in Appendix A, properly executed by each Subcontractor and the Contractor (Article 16 – Prevailing Wage)

(11) Certified copies of all payrolls, consisting of name, occupation and craft, number of hours worked and actual wages paid for each individual, of the Contractor and all Subcontractors working on the project (Article 16 – Prevailing Wage)

(12) Keys checked out thru Key Control or Residence Life for any purpose shall be returned and verification of such shall be made (Article 30 – Key Policy)

(13) Spare parts and/or attic stock as required by Contract Documents and proof of delivery

(14) Change orders (Article 48 – Change Orders)

(15) Final Construction Waste Management Report

(16) Final payment application and supporting documentation (Article 49 – Payment to the Contractor)

(17) All other items as required by the Contract Documents

ARTICLE 54 – EXECUTION AND COMPLETION OF THE WORK

A. The Contractor shall commence Work promptly in accord with the written "Notice to Proceed" as provided in these specifications. Contractor shall execute the Work vigorously and diligently so as to cause completion within the time stipulated in the Agreement.

B. If, in the opinion of the Contractor, the Contractor is delayed by any act or neglect of the Owner, or any representative of the Owner, or by changes in the Work ordered in writing by the Owner, or any other cause beyond the reasonable control of the Contractor, the Contractor shall, within ten (10) calendar days from the start of such delay, enter written claim with the Director that such delay occurred.

C. Time is expressly declared to be the essence in completion of Work covered by the Contract Documents. It is agreed that the Owner may deduct from the Agreement price and retain as liquidated damages, and not as penalty or forfeiture, the sum stipulated in the accepted Agreement for each calendar day, Sundays and holidays included, after date specified for completion of the Project that the entire Work is not Substantially Complete.D. When the Contractor considers that the Work, or portion thereof which the Owner agrees to accept separately, is Substantially Complete, the Contractor shall notify the Consultant and the Owner in writing, and shall submit to the Consultant together with such notice (1) a list of items to be completed or corrected, and (2) all permits, certificates, and special warranties required by the Contract Documents, endorsed by the Contractor and in a form reasonably acceptable to the Consultant. Such notice shall be given at least five (5) calendar days prior to the date stated for final inspection. Promptly after receiving such notice, list, permits, certificates, and special warranties, the Consultant will conduct a preliminary review to determine whether they are generally complete and correct. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. If the Consultant finds on the basis of this review that the Contractor’s notice and supporting documents are not generally complete or correct, the Consultant will return them to the Contractor for revision and resubmittal, describing in

general the additions and/or corrections required. If the Consultant finds on a preliminary review of the Contractor's resubmittal, that the resubmitted notice and supporting documents are still not generally complete and correct, the Contractor shall again correct and resubmit them. The Contractor may be liable for any change in the Consultant's services resulting from such second and any subsequent preliminary reviews. When the Consultant finds on the basis of a preliminary review that the Contractor's notice and supporting documents are substantially complete and correct, the Consultant will proceed to perform a detailed inspection to determine that the requirements of the Contract Documents for Substantial Completion of the Work have been met. Upon making such a determination, the Consultant will prepare a Certificate of Substantial Completion that shall establish the Date of Substantial Completion of the Work. Warranties required by the Contract Documents shall commence upon the Date of Substantial Completion of the Work unless otherwise provided in the Certificate of Substantial Completion.

E. Certification by the Director of a complete or incomplete status of the Work within the time specified shall be conclusive and binding on the Owner and the Contractor for the purpose of determining whether liquidated damages shall be assessed under the terms hereof and the sum total amount due and deductible according thereto.

F. If Substantial Completion has not been given by the date set forth in the Agreement for Final Completion, the Owner without prejudice to any other rights, claims, or remedies has the right to liquidated damages, may back charge the Contractor for all additional expenses incurred by the Owner or Consultant as the result of the extended Agreement period and through final inspection.

G. Final Completion shall be established within 30 days of the date of Substantial Completion unless specified otherwise in writing. Failure to complete the project within this timeframe will allow the Owner the right to initiate liquidated damages in the amount set forth in these Contract Documents. Damages will be charged beyond the date of Final Completion for each calendar day the Work remains undone.

H. Liquidated damages or any matter related thereto shall not relieve the Contractor or his Surety of any responsibility or obligation under this Agreement.

I. The parties hereto realize in order to adjust satisfactorily the damages on account of such failure that it might be impossible to compute accurately or estimate the amount of such loss or damages which the Owner would sustain by reason of failure to complete fully said work within the time required by this contract, therefore it is specifically agreed that the amount fixed as liquidated damages herein is a reasonable forecast of just compensation for harm caused by delay.

ARTICLE 55 – GENERAL GUARANTEE

A. Neither the final application for 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 the Contractor's sureties of liability in respect to any express warranties or responsibility for faulty materials or workmanship.

B. Warranties required by the Contract Documents shall commence upon the Date of Substantial Completion of the Work unless otherwise provided in the Certificate of Substantial Completion. The Contractor or Contractor's sureties shall remedy any defects in the Work and pay for any damage to other work resulting there from which shall appear within a period of one year from the date of Substantial Completion unless a longer period is otherwise specified. 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 Agreement, the Owner may correct the Work or repair the damage and the cost and expense incurred in such event shall be paid by or recoverable from the Contractor.

TERMINATION OF THE AGREEMENT

ARTICLE 56 – OWNER'S RIGHT TO TERMINATE AGREEMENT

A. If the Contractor shall be adjudged a bankrupt, or make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of the Contractor's insolvency, or the Contractor should refuse or should fail to make prompt payment to Subcontractors or for material or labor, or disregard payment to Subcontractors or for material or labor, or disregard laws, ordinances or the instruction of the Owner, or otherwise breach any provision of the Agreement, then the Owner, if the Owner decides sufficient cause exists to justify such action, may, without prejudice to any other right or remedy and after giving the Contractor seven (7) days written notice, terminate the employment of the Contractor and take possession of the premises and of all materials, tools and appliances thereon and finish the Work by whatever method the Owner may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished.

B. If the Contractor refuses or fails to prosecute the Work or any separate part thereof with such diligence as will ensure its completion within the time specified, or fails to terminate the Contractor's right to proceed with the Work or such parts of the Work as to which there has been delay, in such event the Owner may take over the Work and prosecute the same to completion, by the Agreement or otherwise, and the Contractor and the Contractor's sureties shall be liable to the Owner for any excess cost occasioned the Owner thereby. If the Contractor's right to proceed is so terminated, the Owner may take possession of and utilize in completing the Work such materials, appliances and paint as may be on the site of the Work and necessary, therefore.

C. **The Owner shall have the right to terminate this Agreement for convenience (for any reason and without cause) by providing written notice to the Contractor at least (3) three days in advance of the date the Owner requires the Contractor to stop work, and on such date the Agreement shall be deemed terminated. Upon termination of this Agreement for convenience, the Owner shall be released immediately from any and all obligations to the Contractor except for the payment set out herein, the Contractor immediately shall discontinue the Work and remove its personnel and equipment from the Project, and the Owner shall be entitled to take exclusive possession of the Project and all or any part of the Project and materials delivered or in route to the Project. The Contractor shall take immediately such steps as are reasonably necessary to preserve and protect Work completed and in progress and to protect materials, equipment and supplies at the Project, stored off-site, or in transit. If requested by the Owner, the Contractor will make every reasonable effort to cancel existing contracts with Subcontractors upon terms reasonably satisfactory to the Owner. Any payments to be made to a Subcontractor as a result of any such termination shall be paid by the Contractor and shall be included in the calculation of the payment due hereunder, if any. The Contractor shall also, upon request by the Owner, (a) to the extent assignable, irrevocably assign and deliver to the Owner any and all Subcontracts, purchase orders, bonds and options made by the Contractor in performance of the Work, (b) provide to the Owner without charge all rights of the Contractor to use patented or proprietary materials of the Contractor and Subcontractors in completing, operating and maintaining the Project, and (c) deliver to the Owner originals of all Contract Documents and, if the termination occurs at a time when the design of the Project is incomplete, originals of all design documents in process (except that the Contractor may keep for its records copies, and, if sufficient originals exist, an original set, of the Contract Documents executed by the Owner), all other materials relating to the Work which belong to the Owner, and all papers and documents relating to Permits, orders placed, bills and invoices, lien releases and financial management under this Agreement. All deliveries hereunder shall be made free and clear of any liens, security interests or encumbrances, except such as may be created by the Owner. Except as provided herein, no action taken by the Owner or the Contractor after the termination of this Agreement shall prejudice any other rights or remedies of the Owner or the Contractor provided by Governing Law, the Contract Documents or otherwise upon such termination. Termination of this Agreement under this Article shall not relieve the Owner or the Contractor of any obligation hereunder which expressly or by implication survives termination hereof. This Article shall survive the termination or expiration of this Agreement. If the Owner terminates this Contract for convenience and the Contractor fulfills its obligations under this subpart (c), then the Contractor will be paid a reasonable termination charge equal to the percent of the Agreement price reflecting the amount of the Work**

performed properly before the termination notice that has not been paid already by the Owner, plus any retainage related to Work performed properly before the termination notice. The Contractor will not be paid for any work performed after termination or for any reasonably avoidable costs incurred by the Contractor or the Contractor's subcontractors after receipt by the Contractor of the termination notice, including any demobilization costs associated with termination for convenience. The Contractor will not be entitled to any payment of any claim of lost profits or overhead on Work not performed. Payment of the payment set out in this subpart (c) shall be the sole and exclusive liability of the Owner, and the sole and exclusive remedy of the Contractor, with respect to termination of this Agreement for convenience and in such event the Owner shall have no further liability to the Contractor notwithstanding the actual amount of damages that the Contractor may have sustained in connection with such termination. The payment set out herein has been agreed upon and fixed hereunder because of the difficulty of ascertaining the exact amount of such damages the Contractor will actually sustain in the event of a termination of this Agreement for convenience, and the Owner and the Contractor agree that the calculation of the payment in this subpart (c) is reasonable.