

University of Missouri

General Conditions

of the

Contract

for

Construction

(Design-Build)

August 2026 Edition

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ARTICLE 1 GENERAL PROVISIONS

1.1 Basic Definitions

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

1.1.1 Owner

The Owner is The Curators of the University of Missouri. The Owner may act through its Board of Curators or any duly authorized committee or representative thereof. The Owner may also be referred to as "University".

1.1.2 Contracting Officer

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

1.1.3 Owner's Representative

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

1.1.4 Architect/Engineer, A/E, Design/Builder's A/E, or Consultant

When referred to in the Contract Documents, "Architect/Engineer", "A/E", the "Design/Builder's A/E," or "Consultant" shall refer to the duly licensed Architect and/or Engineer furnished, retained, and paid by the Design/Builder in accordance with an agreement between the Design/Builder and the Architect and/or the Engineer, which meets the applicable requirements of this Contract. The Design/Builder's A/E is the Designer of Record, solely responsible for the Design Services for the Project.

1.1.5 Owner's Authorized Agent

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

1.1.6 Design/Builder

The Design/Builder is the Party who has been awarded a contract by the Owner to furnish the Work under these Contract Documents and who shall be responsible for performing or furnishing all Design Services and all Construction required or contemplated by these Contract Documents. When used in the Contract Documents, the term "Design/Builder," shall refer to and be

interchangeable with "Contractor" or "Design/Build Contractor".

1.1.7 Subcontractor and Lower-tier Subcontractor

A Subcontractor is a person or organization who has a contract with the Design/Builder to perform any of the Work, and includes without limitation, any Architect/Engineer. The term "Subcontractor" is referred to throughout the Contract as if singular in number and means a Subcontractor or its authorized representative. The term "Subcontractor" also is applicable to those furnishing materials to be incorporated in the Work whether work performed is at the Owner's site or off site, or both. A lower-tier Subcontractor is a person or organization who has a contract with a Subcontractor or another lower-tier Subcontractor to perform any of the Work. Nothing contained in the Contract Documents shall create contractual relationships between the Owner or the Owner's Technical Consultant and any Subcontractor or lower-tier Subcontractor of any tier.

1.1.8 Service-Disabled Veteran Enterprise (SDVE)

Service-Disabled Veteran Enterprise (SDVE) shall have the same meaning as "Service-Disabled Veteran Business" set forth in Section 34.074, RSMo and the implementing regulations promulgated by the State of Missouri, Office of Administration.

1.1.8.1 SDVE Firm

SDVE Firm shall mean a business entity that is certified as an SDVE by the State of Missouri, Office of Administration.

1.1.9 Honorably Discharged Veteran-Owned Enterprise (HDVE)

Honorably discharged veteran-owned enterprise shall have the meaning set forth in Section 34.069, RSMo and any implementing regulations promulgated by the State of Missouri, Office of Administration.

1.1.9.1 HDVE Firm

HDVE Firm shall mean a business entity that is certified as an HDVE by the State of Missouri, Office of Administration.

1.1.10 Work

Work shall mean all Design Services and all Construction, including without limitation, the performance or furnishing of supervision, labor, equipment, tools, material, supplies, incidentals operations and activities required by the Contract Documents or reasonably inferable therefrom as necessary to produce the results intended by the Contract Documents in a safe, expeditious, orderly, and workmanlike manner, and in the best manner known to each respective trade. Without limiting the foregoing, the Work is the result of performing or furnishing Design Services and Construction required by the Contract Documents.

1.1.11 Approved

The terms "approved", "equal to", "directed", "required", "ordered", "designated", "acceptable", "compliant", "satisfactory", and similar words or phrases will be understood

to have reference to action on the part of the Owner's Technical Consultant and/or the Owner's Representative.

1.1.12 Contract Documents

The Contract Documents consist of (1) the executed Contract, (2) these General Conditions of the Contract for Construction, (3) any Supplemental Conditions or Special Conditions identified in the Contract, (4) the Working Specifications identified in Section 1.1.22 of these General Conditions, (5) the Working Drawings, (6) Addenda issued prior to the receipt of Proposals, (7) the Design/Builder's Proposal addressed to Owner, including the Design/Builder's completed Qualification Statement, (8) Owner's Design/Build Documents, (9) the Design/Builder's Performance Bond and the Design/Builder's Payment Bond, (10) Notice to Proceed, (11) and any other exhibits and/or post Proposal adjustments identified in the Contract, (12) Request For Proposals, (13) Information for Proposers, (14) Supplemental Information for Proposers, and (15) Change Orders issued after execution of the Contract. All other documents and technical reports and information are not Contract Documents, including without limitation, Shop Drawings and Submittals.

1.1.13 Contract

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

1.1.14 Change Order

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

1.1.15 Substantial Completion

The terms "Substantial Completion" or "substantially complete" as used herein shall be construed to mean the completion of the entire Work or a Designated Phase of the Work, including all submittals required under the Contract Documents, except minor items which in the opinion of the

Owner's Technical Consultant and/or the Owner's Representative will not interfere with the complete and satisfactory use of the Work or a Designated Phase of the Work for the purposes intended.

1.1.16 Final Completion

The date when all punch list items are completed, including all closeout submittals, and if applicable, approval by the Owner's Technical Consultant is given to the Owner in writing.

1.1.17 Supplemental and Special Conditions

The terms "Supplemental Conditions" or "Special Conditions" shall mean the part of the Contract Documents which amend, supplement, delete from, or add to these General Conditions.

1.1.18 Day

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

1.1.19 Knowledge

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

1.1.20 Punch List

"Punch List" means the list of items, prepared in connection with the inspection of the Project by the Owner's Representative or Owner's Technical Consultant in connection with Substantial Completion of the entire Work or a Designated Phase of the Work, which the Owner's Representative or Owner's Technical Consultant has designated as remaining to be performed, completed or corrected before such Work will be accepted by the Owner.

1.1.21 Owner's Technical Consultant

The Owner's Technical Consultant is the party or parties retained by the Owner as specified in the Contract, if any, to prepare the Design/Build Documents, review Design/Build Proposals, review Working Drawings and Specifications, and to act as an agent of the Owner during the design and construction of the Work.

1.1.22 Design/Build Documents

The Design/Build Documents establish the Owner's criteria for and the general scope and requirements of the Project, including as applicable, design objectives and constraints, space, flexibility, performance, capacity and expandability requirements, and refer to all documents, drawings and/or

graphic written materials comprising the Design/Build Documents, including through any criteria drawing or addenda attached thereto or referenced therein. The Design/Build Documents were the basis from which the Design/Builder's Proposal was made.

1.1.23 Working Drawings and Specifications

As described in more detail below in these General Conditions, it is intended that the Proposal drawings will be expanded to become working drawings and specifications, complete and in sufficient detail for a comprehensive review by the Owner and to produce the intended Construction. These working drawings shall include, but not be limited to, site, grading and utility plan and profiles, floor plans, elevations, cross-sections, interior elevations, Construction schedules and related details. The working drawings shall comprehensively illustrate the Architectural, Structural, Mechanical, Electrical and Site Engineering systems. These working drawings shall collectively be called the "Working Drawings" or "Drawings" for the purpose of this document. The working specifications shall compliment the Working Drawings and shall be called "Working Specifications" or "Specifications" for the purpose of this document.

1.1.24 Proposer

The entity submitting a Proposal for the Project. "Proposer" shall be interchangeable with the terms "Bidder" throughout the Contract Documents.

1.1.25 Construction

The performing or furnishing of supervision, labor, tools, supplies, incidentals, operations and activities; the furnishing and incorporating of materials and equipment into the Work; and the furnishing of services (other than Design Services) and documents, all as required by the Contract Documents.

1.1.26 Design Services

Services related to the preparation of Drawings, Specifications, and other design submittals specified by the Contract Documents and required to be performed by a licensed Architect or Engineer, as well as services provided by or for licensed Architects or Engineers during the Construction. The Design Services are more fully described in Section 3.18 below.

1.1.27 Contract Time

(1) The dates by which the Design/Builder is required to: (a) achieve Substantial Completion of the entire Work; (b) achieve Substantial Completion of any Designated Phases of the Work specified in the Agreement; (c) achieve Final Completion of the entire Work; and (2) the Milestone Dates as defined in these General Conditions.

1.1.28 Proposal

Proposal means the Design/Builder's proposal to perform the Work submitted pursuant to Owner's Project Manual.

1.1.29 Force Majeure

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

1.2 Specifications and Drawings

1.2.1 The Specifications are that portion of the Contract Documents prepared by or for the Design/Builder in accordance with the requirements of the Contract and approved by the Owner, consisting of the written requirements for materials, equipment, construction system, standards and workmanship and performance of related services for Construction.

1.2.2 The Drawings are that portion of the Contract Documents prepared by or for the Design/Builder in accordance with the requirements of the Contract and approved by the Owner, consisting of drawings, diagrams, illustrations, schedules and other data which show the scope, extent and character of the Construction.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Design/Builder. The Contract Documents are complimentary, and what is required by one shall be as binding as if required by all; performance by the Design/Builder shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results. The Design/Builder shall not commence on-site work until the Owner has approved the Drawings and Specifications.

1.2.4 In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable Laws, standards, codes and ordinances, the Design/Builder shall (1) provide the better quality or greater quantity of Work or (2) comply with the more stringent requirement; either or both in accordance with the Owner's Representative's interpretation. Before ordering any materials or doing any Work, the Design/Builder and each Subcontractor shall verify measurements at the Work site and shall be responsible for the correctness of such measurements. Any difference which may be found shall be submitted to the Owner's Representative and the Owner's Technical Consultant for resolution before proceeding with the Work. If a minor change in the Work is found necessary due to actual field conditions, the Design/Builder shall submit detailed drawings of such departure for the approval by the Owner's Representative and the Owner's Technical Consultant before making the change.

1.2.5 Data in the Contract Documents concerning lot size, ground elevations, present obstructions on or near the site,

locations and depths of sewers, conduits, pipes, wires, etc., position of sidewalks, curbs, pavements, etc., and nature of ground, soil and subsurface conditions have been obtained from sources the Owner believes reliable, but the Owner does not represent or warrant that this information is accurate or complete. The Design/Builder shall verify such data to the extent possible through normal construction or other procedures, including but not limited to contacting utility owners and by prospecting.

1.2.6 Only Work included in the Contract Documents is authorized, and the Design/Builder shall do no work other than that described therein.

1.2.7 Execution of the Contract by the Design/Builder is a representation that the Design/Builder has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. The Design/Builder represents that it has performed its own investigation and examination of the Work site and its surroundings and satisfied itself before entering into this Contract as to:

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

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

1.2.8 All data, documents, graphic displays, designs, drawings, specifications, plans, models, computer-assisted design documents, computer discs, diskettes, and reports

furnished by the Owner, whether electronically or otherwise, (collectively, "Owner Documents") in connection with the Project are and shall remain the Owner's property. All data, documents, graphic displays, designs, drawings, specifications, plans, models, computer-assisted design documents, computer discs, diskettes, and reports relating to the Design/Builder's performance hereunder or which are originated and prepared for the Owner pursuant to this Contract, whether in electronic form or otherwise ("Contractor Documents", and collectively with the Owner Documents, the "Documents"), regardless of any disputes between the Owner and the Design/Builder, shall be deemed "works for hire" as defined by the United States Copyright Laws and are the property of Owner who shall have all ownership rights to the Design/Builder Documents. To the extent any of the Contractor Documents are not deemed to be "works for hire", the Design/Builder hereby sells, transfers and assigns to Owner the entire worldwide right, title and interest, including worldwide copyright, trademark along with the goodwill associated therewith, patent and all other propriety rights in and to the Contractor Documents, whether inchoate, presently existing, or to be developed in the future, including any and all manners of presentations and all derivative works thereof which the Design/Builder may now or hereafter author in whole or part, free of any claim based on or similar to moral rights therein. The Design/Builder shall assist the Owner in obtaining and maintaining for the Owner's benefit all such copyrights and other rights in the Documents. The Design/Builder agrees to execute and to cause its Consultants and Subcontractors to execute such further documents and instruments as the Owner may reasonably require as evidence of the Owner's ownership rights in the Documents. The Design/Builder shall secure appropriate agreements with each of its Consultants and Subcontractors so that each Consultant and Subcontractor will agree to the obligations set forth in this Section 1.2.9.

1.2.9 Accordingly, the Owner shall have the right to use, duplicate and disclose in whole, or in part, the Documents and to authorize others to do so for any purpose, including but not limited to, completion of, additions to, occupancy of and maintenance of the Project. It is understood that any reuse of such documents in whole or in part for work not covered by this Contract, without the written consent of the Design/Builder, their Consultants and Subconsultants, will relieve the Design/Builder, their Consultants and Subconsultants of all liability pertaining to such reuse.

1.2.10 The Design/Builder represents and warrants that, except as to any material provided to the Design/Builder by the Owner and incorporated in the Contractor Documents, (1) the Contractor Documents are wholly original with the Design/Builder as the sole creator thereof; (2) the Contractor Documents do not violate the rights of any third party; (3) the Contractor Documents are not the subject of any litigation or claim that might give rise to litigation; (4) that the Design/Builder has all rights necessary to convey the rights

granted to the Owner herein; and (5) that the Contractor Documents have not been licensed, assigned, mortgaged or otherwise encumbered. The Design/Builder agrees to indemnify, defend and hold harmless the Indemnitees against any breach of any of the foregoing representations and warranties.

1.2.11 The Design/Builder and any Consultant, Subcontractor or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with Owner: (1) shall not have or acquire any title to or ownership rights in any of the Documents (or copies thereof); (2) shall not reuse any of such Documents (or copies thereof) on extensions of the Project or any other project without the written consent of Owner; and (3) the Design/Builder shall not duplicate or disclose the Documents, in whole or in part, in any manner, without the prior written approval of Owner. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of this Contract. The Design/Builder shall secure appropriate agreements with each of its Consultants, Subcontractors or other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with the Owner, so that each such party will agree to the obligations set forth in this Section 1.2.12. However, nothing herein shall preclude the Design/Builder from retaining and using any standard details contained in any of the Documents in the normal course of the Design/Builder's professional business.

1.3 Required Provisions Deemed Inserted

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

1.4 Design/Build Documents

1.4.1 The Design/Build Documents are separated into titled divisions for convenience of reference and to facilitate the creation of working drawings and specifications by the Design/Builder pursuant to the Contract.

1.4.2 The Design/Build Criteria Drawings comprising the Design/Build Criteria are intended to show general arrangements, design, and extent of Work and are partly diagrammatic; as such, they are not scaled. Neither the Owner nor the Owner's Technical Consultant guarantees the exactness or accuracy of any grades, elevations, dimensions or locations given on any Design/Build Criteria Drawings, and the Design/Builder therefore warrants to the Owner that it has satisfied itself as to the accuracy of such items prior to entering into this Contract.

1.4.3 Details take precedence over smaller scale general drawings.

1.4.4 Should discrepancies occur between Design/Build Criteria Drawings, the following hierarchy governs:

- .1** Architectural drawings govern over other drawings; and
- .2** Structural drawings govern over other drawings except architectural.

1.4.5 The Design/Builder will furnish, free of charge, all copies of Working Drawings, Specifications and other Design Documents reasonably requested by the Owner or necessary for the execution of the Work.

ARTICLE 2 OWNER

2.1 Information and Services Required of the Owner

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

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

2.1.3 The Owner may, but is not required to, furnish to the Design/Builder a certified land survey of the site.

2.2 Owner's Right to Stop the Work

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

2.3 Owner's Right to Carry Out the Work

2.3.1 If the Design/Builder defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7) day period after receipt of a written notice from the Owner to correct such default or neglect, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design/Builder the cost of correcting such

deficiencies, including compensation for the Owner's Technical Consultant's additional services and expenses made necessary by such default or neglect. If payments then or thereafter due the Design/Builder are not sufficient to cover such amounts, the Design/Builder shall pay the difference to Owner. However, such notice shall be waived in the event of an emergency with the potential for property damage or the endangerment of students, faculty, staff, the public or construction personnel, at the sole discretion of the Owner.

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

2.4 Extent of Owner Rights

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

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

ARTICLE 3 DESIGN/BUILDER

3.1 Design/Builder's Warranty

3.1.1 The Design/Builder warrants all equipment and materials furnished, and Work performed, under this Contract, against defective materials and workmanship for a period of twelve months after acceptance as provided in this Contract, unless a longer period is specified, regardless of whether the same were furnished or performed by the Design/Builder or any Subcontractors of any tier. Upon written notice from the Owner of any breach of warranty in this Article 3 during the applicable warranty period due to defective material or workmanship, defects in design or otherwise, the affected part or parts thereof shall be corrected, repaired or replaced by the Design/Builder at no cost to the Owner. Should the Design/Builder fail or refuse to make the necessary corrections, repairs, replacements, and tests when requested by the Owner, the Owner may

perform, or cause the necessary work and tests to be performed, at the Design/Builder's expense, or exercise the Owner's rights under Article 14.

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

3.1.3 The above and below warranties are not intended as a limitation but are in addition to all other express warranties set forth in this Contract and such other warranties as are implied by law, custom, and usage of trade, including without limitation, the implied warranty of fitness for a particular purpose. The Design/Builder, and its surety or sureties, if any, shall be liable for the satisfaction and full performance of the warranties set forth herein.

3.1.4 Neither the final payment nor any provision in the Contract Documents nor partial or entire occupancy of the premises by the Owner, nor expiration of warranty stated herein, will constitute an acceptance of Work not done in accordance with the Contract Documents or relieve the Design/Builder of liability in respect to any responsibility for non-conforming work. The Design/Builder shall immediately remedy any defects in the Work and pay for any damage to other Work resulting therefrom upon written notice from the Owner. Should the Design/Builder fail or refuse to remedy the non-conforming work, the Owner may perform, or cause to be performed the work necessary to bring the Work into conformance with the Contract Documents at the Design/Builder's expense.

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

3.1.6 The Design/Builder further warrants, for a period of twelve (12) months after Final Completion of the Work, that

the Design Services are in conformance with the Contract Documents and are free of any design errors, omissions or negligence. The Design/Builder shall have exclusive financial responsibility for any costs, expenses, charges or liability incurred or suffered by the Owner resulting from design errors, omissions or negligence, or from non-conformance of the Design Services with the Contract Documents.

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

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

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

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

3.2.4 It is the responsibility of the Design/Builder to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes, and regulations.

3.3 Anti-Kickback

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

3.3.2 No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering,

inspection, construction, or material supply contract or any Subcontract of any tier in connection with the construction of the Work shall have a financial interest in this Contract or in any part thereof, any material supply contract, Subcontract of any tier, insurance contract, or any other contract pertaining to the Work.

3.4 Supervision and Construction Procedures

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

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

3.4.3 The Design/Builder and each of its Subcontractors of any tier shall submit to the Owner such schedules of quantities and costs, progress schedules, in accordance with 3.17.2 of this document, payrolls, reports, estimates, records, and other data as the Owner may request concerning Work performed or to be performed under the Contract.

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

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

3.4.6 The Design/Builder shall establish and be responsible for wall and partition locations. If applicable, separate

contractors shall be entitled to rely upon these locations and for setting their sleeves, openings, or chases.

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

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

3.4.8 The Design/Builder shall coordinate all Work so there shall be no prolonged interruption of existing utilities, systems and equipment of Owner. Any existing plumbing, heating, ventilating, air conditioning, or electrical disconnection necessary, which affect portions of this construction or building or any other building, must be scheduled with the Owner's Representative to avoid any disruption of operation within the building under construction or other buildings or utilities. In no case shall utilities be left disconnected at the end of a workday or over a weekend. Any interruption of utilities, either intentionally or accidentally, shall not relieve the Design/Builder from repairing and restoring the utility to normal service. Repairs and restoration shall be made before the workers responsible for the repair and restoration leave the job.

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

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

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

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

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

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

3.4.15 When requested by the Owner's Representative, the Design/Builder, at no extra charge, shall provide scaffolds or ladders in place as may be required by the Owner's Technical Consultant or the Owner for examination or inspection of Work in progress or completed.

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

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

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

3.5 Use of Site

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

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

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

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

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

occupants of existing buildings shall be referred to the Owner's Representative for determination.

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

3.6 Review of Contract Documents and Field Conditions by Design/Builder

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

3.6.2 The Design/Builder shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Design/Builder with the Contract Documents before commencing the Work. Errors, inconsistencies or omissions discovered shall be reported in writing to the Owner's Technical Consultant and Owner's Representative within twenty-four (24) hours. During the progress of Work, Design/Builder shall verify all field measurements prior to fabrication of building components or equipment and proceed with the fabrication to meet field conditions. The Design/Builder shall consult all Contract Documents to determine the exact location of all Work and verify spatial relationships of all Work. Any question concerning said location or spatial relationships shall be submitted to the Owner's Representative. Specific locations for equipment, pipelines, ductwork and other such items of Work, where not dimensioned on plans, shall be determined in consultation with Owner's Representative and Owner's Technical Consultant. The Design/Builder shall be responsible for the proper fitting of the Work in place.

3.6.3 The Design/Builder shall provide, at the proper time, such material as required for support of the Work. If openings or chases are required, whether shown on Drawings or not, the Design/Builder shall see they are properly constructed. If required openings or chases are omitted, the Design/Builder shall cut them at the Design/Builder's own expense, but only

as directed by the Owner's Technical Consultant, through the Owner Representative.

3.6.4 Should the Contract Documents fail to particularly describe materials or goods to be used, it shall be the duty of the Design/Builder to inquire of the Owner's Technical Consultant and the Owner's Representative what is to be used and to supply it at the Design/Builder's expense, or else thereafter replace it to the Owner's Representative's satisfaction. At a minimum, the Design/Builder shall provide the quality of materials as generally specified throughout the Contract Documents. Nothing in this Section 3.6 shall limit Design/Builder's obligations under Section 3.18 below.

3.7 Cleaning and Removal

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

3.8 Cutting and Patching

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

3.8.2 The Design/Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Design/Builder shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design/Builder shall not unreasonably withhold from the Owner or a separate

contractor the Design/Builder's consent to cutting or otherwise altering the Work.

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

3.9 Indemnification

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

3.9.2 The indemnity obligations of the Design/Builder under this Section 3.9 shall survive termination of this Contract or final payment thereunder. In the event of any claim or demand made against any party which is entitled to

be indemnified hereunder, the Owner may in its sole discretion reserve, return or apply any monies due or to become due the Design/Builder under the Contract for the purpose of resolving such claims; provided, however, that the Owner may release such funds if the Design/Builder provides the Owner with reasonable assurance of protection of the Owner's interests. The Owner shall in its sole discretion determine if such assurances are reasonable. Owner reserves the right to control the defense and settlement of any claim, action or proceeding which the Design/Builder has an obligation to indemnify the Indemnitees against under Section 3.9.1.

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

3.9.4 The obligations of the Design/Builder under Section 3.9.1 shall not extend to the liability of the Owner's Technical Consultant.

3.10 Patents

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

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

3.11 Delegated Design

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

3.12 Materials, Labor, and Workmanship

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

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

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

3.12.4 The Design/Builder shall base its Proposal only on the Contract Documents.

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

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

3.12.7 Unless otherwise specifically noted, the Design/Builder shall provide and pay for supervision, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work.

3.12.8 Substitutions

3.12.8.1 A substitution is a Design/Builder proposal of an alternate product or method in lieu of has been specified or shown in the Contract Documents, which is not an “or equal” as set forth in Section 3.12.1.

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

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

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

- .1** Required for compliance with interpretation of code requirements or insurance regulations then existing;
- .2** Unavailability of specified products, through no fault of the Design/Builder;

- .3** Material delivered fails to comply with the Contract Documents;
- .4** Subsequent information discloses inability of specified products to perform properly or to fit in designated space;
- .5** Manufacturer/fabricator refuses to certify or guarantee performance of specified product as required; or
- .6** When in the judgment of the Owner or the Owner’s Technical Consultant, a substitution would be substantially to the Owner’s best interests, in terms of cost, time, or other considerations.

3.12.8.4 Whether or not any proposed substitution is accepted by the Owner or the Owner’s Technical Consultant, the Design/Builder shall reimburse the Owner for any fees charged by the Owner’s Technical Consultant or other consultants for evaluating each proposed substitute.

3.13 Approved Equal

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

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

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

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

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

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

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

3.14.4 Coordination Drawings are drawings for the integration of the Work, including work first shown in detail on shop drawings or product data. Coordination drawings show sequencing and relationship of separate units of work which must interface in a restricted manner to fit in the space provided, or function as indicated. Coordination Drawings are the responsibility of the Design/Builder and are submitted for informational purposes. The Special Conditions will state whether

coordination drawings are required. BIM models may be used for coordination in lieu of coordination drawings at the Design/Builder's discretion, unless required in the Special Conditions. The final coordination drawings/BIM Model will not change the contract documents, unless approved by a fully executed change order describing the specific modifications that are being made to the contract documents.

3.14.5 Shop Drawings, Coordination Drawings/BIM Models, Product Data, Samples and similar submittals (collectively referred to as "Submittals") are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Design/Builder proposes to conform to the information given and the design concept expressed in the Contract Documents. The Design/Builder will designate, in connection with its submission of the Drawings and Specifications, those portions or elements of the Work for which they propose Submittals will be provided for the Owner's Technical Consultant's Review. Owner's Technical Consultant will determine if additional submittals are required.

3.14.6 The Design/Builder shall schedule submittal of Shop Drawings and Product Data to the Owner's Representative so that no delays will result in delivery of materials and equipment, advising the Owner's Representative of priority for checking of Shop Drawings and Product Data, but a minimum of two weeks shall be provided for this purpose. Such schedule shall be provided contemporaneously with the provision of the final Construction Documents pursuant to Section 3.18 below. Because time is of the essence in this Contract, unless noted otherwise in the Contract Documents, all submittals, shop drawings and samples must be submitted as required to maintain the Design/Builder's plan for proceeding, but not less than within 90 days of the construction start of the work package. If the Design/Builder believes that this milestone is unreasonable for any submittal, the Design/Builder shall request an extension of this milestone, within 60 days of the construction start of the work package, for each submittal that cannot meet the milestone. The request shall contain a reasonable explanation as to why the 90-day milestone is unrealistic and shall specify a date on which the submittal will be transmitted, for approval by the Owner's Representative. Failure of the Design/Builder to comply with this section may result in delays in the submittal approval process and/or charges for expediting approval, both of which will be the responsibility of the Design/Builder.

3.14.7 The Design/Builder, at its own expense, shall submit Samples required by the Contract Documents with reasonable promptness as to cause no delay in the Work or the activities of separate the Design/Builders and no later than twenty (20) days before materials are required to be ordered for scheduled delivery to the Work site. Samples shall be labeled to designate material or products represented, grade, place of origin, name of producer, name of the Design/Builder and the name and number of the Owner's Project. Quantities of Samples shall be twice the

number required for testing so that Owner's Representative can return one set of the Samples. Materials delivered before receipt of Owner's Representative's approval may be rejected by Owner's Representative and in such event, the Design/Builder shall immediately remove all such materials from the Work site. When requested by Owner's Technical Consultant or Owner's Representative, samples of finished masonry and field applied paints and finishes shall be located as directed and shall include sample panels built at the site of approximately twenty (20) square feet each.

3.14.8 The Design/Builder shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Owner's Representative. Such Work shall be in accordance with approved submittals.

3.14.9 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Design/Builder represents such Submittals strictly comply with the requirements of the Contract Documents and that the Design/Builder has determined and verified field measurements and field construction criteria related thereto, that materials are fit for their intended use and that the fabrication, shipping, handling, storage, assembly and installation of all materials, systems and equipment are in accordance with best practices in the industry and are in strict compliance with any applicable requirements of the Contract Documents. The Design/Builder shall also coordinate each Submittal with other Submittals.

3.14.10 The Design/Builder shall be responsible for the correctness and accuracy of the dimensions, measurements and other information contained in the Submittals.

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

3.14.12 The Design/Builder shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Owner's Representative's approval of Shop Drawings, Product Data, Samples or similar submittals. The Design/Builder shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Owner's Representative's approval thereof. Specifically, but not by way of limitation, the Design/Builder acknowledges that the Owner's Representative's approval of Shop Drawings shall

not relieve the Design/Builder for responsibility for errors and omissions in the Shop Drawings since the Design/Builder is responsible for the correctness of dimensions, details and the design of adequate connections and details contained in the Shop Drawings.

3.14.13 The Design/Builder 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 Owner's Representative on previous Submittals.

3.14.14 The Design/Builder 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 Owner's Representative or applicable Laws, by a licensed engineer or other design professional.

3.14.15 Nothing in this Section 3.13 shall limit Design/Builder's obligations under Section 3.18 below.

3.15 Record Drawings

3.15.1 The Design/Builder shall maintain a set of Record Drawings on site in good condition and shall use colored pencils to markup said set with "record information" in a legible manner to show: (1) Proposal addendums, (2) executed change orders, (3) deviations from the Drawings made during construction; (4) details in the Work not previously shown; (5) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (6) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stub-outs; and (7) such other information as either the Owner or the Owner's Technical Consultant may reasonably request. Upon Substantial Completion of the Work, Design/Builder shall deliver all Record Drawings to the Owner and the Owner's Technical Consultant for approval. If not approved, the Design/Builder shall make the revisions requested by the Owner's Technical Consultant or the Owner's Representative. Final payment and any retainage shall not be due and owing to the Design/Builder until the final Record Drawings as required by the Article 3.14.1 and Article 3.18.6.5 are delivered to the Owner.

3.16 Operating Instructions and Service Manuals

3.16.1 The Design/Builder shall submit four (4) volumes of operating instructions and service manuals to the Owner's Representative before completing 50% of the adjusted Contract Sum allocated to Construction. Payments beyond 50% of such amount may be withheld until all operating instructions and service manuals are received. The operating instructions and service manuals shall contain:

- .1** Start-up and Shutdown Procedures: Provide a step-by-step write up of all major equipment. When manufacturer's printed start-up, trouble shooting and

shut-down procedures are available, they may be incorporated into the operating manual for reference.

- .2 Operating Instructions: Written operating instructions shall be included for the efficient and safe operation of all equipment.
- .3 Equipment List: List of all major equipment as installed shall include model number, capacities, flow rate, and name-plate data.
- .4 Service Instructions: The Design/Builder shall be required to provide the following information for all pieces of equipment.
 - (a) Recommended spare parts including catalog number and name of local suppliers or factory representative.
 - (b) Belt sizes, types, and lengths.
 - (c) Wiring diagrams.
- .5 Manufacturer's Certificate of Warranty: Manufacturer's certificates of warranty shall be obtained for all major equipment. Warranty shall be obtained for at least one year from the date of Substantial Completion. Where longer period is required by the Contract Documents, the longer period shall govern.
- .6 Parts catalogs: For each piece of equipment furnished, a parts catalog or similar document shall be provided which identifies the components by number for replacement ordering.

3.16.2 Submission

- .1 Manuals shall be bound into volumes of standard 8 1/2" x 11" hard binders. Large drawings too bulky to be folded into 8 1/2" x 11" shall be separately bound or folded and in brown envelopes, cross-referenced and indexed with the manuals.
- .2 The manuals shall identify the Owner's Project name, project number, and include the name and address of the Design/Builder and major Subcontractors of any tier who were involved with the activity described in that particular manual.

3.17 Taxes

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

3.17.2 The Design/Builder shall furnish this certificate to all subcontractors, and any person or entity

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

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

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

3.17.5 The Owner shall not be responsible for any tax liability due to the Design/Builder's neglect to make timely orders, payments, etc. or the Design/Builder's misuse of the Project Tax Exemption Certificate. The Design/Builder represents that the Project Tax Exemption Certificate shall be used in accordance with Section 144.062, RSMo and the terms of the Project Tax Exemption Certificate. The Design/Builder shall indemnify the Owner for any loss or expense, including but not limited to, reasonable attorneys' fees, arising out of the Design/Builder's use of the Project Tax Exemption Certificate.

3.18 Design/Builder's Schedules

3.18.1 As part of its Proposal, the Design/Builder has delivered to the Owner a Schedule of Design Services (the "Design Schedule") and a preliminary Schedule for Construction. Such schedules may comprise one (1) document if permitted by the Owner in the Project Manual but shall be referred to herein separately. To be proper, the Design Schedule shall conform to the Contract Time and the Owner's scheduling requirements set forth in the Project Manual for the Project. Further, such Design Schedule shall set forth interim dates for completion of each phase of the Design Services and other dates that are critical in ensuring the timely and orderly

completion of the Design Services in accordance with the requirements of the Contract Documents and the Owner's scheduling requirements (when use herein with respect to the Design Schedule, the "Milestone Dates"). The Design Schedule shall include dates for design submittals and identify any partial design submittals the Design/Builder plans in accordance with Section 3.18 below.

3.18.2 The preliminary schedule for Construction shall conform to the Contract Time and the Owner's scheduling requirements set forth in the Design Build Documents for the Project. As Construction requirements are developed through performance of the Design Services, the Design/Builder shall periodically update the preliminary schedule for Construction for the Owner's approval. Each updated draft of the schedule for Construction (as applicable, the Construction Schedule, and collectively with the Design Schedule, the "Schedules") shall conform to the phasing and completion dates set forth in the preliminary schedule included in the Design/Builder's Proposal and any previous Construction Schedule approved by the Owner. As part of each update, the Design/Builder shall further indicate and refine proposed activity sequences and durations, Milestone Dates (as defined below), preparation and processing of shop drawings and samples, delivery of significant materials or equipment and the Owner's occupancy requirements showing portions of the Project having occupancy priority. If any Construction Schedule update indicates that previously approved Construction Schedules, including the preliminary schedule for Construction, may not be met, the Design/Builder shall make appropriate recommendations to the Owner so that the Owner's occupancy requirements can be satisfied.

3.18.3 The Design/Builder shall deliver to the Owner a proposed final Construction Schedule, which has been updated in conformance with the above requirements, for the Construction Work, or a Designated Phase of the Work, no later than when the Design/Builder delivers to the Owner a final set of Construction Documents for such Work, or Designated Phase of the Work, pursuant to Section 3.18 below. The final Construction Schedule shall set forth interim dates for completion of various components of the Work and other dates that are critical in ensuring the timely and orderly completion of the Construction Work in accordance with the requirements of the Contract Documents (when use herein with respect to the Construction Schedule, the "Milestone Dates").

3.18.4 No Schedule shall exceed time limits current under the Contract Documents, and each Schedule shall be revised on a monthly basis or as requested by the Owner's Representative as required by the conditions of the Work and shall provide for expeditious and practicable execution of the Work. The Design/Builder shall conform to the most recent Schedule approved by the Owner, as applicable.

3.18.5 Each Schedule shall be in a detailed format satisfactory to the Owner's Representative and the Owner's Technical Consultant. If the Owner's Representative or the Owner's Technical Consultant has a reasonable objection to the any Schedule submitted by the Design/Builder, such Schedule shall be promptly revised by the Design/Builder. The Design/Builder shall monitor the progress of the Work for conformance with the requirements of the Schedules and shall promptly advise the Owner of any delays or potential delays. The Owner's award of the Work to the Design/Builder shall not be deemed as acceptance or approval of any non-conformity in the Design Schedule or preliminary schedule for Construction with respect to the requirements of this Section 3.17, or as a waiver of any of the Owner's rights hereunder.

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

- .1** The schedule shall be prepared using Primavera P3, Oracle P6, Microsoft Project or other software acceptable to the Owner's Representative.
- .2** The schedule shall be prepared and maintained in CPM format, in accordance with Construction CPM Scheduling, published by the Associated General Contractors of American (AGC).
- .3** Prior to submittal to the Owner's Representative for review, the Design/Builder shall obtain full buy-in to the schedule from all major subcontractors, in writing if so requested by the Owner's Representative.
- .4** Schedule shall be updated, in accordance with Construction CPM Scheduling, published by the AGC, on a monthly basis at minimum, prior to, and submitted with, the monthly pay application or as requested by the Owner's Representative.
- .5** Along with the update the Design/Builder shall submit a narrative report addressing all changes, delays and impacts, including weather to the schedule during the last month, and explain how the end date has been impacted by same.
- .6** The submission of the updated schedule certifies that all delays and impacts that have occurred on or to the project during the previous month have been factored into the update and are fully integrated into the schedule and the projected completion date.

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

3.18.7 In the event the Owner's Representative or the Owner's Technical Consultant determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the

Design/Builder to take corrective measures necessary to expedite the progress of the Work, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, facilities, (3) expediting delivery of materials, and (4) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Design/Builder's compliance with the Schedules. The Design/Builder shall not be entitled to an adjustment in the Contract Sum concerning Extraordinary Measures required by the Owner under or pursuant to this Section 3.17.6. The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.17.6 as frequently as the Owner deems necessary to ensure that the Design/Builder's performance of the Work will comply with any Milestone Date set forth in the Schedules or completion date set forth in the Contract Documents.

3.19 Design Duties of the Design/Builder

3.19.1 The Design/Builder shall perform or furnish all Design and related Services comprising the Work, and all fees, charges and other costs and expenses relating to these Services are included in the Contract Sum. The design of the Project prepared or furnished by the Design/Builder shall satisfy and comply with Owner's Design/Build Documents and the Contract Documents. The design of the Project shall strictly comply with all Laws. All design documents provided by the Design/Builder, including Preliminary Design Documents, Design Development Documents and Construction Documents, shall be provided in an electronic format approved by the Owner as well as hard copy format. The Design/Builder recognizes, agrees and accepts that the Owner is relying upon it for the complete and total design, development, implementation and administration of the design of the Project. It is agreed by the Design/Builder and the Owner that despite the specific listing of the Design Services below, it is the intent of the Design/Builder and the Owner that the Design Services under this Contract include the complete and total design, development, implementation and administration of the design of the Project.

- .1** The Design/Builder shall review all information and documents provided by the Owner, including the Owner's Design/Build Documents, and if any information is inadequate, incorrect, misleading and/or the Design/Builder needs additional information to perform or furnish the Design Services, the Design/Builder shall promptly notify the Owner in writing.
- .2** The Design/Builder represents that it has carefully studied and evaluated all information and documents provided to the Design/Builder by the Owner prior to entering into this Contract,

including the Owner's Design/Build Documents, and the Design/Builder has reported in writing to the Owner any errors, inconsistencies or omissions discovered prior to entering into this Contract. Except as to any errors, inconsistencies or omissions reported to the Owner in writing, the Design/Builder represents that the requirements of the Project provided by the Owner are sufficiently complete and detailed for the Design/Builder to perform or furnish Design Services and comply with the requirements of the Contract Documents.

- .3** The Design Services shall include, without limitation, all of the phases described below and shall include where applicable, but are not limited to, architectural, civil, structural, mechanical and electrical engineering services. During each phase of Design Services, the Design/Builder's Consultant shall fulfill all requirements and responsibilities as described in the Contract Documents. No deviation from or deletion to these requirements and responsibilities is permitted. The Consultant shall obtain written approval from the Owner before proceeding with each phase.
- .4** It is understood that the Project designed hereunder shall be efficient, economical, reliable, and of proven quality material, and must harmonize architecturally with the buildings upon the University campus and those buildings to be under construction concurrently. In order to accomplish such purpose, the Consultant shall cooperate mutually with the Owner and its agents.
- .5** All Architectural, Engineering and other Design Services performed by the Consultant shall be performed by a duly trained, qualified and professionally competent Professional Architect and/or Professional Engineer respectively, who are currently and at all times throughout performance of the Work fully registered and licensed in the State of Missouri (i.e. all design and calculations for civil work shall be by a Civil Engineer licensed in the State of Missouri, all design and calculation for mechanical work shall be by a Mechanical Engineer licensed in the State of Missouri, etc). In addition, the firm of the Consultant shall be currently and at all times throughout performance of the Work fully registered and licensed by the State of Missouri. All working drawings, specifications, and calculations shall bear the seal of the Professional Architect and/or Engineer, as applicable. The contractual and professional obligations of such Consultants shall be undertaken and performed in the interests of the Design/Builder and the Owner.
- .6** Contracts and agreements with such Consultants shall be entered into and performed by the Design/Builder in accordance with Article 5 below. Nothing contained herein shall be deemed to create any contractual relationship between the Owner and any

third party, and nothing in the Contract Documents shall give any third party any claim or cause of action against the Owner; however, it is understood and agreed that the Owner is an intended third-party beneficiary of all Subcontracts for design, engineering or professional services to the extent pertaining to the Project. The Design/Builder shall incorporate the provisions and obligations of this Section 3.18.1.6 into its Subcontracts with Design and Engineering Consultants. It is acknowledged and agreed by the Design/Builder that the requirements of this Section shall in no manner waive or release the Design/Builder from any of its obligations under the Contract Documents or vary any of the terms of the Contract Documents.

.7 The Design Services shall comply with all applicable Laws, codes, standards, the Owner's Design/Build Documents; the "Consultant Procedures and Design Guidelines" of the University of Missouri (see Special Conditions for link/location); and the Contract Documents. Where the Design/Build Documents establish requirements different than the "Consultant Procedures and Design Guidelines" the Design/Build Documents shall govern. The Consultant shall certify such action by including a signed certification statement on the cover page of the Drawings and upon completion of the entire Work. Applicable codes and standards shall include, but not be limited to, those listed in Section 13.8. Without limiting the foregoing, the Design/Builder shall not design, specify or incorporate into any Drawings or Specifications any Hazardous Materials in such manner as would violate any Laws having jurisdiction over the Site, the Project, or any part of either or that would cause substantial damage or a risk of substantial damage to the environment or any persons or property. As used in this Contract, the term "Hazardous Materials" shall include substances currently defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended 42 U.S.C. §§ 9061 et seq., Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101 et seq., the Resource Conservation Act and Recovery Act, 42 U.S.C. §§ 6901 et seq., and all other environmental Laws as all of the above may be amended from time to time. If Hazardous Materials are designed or specified by the Design/Builder in Drawings or Specifications for the Project contrary to the requirements of this Section, the Design/Builder shall be liable for and hereby agrees to indemnify, defend and hold the Indemnitees harmless for any

losses arising directly or indirectly out of the release of said Hazardous Materials.

.8 Recognizing it is unlawful to renovate or construct public facilities without professionally sealed drawings and specifications, the Design/Builder shall not commence Construction, or any part thereof, until Drawings and Specifications prepared in accordance with this Section 3.18 are sealed by the Design/Builder's Consultant's appropriate professional discipline registered in the State of Missouri for each specific type of Work.

.9 The Owner shall have the right to review, and approve or disapprove, any portion of the Design Services on any reasonable basis, including but not limited to, costs, aesthetics or function of the proposed design or failure of the design to satisfy the Owner's requirements. In the event that any of the Design Services are not approved, the Design/Builder shall proceed with revisions to the Design Services, drawings, specifications (whether or not final) and other documents to satisfy any objections. These revisions will be made without adjustment to the Contract Sum. Should there be material and substantial revisions to the Project, which changes substantially increase the scope of Design Services hereunder ("Scope Change"), the Contract Sum shall be equitably adjusted based upon the additional time to complete such revision services. In no event shall the Design/Builder be entitled to an increase in the Contract Sum due to the Owner suggested enhancements to the aesthetic or functionality elements of the design, or due to the Design/Builder's fault, negligence or failure to comply with the Contract Documents. To make a claim for an adjustment in the Contract Sum or Contract Time as a result of a Scope Change, the Design/Builder shall notify the Owner in writing of any revisions to the Project that, in the Design/Builder's opinion, represents a Scope Change, setting forth in detail the reasons the Design/Builder contends that such revisions represent a Scope Change; provided, however, that to be effective, such notice shall be provided as soon as reasonably possible, and not later than thirty (30) calendar days, after the date that the Design/Builder receives notice of such Scope Change.

.10 This Section 3.18, "Design Duties of the Design/Builder," puts forth the requirements for the submittal of plans, specifications and other design documents by the Design Builder. Sections 3.18.3, 3.18.4 and 3.18.5 require submittal of documents at the Preliminary, Design Development and Working Drawing phases of the Project, respectively. After each submittal is made, a meeting will be held to discuss and comment on the submittal. This meeting will be scheduled by the Owner and will normally be held within fourteen (14) days of the Owner's receipt

- of the submittal. Based on the overall completeness, accuracy and presentation of the submittal, the Owner may require a resubmission of revised documents and an additional meeting. The Design/Builder shall correct or revise, at its own cost and expense, any errors or deficiencies in the Design Services performed under this Contract. The acceptance or approval of any of the Design Services by the Owner shall not relieve the Design/Builder of the responsibility for strictly complying with the terms of the Contract Documents or subsequent correction of such errors or deficiencies, unless and only to the extent the Owner has knowingly waived such correction requirements in writing.
- .11** The Owner's review of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Construction Documents compatible with the Design/Build Documents. Neither the Owner's review nor disapproval of any interim design submissions and Construction Documents shall be deemed to transfer any professional liability from the Design/Builder to the Owner or diminish, reduce or limit the Design/Builder's obligations under the Contract.
- .12** At the request of the Owner, the Design/Builder shall certify from time to time to the Owner or the designee(s) of the Owner as to the following:
- The then-current status of the Project;
 - That the design documents prepared by the Design/Builder comply with all applicable Laws; and
 - Such other facts and circumstances as the Owner may reasonably require.
- .13** In developing the design of the Project, the Design/Builder shall give consideration to:
- User safety;
 - Maintenance and operational costs;
 - Contemplated expansion or desired flexibility for the Project;
 - Possible energy conservation measures; and
 - Schedule constraints.
- .14** The Design/Builder acknowledges and agrees that Construction may be required to begin before all Design Services are completed, and in such case Construction and Design Services will proceed concurrently.
- 3.19.2 Pre-Design Phase**
- .1** The Design/Builder shall perform or furnish an analysis of key design considerations, key program considerations, Laws, and Site and utility constraints and limitations.
- .2** The Design/Builder shall research and prepare a code, permits and approvals study for the Project. The Design/Builder shall research and identify all

applicable Laws, consult with all governmental agencies having jurisdiction over the Project, and attend meetings with such agencies in order to obtain all permits and approvals for the Project.

- .3** To the extent not provided by the Owner, the Design/Builder shall obtain such geotechnical and related information which is necessary to complete the Design Services in accordance with the Contract Documents. The Design/Builder shall be responsible for analyzing, evaluating and interpreting such geotechnical and related information, whether procured by the Design/Builder or provided by the Owner.
- .4** To the extent not provided by the Owner, the Design/Builder shall obtain surveying services and related information which is necessary to complete the Design Services in accordance with the Contract Documents. The Design/Builder shall be responsible for analyzing, evaluating and interpreting such surveying and related information, whether procured by the Design-Builder or provided by the Owner.
- .5** The Design/Builder shall be responsible for obtaining all information, tests, data and professional services necessary to complete the Design Services in accordance with the Contract Documents.

3.19.3 Preliminary Design Phase

- .1** Preliminary Design Phase requirements are listed under Schematic Design in the "Consultant Procedures and Design Guidelines" of the University of Missouri (see Special Conditions for link/location).
- .2** The Design/Builder shall prepare Preliminary Design Studies for approval by the Owner which shall consist of drawings, outline specifications and other documents to illustrate and describe the scope, size, relationship, form, appearance and character of the Project as to materials, geotechnical, civil, landscape, structure, mechanical, electrical and Construction systems and requirements for the Project, and such other essentials as may be appropriate. The Preliminary Design Studies shall be specific enough in detail and notice to allow the Owner to make a considered evaluation of the Proposal. An initial draft of the Preliminary Design Studies was submitted as part of the Proposal submitted by the Design/Builder and was sealed by the Consultant. The award of the Proposal by the Owner to the Design/Builder does not and shall not constitute approval by the Owner of such initial Preliminary Design Studies, or satisfaction by the Design/Builder of any other requirements of this Contract, including this Section 3.18, regarding such initial Preliminary Design Studies. The Design/Builder shall not proceed with any other portions of the Design Services prior to the Owner's approval of the Preliminary Design Studies.

- .3 It is the intention of the Owner that subsequent drafts of the Preliminary Design Studies shall further define, enhance and improve the design as described in these Contract Documents, including methods of construction.

3.19.4 Design Development Phase

- .1 Design Development Phase requirements are located in the "Consultant Procedures and Design Guidelines" of the University of Missouri (see Special Conditions for link/location).
- .2 Based upon the approved Preliminary Design Studies, the Design/Builder shall furnish, for review and approval by the Owner, Design Development Documents consisting of drawings and other documents (i.e. structural, mechanical, electrical, plumbing, etc. calculations) that further define and enhance the size, scope and character of the entire Project as to geotechnical, civil, landscape, architectural, structural, mechanical, electrical and other Construction systems, materials, and such other elements as may be appropriate.
- .3 The Design/Builder shall not proceed with any other portions of the Design Services prior to the Owner's approval of the Design Development Documents.
- .4 The Design/Builder may be required to submit additional Preliminary Design clarifications and descriptions as requested by the Owner.

3.19.5 Working Drawing and Specification Phase

- .1 Working Drawings and Specification Phase requirements are listed under Construction Documents Phase in the "Consultant Procedures and Design Guidelines" of the University of Missouri (see Special Conditions for link/location).
- .2 The Design/Builder shall furnish Construction Documents from the approved Design Development Documents, which set forth in detail the requirements for the Construction Work of the Project, including but not limited to, Working Drawings on separate sheets, and Working Specification, for the following divisions of the Work: geotechnical; landscape; architectural; civil; mechanical; structural; heating; ventilating; air conditioning and plumbing; fire protection; electrical; life safety; and controls. The final Construction Documents shall be a complete, accurate, integrated, coordinated, consistent and functional set.
- .3 Working Drawings and Specifications shall be submitted for the Owner's review and approval when both the Working Drawings and Specifications are each 75% complete, and again at 100% complete.

- .4 When the Drawings and Specifications are sufficiently complete, the Design/Builder shall provide to the Owner for the Owner's approval a list of all tests, inspections or reports that are proposed to be required under the Contract Documents. This list should designate the party responsible for the engagement of and payment to providers of those services. Where the Owner has agreed to directly contract with third parties for such tests, inspections or reports, the Design/Builder shall, as part of the Work and in accordance with the Owner's instructions, solicit competitive or best value price proposals from reputable and licensed providers of such services, for the purposes of the Owner's engagement of such a provider. Nothing herein shall affect, diminish or reduce the Design/Builder's responsibility for the payment of the costs of such tests, inspections and approvals as set forth in Section 13.3 of this Contract.
- .5 Ten (10) sets, or as required in the Special Conditions, of proposed Working Drawings and Specifications shall be furnished for the Owner's review by the Design/Build at the intervals provided above.
- .6 As requested by the Owner, the Design/Builder shall be responsible for the creation, possession and maintenance of Computer Aided Design and Drafting ("CADD") data relating to the Drawings and Specifications. The Design/Builder shall prepare a CADD layering scheme consistent with the Owner's instructions and procedures that will facilitate the integration of new data into existing files or the updating of existing data sets with new information. The Design/Builder shall propose the use of a management system to catalogue the data sets that will be generated, as well as successive updates of individual data sets. Reproducible copies of Drawings and Specifications shall be provided by the Design/Builder. Such reproducible copies shall control over the same data stored on diskette or any other electronic data storage device.
- .7 The Design/Builder shall not proceed with any other portions of the Work without approval of the Construction Documents by the Owner.
- .8 The Construction Documents shall be in strict compliance with all applicable Laws and shall satisfy the Owner's requirements for the Project as set forth in the Owner's Design/Build Documents and the Contract Documents. With respect to any facilities, components thereof or equipment designed or specified as part of the Work, such facilities, components, or equipment, when operated and maintained by the Owner, shall comply with all Laws, including without limitation, MSHA, OSHA and any applicable environmental permits and environmental Laws.
- .9 The Construction Documents shall be sufficient for the Design/Builder to obtain all governmental

permits, licenses, authorizations, and consents to perform and complete the Work. The Design/Builder shall meet and consult with all governmental entities having jurisdiction over the Project necessary for the Design/Builder to obtain all permits, licenses, authorizations and consents necessary for the performance and completion of the Work. The Design/Builder shall make necessary revisions to Drawings and Specifications and other documents required by any Laws.

3.19.6 Construction Phase

- .1** The Consultant shall assist the Design/Builder in performing the Construction Work set forth in the Contract Documents. Notwithstanding anything to the contrary in this Section 13.8.5, in no event will the Consultant be deemed to act on behalf of the Owner with respect to any of the Owner's rights or obligations under the Contract; nor will the actions of the Consultant during this Construction Phase be deemed to limit or otherwise affect any of the Design/Builder's obligations or the Owner's rights under this Contract.
- .2** The Consultant shall make a minimum of two (2) visits per month to the site to familiarize himself generally with the progress and quality of Work and to determine in general if the Project is proceeding in accordance with the Contract Documents. On the basis of his on-site observations as a Consultant, Consultant shall be required by the Design/Builder to make monthly reports directly to the Design/Builder, with regard to the progress of the Work. The Consultant's reports shall inform the Design/Builder of any defects and/or deficiencies in the Work of the Design/Builder and shall critique construction means used by the Design/Builder. The Consultant shall be professionally responsible for the content and accuracy of the required report. The Design/Builder shall submit a true and correct copy of this report to the Owner within three (3) days after its receipt thereof from the Consultant and the Owner shall be entitled to rely thereon.
- .3** The Consultant shall report to the Design/Builder and the Owner Work which does not conform to the Working Drawings and Specifications. The Consultant shall make recommendations to the Design/Builder for special inspections or testing of any Work in accordance with the provisions of the Project Working Drawings and Specifications, and these Contract Documents whether or not such Work be fabricated, installed or completed. The Design/Builder shall submit a copy of these reports to the Owner within three (3) days after its

receipt thereof from the Consultant and the Owner shall be entitled to rely thereon.

- .4** The Consultant shall conduct inspections to determine and submit to the Owner for the Owner's acceptance, the date of final completion (*See* Article 8). The Consultant shall also receive all written guarantees and related documents assembled by the Design/Builder and based upon his independent and professional judgment as a Consultant, shall issue certification to the Owner through the Design/Builder that the Project has been completed in accordance with the Working Drawings and Specifications, the other Contract Documents and all applicable Laws and codes.
- .5** The Consultant shall furnish the Owner, through the Design/Builder, a set of Record Drawings on reproducible photographic (non-deteriorating) 4 mil Mylar and 2 sets a set of high-quality bond paper (minimum 24# weight) Record Drawings within twenty-one (21) days of receipt of the marked-up drawings from the Design/Builder. These drawings shall indicate conditions at final completion of the Project based upon information supplied by the Design/Builder and shall be of sufficient quality to facilitate photographic reproduction. In addition to the above drawings, if required by the Owner, an electronic copy in the format designated by the Owner shall be furnished of any drawings produced by a CADD.
- .6** The Design/Builder shall furnish ten (10) copies of each draft of the Preliminary Design Studies and Design Development Documents and ten (10) copies of the Working Drawings and Specifications. Additional copies of these documents may be required by the Owner, who agrees to pay for the direct cost of producing such additional copies, provided the maximum cost of such copies shall be agreed upon in writing at the time the request therefor is made by the Owner. In no event shall such cost include overhead, administrative or labor costs.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

4.1 Rights of the Owner

4.1.1 The Owner's Representative will administer the Construction Contract. The Owner's Technical Consultant, if applicable, will assist the Owner's Representative with the administration of the Contract as indicated in these Contract Documents.

4.1.2 If, in the judgment of the Owner's Representative, it becomes necessary to accelerate the Work, the Design/Builder, when directed by the Owner's Representative in writing, shall cease Work at any point and transfer its workers to such point or points and execute such portions of

the Work as may be required to enable others to hasten and properly engage and carry out the Work, all as directed by the Owner's Representative. The additional cost of accelerating the Work, if any, will be borne by the Owner, unless the Design/Builder's Work progress is behind schedule as shown on the most recent progress schedule.

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

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

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

4.1.6 The Owner does not allow smoking on University property.

4.2 Rights of the Owner's Technical Consultant

4.2.1 The Owner's Technical Consultant will interpret requirements of the Contract Documents with respect to the quality, quantity and other technical requirements of the Work itself within a reasonable time after written request of the Design/Builder. The Design/Builder shall provide the Owner's Representative a copy of such written request. If the Owner has not engaged a Technical Consultant, such actions shall be performed by the Owner's Representative.

4.3 Review of the Work

4.3.1 The Owner's Technical Consultant, the Owner's Representative and the Owner's Authorized Agent shall, at all times, have access to the Work; and the Design/Builder shall provide proper and safe facilities for such access.

4.3.2 The Owner's Representative shall have authority to reject Work that does not strictly comply with the requirements of the Contract Documents. Whenever the Owner's Representative considers it necessary or advisable

for implementation of the intent of the Contract Documents, Owner's Representative shall have the authority to require additional inspection or testing of the Work, whether or not such Work is fabricated, installed or completed.

4.3.3 The fact that the Owner's Technical Consultant or the Owner's Representative observed, or failed to observe, faulty Work, or Work done which is not in accordance with the Contract Documents, regardless of whether or not the Owner has released final payment, shall not relieve the Design/Builder from responsibility for all damages and additional costs of the Owner as a result of defective or faulty Work.

4.4 Claims

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

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

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

4.5 Claim for Additional Cost

4.5.1 If the Design/Builder makes a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute or perform the Work. In

addition to all other requirements for notice of a Claim, said notice shall detail and itemize the amount of all Claims and shall contain sufficient data to permit evaluation of the same by the Owner.

4.6 Claims for Additional Time

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

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

4.6.2 If weather days are the basis for a Claim for additional time, such Claim shall be documented by the Design/Builder by data acceptable to the Owner's Representative substantiating that weather conditions for the period of time in question, had an adverse effect on the critical path of the scheduled construction. Weather days shall be defined as days on which critical path work cannot proceed due to weather conditions (including but not limited to rain, snow, etc.), in excess of the number of days shown on the Anticipated Weather Day schedule in the Special Conditions. To be considered a weather day, at least four working hours must be lost due to the weather conditions on a critical path scope item for that day.; Weather days and Anticipated weather days listed in the Special Conditions shall only apply to Monday through Friday. A weather day claim cannot be made for Saturdays, Sundays, New Year's Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving Day and Christmas Day, unless that specific day was approved in writing for work by the Owner's Representative.

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

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

.2.1 If the Design/Builder cannot work on a critical path activity due to adverse weather, after implementing all reasonable temporary weather protection, the Design/Builder will so notify the Owner's Representative. Each week, the Design/Builder will notify the

Owner's Representative of the number of adverse weather days that it believes it has experienced in the previous week. As provided in the contract, until such time as the weather days acknowledged by the Owner's Representative exceed the number of days of adverse weather contemplated in the Special Conditions, no request for extension of the contract completion time will be considered.

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

4.6.3 A Force Majeure event or circumstance shall not be the basis of a claim by the Contractor seeking an adjustment in the Contract amount for costs or expenses of any type. With the exception of weather delays which are administered under this Article 4, and notwithstanding other requirements of the Contract, all Force Majeure events resulting in a delay to the critical path of the project shall be administered as provided in Article 8.

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

4.7 Resolution of Claims and Disputes

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

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

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

4.8 Administrative Review

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

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

4.8.3 If the Design/Builder is not in agreement with the proposal of the Owner's Review Administrator as to the resolution of the claim, the Design/Builder may file a written appeal with the UM System Contracting Officer, [in care of the UM Executive Director of Facilities Planning and Development, 130 General Services Building, University of Missouri, Columbia, Missouri 65211 within fifteen (15) days after receipt of the Owner's Review Administrator's proposal. The UM System Contracting Officer will call a meeting of the Design/Builder, the Owner's Representative, and the Owner's Review Administrator by written notice, within thirty (30) days after receipt of the Design/Builder's written appeal. The Owner's Review Administrator shall provide the UM System Contracting Officer with a copy of the written decision and summary of the review meeting, the Design/Builder's corrections or comments regarding the summary of the review meeting, and any written documentation presented by the Design/Builder and the

Owner's Representative at the initial review meeting. The parties may present further documentation and/or present the testimony of any knowledgeable person regarding the claim at the meeting called by the UM System Contracting Officer.

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

ARTICLE 5 SUBCONTRACTORS

5.1 Award of Subcontracts

5.1.1 As part of its Proposal, the Design/Builder has furnished the Owner and the Owner's Technical Consultant, in writing, with the name, and trade or profession, for each proposed Subcontractor and the names of all persons or entities proposed as manufacturers of products, materials and equipment identified in the Contract Documents and where applicable, the name of the proposed installing Subcontractor, to the extent such information is known or capable of being determined by the Design/Builder at such time; provided, however, that in no event shall the Design/Builder fail to specify the names and other required information concerning its Consultants. If a Subcontractor is not known or capable of being identified at the time Design/Builder submits its Proposal to the Owner, the Design/Builder shall furnish the name and other required information concerning such Subcontractor as soon as reasonably possible, and in any event prior to such Subcontractor's commencement of any of the Work, to the Owner for its approval. The Owner's Representative will reply to the Design/Builder in writing if the Owner has reasonable objection to any proposed person or entity. The Design/Builder shall not contract with a proposed person or entity to whom the Owner has made reasonable and timely objection.

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

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

5.2 Subcontractual Relations

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

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

any Subcontractors of any tier or suppliers, Design/Builder shall obtain the same.

5.3 Contingent Assignment of Subcontract

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

ARTICLE 6

SEPARATE CONTRACTS AND COOPERATION

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

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

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

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

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

where any such cause is beyond the Owner's reasonable control.

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

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

ARTICLE 7 CHANGES IN THE WORK

7.1 CHANGE ORDERS

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

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

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

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

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

- .1** By a lump sum proposal from the Design/Builder and the Subcontractors of any tier, including overhead and profit.
- .2** By a time and material basis with or without a specified maximum. The Design/Builder shall submit to the Owner's Representative itemized time and material sheets depicting labor, materials, equipment utilized in completing the Work on a daily basis for the Owner's

Representative approval. If this pricing option is utilized, the Design/Builder may be required to submit weekly reports summarizing costs to date on time and material change orders not yet finalized.

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

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

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

- .1** Labor: The Design/Builder's proposal shall include breakdowns by labor, by trade, indicating number of hours and cost per hour for each Subcontractor as applicable. Such breakdowns shall only include employees in the direct employ of the Design/Builder or Subcontractors in the performance of the Work. Such employees shall only include laborers at the site, mechanics, craftsmen and foremen. Payroll cost shall include base rate salaries and wages plus the cost of fringe benefits required by agreement or custom and social security contributions, unemployment, payroll taxes and workers' or workmen's compensation insurance and other customary and legally required taxes paid by the Design/Builder or Subcontractors. Any item or expense outside of these categories is not allowed. The expense of performing Work after regular working hours, on Saturdays, Sundays or legal holidays shall not be included in the above, unless approved in writing and in advance by the Owner.
- .2** Material, supplies, consumables and equipment to be incorporated into the Work at actual invoice cost to the Design/Builder or Subcontractors; breakdowns showing all material, installed equipment and consumables fully itemized with number of units installed and cost per unit extended. Any singular

item or items in aggregate greater than one thousand dollars (\$1,000) in cost shall be supported with supplier invoices. Normal hand tools are not compensable.

- .3 Equipment: Breakdown for required equipment shall itemize (at a minimum) delivery / pick-up charge, hourly rate and hours used. Operator hours and rate shall not be included in the equipment breakdown. The Design/Builder must use the most cost-effective equipment available in the area and should not exceed the rates listed in the Rental Rate Blue Book for Construction Equipment (Blue Book). The Design/Builder shall submit documentation for the Blue Book to support the rate being requested.

7.2 Construction Change Directive

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

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

7.2.2 Upon receipt of a Construction Change Directive, the Design/Builder shall promptly proceed with the change in the Work involved and advise Owner of the

Design/Builder's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum, Contract Time or both.

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

7.3 Overhead and Profit

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

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

complexity of the Work involved, but shall not be less than the following:

Overhead and Profit

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

7.4 Extended General Conditions

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

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

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

- .1** For the portion of the direct payroll cost of the Design/Builder's project manager expended in completing the Work and the direct payroll cost of other onsite administrative staff not included in Article 7.6.1. Direct payroll cost shall include base rate salaries and wages plus the cost of fringe benefits required by agreement or custom and social security contributions, unemployment, payroll taxes and workers' or workmen's compensation insurance and other customary and legally required taxes paid by the Design/Builder;
- .2** Cost of the Design/Builder's temporary office, including temporary office utilities expense;
- .3** Cost of temporary utilities required in the performance of the work;
- .4** Profit not to exceed 5% of the total extended overhead direct costs;

7.4.4 All costs not falling into one of these categories and costs of the Design/Builder's staff not employed onsite are not allowed.

7.5 Emergency Work

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

**ARTICLE 8
TIME**

8.1 Progress and Completion

8.1.1 The Design/Builder acknowledges and agrees that time is of the essence of this Contract and any Schedule.

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

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

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

8.2 Delay in Completion

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

8.2.2 All time limits stated in the Contract are of the essence of the Contract. However, if the Contractor is delayed

at any time in the progress of the Work by any act or neglect of the Owner or by the Owner's Representative, by changes ordered in the Work, Force Majeure including but not limited to war, armed conflict, riot, civil commotion or disorder, act of terrorism or sabotage; epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions, compliance with any law or governmental order, rule, regulation or direction, curfew restriction, act of God or natural disaster such as earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, damage or destruction by lightning, drought; explosion, fire, destruction of machines, equipment, prolonged break-down of transport, telecommunication or electric current; general labor disturbance such as but not limited to boycott, strike and lock-out, occupation of factories and premises, or any other causes beyond the Contractor's reasonable control which the Owner's Representative determines may justify delay then, upon submission of the Time Impact Schedule Analysis (TIA) justifying the delay called out in Section 4.7 of these General Conditions, the Contract Time may be extended for a reasonable time to the extent such delay will prevent Contractor from achieving Substantial Completion and/or Final Completion within the Contract Time and if performance of the Work is not, was not or would not have been delayed by any other cause for which the Contractor is not entitled to an extension of the Contract Time under the Contract Documents. It shall be a condition precedent to any adjustment of the Contract Time that Contractor provide the Owner's Representative with written notice of the cause of delay within seven (7) days from the occurrence of the event or condition which caused the claimed delay. If a Force Majeure is approved by the Owner as the basis for a delay claim, an adjustment in the contract time to the extent the Force Majeure impacts the schedule is the only remedy. No increase in the contract sum for any reason shall be allowed due to a Force Majeure.

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

8.2.4 Notwithstanding anything to the contrary in the Contract Documents, except as otherwise noted in these General Conditions, an extension in the Contract Time, to the extent permitted under this Article, shall be the sole remedy of the Design/Builder for any (1) delay in the

commencement, prosecution or completion of the Work, (2) hindrance or obstruction in the performance of the Work, (3) loss of productivity, or (4) other claims due to or caused by any events beyond the control of both the Owner and the Design/Builder defined herein as Force Majeure. In no event shall the Design/Builder be entitled to any compensation or recovery of any damages or any portion of damages resulting from delays caused by or within the control of the Design/Builder or by acts or omissions of the Design/Builder or its Subcontractors of any tier or delays beyond the control of both the Owner and the Design/Builder. If the Design/Builder contends that delay, hindrance, obstruction or other adverse condition results from acts or omissions of the Owner, the Owner's Representative or the Owner's Technical Consultant, the Design/Builder shall provide written notice to the Owner within seven (7) calendar days of the event arising to such claim. The Design/Builder shall only be entitled to an adjustment in the Contract Sum to the extent that such acts or omissions continue after the Design/Builder's written notice to the Owner of such acts or omissions, but in no case shall Force Majeure be the basis of an increase in the contract sum. The Owner's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, approving Design Services or other Work, ordering changes in the Work, or directing suspension, rescheduling or correction of the Work) regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be the basis of any Claim for an increase in the Contract Sum or Contract Time. In the event the Design/Builder is entitled to an adjustment in the Contract Sum for any delay, hindrance, obstruction or other adverse condition caused by the acts or omissions of the Owner, the Owner's Representative or the Owner's Technical Consultant, the Design/Builder shall only be entitled to its actual direct costs caused thereby and the Design/Builder shall not be entitled to and waives any right to special, indirect, or consequential damages including loss of profits, loss of savings or revenues, loss of anticipated profits, labor inefficiencies, idle equipment, home office overhead, and similar type of damages.

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

8.3 Liquidated Damages

8.3.1 If Liquidated Damages are prescribed in the Contract, the Owner may deduct from the Contract Sum and retain as Liquidated Damages, and not as penalty or forfeiture, the sum

stipulated in the Contract for each calendar day after the date specified for completion of the Work that the entire Work, or Designated Phase thereof, as applicable, is not Substantially Complete and/or Finally Complete.

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

9.1 Commencement, Prosecution, and Completion

9.1.1 The Design/Builder shall commence Work within five (5) days upon the date of a "Notice to Proceed" from the Owner or on the date fixed in the Notice to Proceed. The Design/Builder shall prosecute the Work with faithfulness and diligence, and the Design/Builder shall complete the Work within the Contract Time set forth in the Contract Documents.

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

9.1.3 The Contract Time shall begin when the Design/Builder receives notice requesting the instruments listed below. Before the Owner will issue a Notice to Proceed to permit the Design/Builder to begin Work, the Owner shall have received the following instruments, properly executed as described in the Contract Documents and, as applicable, Owner's notice. The documents below shall have been received by the Owner within fifteen (15) days after the Design/Builder's receipt of the Owner's notice:

- .1** Duly executed Contract
- .2** Performance and Payment Bonds (See Article 11)
- .3** Certificates and other required proof of Insurance (See Article 11)
- .4** List of Subcontractors of any tier

9.1.4 In the event the Design/Builder fails to provide the Owner such documents, the Design/Builder may not enter upon the site or otherwise commence performance of the Work until such documents are provided. The date the Design/Builder is required to commence and complete the

Work shall not be affected by the Owner denying the Design/Builder access to the site as a result of the Design/Builder's failure to provide such documents and the Design/Builder shall not be entitled to an adjustment of the Contract Time or Contract Sum as a result of its failure to comply with the provisions of this Section

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

9.1.6 Any successful Proposer, which is a corporation organized in a state other than Missouri or any Proposer doing business in the State of Missouri under a fictitious name shall furnish, at no cost to the Owner, no later than the time at which the executed Contract, the Payment Bond, and the Performance Bond are returned, a properly certified copy of its current Certificate of Authority and License to do business in the State of Missouri. No contract will be executed by the Owner until such certificate is furnished by the Proposer, unless there already is on file with the Owner a current certificate, in which event, no additional certificate will be required during the period of time for which such current certificate remains in effect.

9.1.7 Within fifteen (15) calendar days of the issuance of a Notice to Proceed, the Design/Builder shall submit one (1) signed copy of the following instruments, to the extent such items are not required to be delivered prior to such time and are reasonably capable of being developed at such time. No payment will be processed until all of these instruments are received and approved by the Owner's Representative.

- .1** Reproducible Design Schedule and preliminary schedule for Construction;
- .2** The Design/Builder's initial Schedule of Values;
- .3** List of Subcontractors;
- .4** Itemized breakdown of all labor rates for each classification. Overhead and profit shall not be included. Payroll cost shall include base rate salaries and wages plus the cost of fringe benefits required by agreement or custom and social security contributions, unemployment, payroll taxes and workers' or workmen's compensation insurance and other customary and legally required taxes paid by the Design/Builder or Subcontractors. Any item or expense outside of these categories is not allowed. The expense of performing Work after regular working hours, on Saturdays, Sundays or legal

.5 holidays shall not be included in the above, unless approved in writing and in advance by Owner; and Itemized breakdown of anticipated equipment rates (breakout operator rate). Overhead and profit shall not be included. Breakdown for required equipment shall itemize (at a minimum) delivery/ pick-up charge, hourly rate and hours used. Operator hours and rate shall not be included in the equipment breakdown. The Design/Builder must use the most cost-effective equipment available in the area and should not exceed the rates listed in the Rental Rate Blue Book for Construction Equipment (Blue Book). The Design/Builder shall submit documentation for the Blue Book to support the rate being requested.

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

- .1 Bank Transit Number for the Design/Builder's bank into which the electronic deposit will be made.
- .2 Bank Account Number for the Design/Builder's account into which the electronic deposit will be made.
- .3 The Design/Builder's e-mail address so that formal notification of the deposit by the Owner can be provided.

9.2 Contract Sum

9.2.1 The Owner shall compensate the Design/Builder for all Work described herein, and in the Contract Documents the Contract Sum set forth in the Contract, subject to additions and deletions as provided hereunder.

9.3 Schedule of Values

9.3.1 Within fifteen (15) days after receipt of the Notice to Proceed, if not required as part of the Design/Builder's Proposal, the Design/Builder shall submit to the Owner an initial schedule of values which allocates the entire Contract Sum to various portions of the Work, including the Design Services. Such initial schedule of values shall be deemed final as to the Design/Builder's Design Services, subject to the Owner's approval rights in this Article 9. As Construction requirements are developed through performance of the Design Services, the Design/Builder shall periodically update the initial schedule of values for purposes of further refining and specifying the portions of Construction comprising the schedule of values. Each revised schedule shall conform generally to the allocations and categories in the initial and any previously approved schedules of values. The Design/Builder shall deliver to the

Owner a proposed final schedule of values for the Construction Work, or a Designated Phase of the Work, no later than when the Design/Builder delivers to the Owner a final set of Construction Documents for such Work, or Designated Phase of the Work, pursuant to Section 3.18 above.

9.3.2 Each draft of the Schedule of Values (as applicable, the "Schedule of Values") shall be in such form and supported by such data to substantiate its accuracy as the Owner's Representative may require. The Schedule of Values, unless objected to by the Owner's Representative, shall be used as a basis for reviewing the Design/Builder's Applications for Payment. The values set forth in such Schedule may, at the Owner's option, be used in any manner as fixing a basis for additions to or deletions from the Contract Sum.

9.3.3 Without limiting the foregoing, the Schedule of Values shall include or be accompanied by, to the extent developed at such time, the following:

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

9.4 Applications for Payment

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

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

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

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

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

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

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

- .7 Upon favorable inspection by the Owner's Representative, the Design/Builder shall, at the Owner's option, submit a Bill of Sale and Bailment Agreement on forms provided by the Owner's Representative, transferring title of the material or equipment to The Curators of the University of Missouri.
- .8 An invoice provided by the supplier shall be included with the applicable pay request.
- .9 The Design/Builder shall remain fully responsible for all items, until acceptance of the project by the Owner.
- .10 The Design/Builder shall reimburse all costs incurred by the Owner in inspecting and verifying all material stored offsite, including mileage, airfare, meals, lodging and time, charged at a reasonable hourly rate.
- .11 The Contractor shall furnish and maintain insurance covering the replacement cost of the material stored offsite against all losses and shall furnish proof of coverage with the application for payment for material stored offsite.
- .12 The Contractor is responsible for all costs related to storage and handling of material stored offsite unless otherwise directed by the Owner's Representative.

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

9.4.6 The Design/Builder will be reimbursed for ninety-five percent (95%) of the value of all Design Services and/or labor furnished and material installed and computed in the same manner, less all previous payments made.

9.5 Approval for Payment

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

9.6 Decisions to Withhold Approval

9.6.1 The Owner's Representative may decide not to certify payment and may withhold approval in whole or in part, to the extent reasonably necessary to protect the Owner. If the Owner's Representative is unable to approve payment in the amount of the Application, the Owner's Representative will notify the Design/Builder as provided in Section 9.5.1. If the Design/Builder and Owner's Representative cannot agree on a revised amount, the Owner's Representative will promptly issue approval for payment for the amount for which the Owner's Representative is able to determine is due to the Design/Builder. The Owner's Representative may also decide not to approve

payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of approval for payment previously issued, to such extent as may be necessary in the Owner's Representative opinion to protect the Owner from loss because of:

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

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

9.7 Progress Payments

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

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

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

9.7.4 Based on the Schedule of Values submitted by the Design/Builder, Applications for Payment submitted by the Design/Builder shall indicate the actual percentage of completion of each portion of the Design/Builder's Work as of the end of the period covered by the Application for Payment.

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

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

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

9.8 Failure of Payment

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

9.9 Substantial Completion

9.9.1 Substantial Completion is the stage in the progress of the Work as defined in Section 1.1.9 as certified by the Owner.

9.9.2 When the Design/Builder considers the entire Work, or a Designated Phase thereof, is substantially complete, the

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

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

9.10 Partial Occupancy or Use

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

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

9.11 Final Completion and Final Payment

9.11.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt

of a final Application for Payment, the Owner's Representative and the Owner's Technical Consultant will promptly make such inspection and, when the Owner's Representative and Owner's Technical Consultant find the Work acceptable under the Contract Documents and the Contract fully performed, the Owner's Representative will promptly issue a final approval for payment; otherwise, Owner's Representative will return the Design/Builder's Final Application for Payment to the Design/Builder, indicating in writing the reasons for refusing to recommend final payment, in which case the Design/Builder shall make the necessary corrections and resubmit the Application. Submission of a Final Application for Payment shall constitute a further representation that conditions listed in Section 9.11.2 as precedent to the Design/Builder's being entitled to final payment have been fulfilled. All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Design/Builder to the Owner's Representative as part of the final Application for Payment. The final approval for payment will not be issued by the Owner's Representative until all warranties and guarantees have been received and accepted by the Owner.

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

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

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 Safety Precautions and Programs

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

10.1.2 The Contractor and all Subcontractors to the Contract must require all on-site employees to complete the ten-hour construction safety training program required under Section 292.675, RSMo, unless they have previously completed the program and have documentation of having done so. The Contractor will forfeit a penalty to the Owner of \$2,500 plus an additional \$100 for each employee employed by the Contractor or Subcontractor, for each calendar day, or portion thereof, such employee is employed without the required training." (Section 292.675, RSMo).

10.1.3 In the event the Design/Builder discovers on the site, material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), lead, mercury, or other material known to be hazardous, which has not been rendered harmless, the Design/Builder shall immediately stop Work in the area affected and report the condition to the Owner's Representative and the Owner's Technical Consultant in writing. The Work in or relating to the affected area shall not thereafter be resumed except by written agreement of the Owner's Representative and the Design/Builder if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless by written agreement of the Owner's Representative and the

Design/Builder. "Rendered Harmless" shall mean that levels of such materials are less than any applicable exposure standards, including but limited to OSHA regulations.

10.2 Safety of Persons and Property

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

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

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

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

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

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

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

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

10.2.8 The Design/Builder shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work which cause death, lost time injury, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner

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

ARTICLE 11 INSURANCE AND BONDS

11.1 Insurance

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

11.1.2 The Contractor shall not be allowed on the Owner's property without proof of the insurance coverages set forth herein

11.2 Commercial General Liability

11.2.1 The Contractor shall secure and maintain from the date of the Contract, and for a period of at least ten (10) years from the date of Final Completion of the entire Work,

Commercial General Liability insurance ("CGL") with a combined single limit of not less than \$2,000,000 per occurrence, \$5,000,000 general aggregate, \$5,000,000 products and completed operations aggregate, and \$1,000,000 personal injury and advertising injury. General Aggregate must apply per project. An umbrella policy may be used to satisfy these limits.

11.2.2 CGL insurance shall be written on a Commercial form CG 00 01 or an equivalent form providing the same coverages and shall cover claims and liability in connection with or resulting from the Contractor's operations and activities under the Contract, for personal injuries, occupational sickness, disease, death or damage to property of others, including loss of use resulting therefrom, arising out of any operations or activities of the Contractor, its agents, or any Subcontractors of any tier or by anyone directly or indirectly employed by either of them.

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

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

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

11.3 Licensed for Use Vehicle Liability

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

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

11.4 Workers' Compensation Insurance

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

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

11.5 General Insurance Requirements and Professional Liability

11.5.1 Any Consultant/Contractor providing professional design services as part of the Contract shall be required to provide and maintain, from the date of this Contract and for a period of ten (10) years after the date of Final Completion, Professional Liability insurance, in a claims made form, to cover any claims, including but not limited to errors, omissions, and negligence, which may arise from the design and related services performed by the Consultant. The minimum limits for such policy shall be \$1,000,000.00 per claim/\$1,000,000.00 aggregate.

11.5.2 "The officers, employees, and agents of The Curators of the University of Missouri" shall be added as Additional Insured with respect to the CGL, umbrella/excess and Automobile Liability policies required herein. A certificate of insurance evidencing all coverage required is to be provided at least ten (10) days prior to the inception date of the Contract between the Contractor and the University. The Contractor is required to maintain coverages as stated and required to notify the University of a carrier change or cancellation within two (2) business days. The Contractor shall provide a copy of the policy to the University upon request. The University reserves the right to require higher limits on any contract provided notice of such requirement is stated in the request for proposals for such contract. The Contractor shall request that its insurer(s) include the following disclaimer in any insurance policy, rider or endorsement issued pursuant to this Additional Insured requirement: "Neither the

requirement for Additional Insured status nor any of the Contractor's action in compliance with such requirement, either direct or indirect, is intended to be and neither shall be construed as a waiver of any sovereign immunity, governmental immunity or any other type of immunity enjoyed by The Curators of the University of Missouri, the Board of Curators of the University of Missouri, or any of its officers, employees or agents."

The Additional Insured status must be conveyed by using the ISO CG 20 10 (2004) edition or equivalent and the ISO CG 20 37 (2004) edition. The policy shall be endorsed to be primary coverage and any other insurance carried by the Owner shall be excess only and will not contribute with Contractors' insurance. To confirm, the Endorsement should accompany the insurance certificate.

11.5.3 All insurance coverages procured by the Contractor shall be provided by agencies and insurance companies acceptable to and approved by Owner. All insurance coverage shall be provided by insurance companies that are duly licensed to conduct business in the State of Missouri as an admitted carrier, except that the Professional Liability insurance required herein may be provided by any insurance company legally authorized to do business in the State of Missouri. The form and content of all insurance coverage provided by the Contractor are subject to the approval of the Owner. All required insurance coverages shall be obtained and paid for by the Contractor. Any approval of the form, content or insurance company by the Owner shall not relieve the Contractor from the obligation to provide the coverages required herein. All insurance coverage procured by the Contractor shall be provided by insurance companies having policyholder ratings no lower than "A-" and financial ratings not lower than "XP" in the Best's Insurance Guide, latest edition in effect as of the date of the Contract, and subsequently in effect at the time of renewal of any policies required by the Contract Documents. Insurance coverages required hereunder shall not be subject to a deductible amount on a per-claim basis of more than \$10,000.00 and shall not be subject to a per-occurrence deductible of more than \$25,000.00. Insurance procured by the Contractor covering the Additional Insureds shall be primary insurance and any insurance maintained by Owner shall be excess insurance.

11.5.4 All insurance required hereunder shall provide that the insurer's cost of providing the insureds a defense and appeal, including attorneys' fees, shall be supplementary and shall not be included as part of the policy limits but shall remain the insurer's separate responsibility. The Contractor shall cause its insurance carriers for all required coverages, except for workers' compensation, to waive all rights of subrogation against the Owner and its officers, employees and agents.

11.5.5 The Contractor shall furnish the Owner with certificates, Additional Insured endorsements, policies, or binders which indicate the Contractor and/or the Owner and

other Contractors (where required) are covered by the required insurance showing type, amount, class of operations covered, effective dates and dates of expiration of policies prior to commencement of the Work. The Contractor is required to maintain coverages as stated and required to notify the University of a carrier change or cancellation within two (2) business days. The University reserves the right to request a copy of the policy. The Contractor fails to provide, procure, and deliver acceptable policies of insurance or satisfactory certificates or other evidence thereof, the Owner may obtain such insurance at the cost and expense of the Contractor without notice to the Contractor.

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

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

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

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

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

11.5.11 By requiring the insurance set forth herein and in the Contract Documents, the Owner does not represent or warrant that coverage and limits will necessarily be adequate to protect the Contractor, and such coverages and limits shall not be deemed as a limitation on the Contractor's liability under the indemnities granted to the Owner in the Contract Documents. For those policies requiring the Owner to be added as an Additional Insured, as set forth herein, the

Owner and all other indemnified parties shall be an Additional Insured for the full limits carried by the Contractor, not just the limits required herein.

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

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

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

11.6 Builder's Risk Insurance

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

11.6.2 The insurance as required herein shall name as insureds the Owner, the 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 the Owner.

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

11.6.4 The insurance required herein shall be on an all risk form and shall be written to cover all risks of physical loss or

damage to the insured party and shall insure at least against the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, lightening, earthquake, flood, frost, water damage, windstorm and freezing.

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

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

.1 the date which all persons and organization who are insureds under the policy agree in writing that it shall be terminated;

.2 the date on which final payment of this Contract has been made by the Owner to the Contractor; or

.3 the date on which the insurable interests in the property of all insureds other than the Owner have ceased.

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

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

coverage in favor of the Owner and other indemnified parties.

11.7 Bonds

11.7.1 When the Contract Sum exceeds Fifty Thousand Dollars (\$50,000), the Contractor shall procure and furnish a Performance Bond and a Payment Bond in the form prepared by the Owner, each in an amount equal to one hundred percent (100%) of the Contract Sum, as well as adjustments to the Contract Sum. The Performance Bond shall secure and guarantee the Contractor's faithful performance of this Contract, including but not limited to the Contractor's obligation to correct defects after final payment has been made as required by the Contract Documents. The Payment Bond shall secure and guarantee payment of all persons performing labor on the Project under this Contract and furnishing materials in connection with this Contract. These Bonds shall be in effect through the duration of the Contract plus the Guaranty Period as required by the Contract Documents.

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

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

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

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF THE WORK

12.1 Uncovering of the Work

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

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

12.2 Correction of the Work

12.2.1 The Owner's Technical Consultant or the Owner's Representative shall have the right to reject Work not in strict compliance with the requirements of the Contract Documents. The Design/Builder shall promptly correct Work rejected by the Owner's Technical Consultant or the Owner's Representative for failing to conform to the requirements of the Contract Documents, whether observed before or after final completion and whether or not fabricated, installed, or completed. If Work has been rejected by Owner's Technical Consultant or Owner's Representative, the Owner's Technical Consultant or Owner's Representative shall have the right to require the Design/Builder to remove it from the Project site and replace it with Work that strictly conforms to the requirements of the Contract Documents regardless, if such removal and replacement results in "economic waste." The Design/Builder shall pay all claims, costs, losses and damages caused by or resulting from the correction, removal or replacement of defective, or non-compliant

Work, including but not limited to, all costs of repair or replacement of Work of others. The Design/Builder shall bear costs of correcting, removing and replacing such rejected Work, including additional testing and inspections and compensation for the Owner's Technical Consultant's services and expenses made necessary thereby. If prior to the date of final payment, the Design/Builder, a Subcontractor or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical device, the Design/Builder shall cause such item to be restored to "like new" condition at no expense to the Owner.

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

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

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

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

12.2.6 Nothing contained in Article 12 shall be construed to establish a period of limitation with respect to other obligations that the Design/Builder might have under the Contract Documents. Establishment of the twelve (12) month Guarantee Period as described in Article 12 relates only to the specific obligation of the Design/Builder to correct, remove or replace the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which

proceedings may be commenced to establish the Design/Builder's liability with respect to the Design/Builder's obligations under the Contract Documents. The requirements of Article 12 are in addition to and not in limitation of any of the other requirements of the Contract for warranties or conformance of the Work to the requirements of the Contract Documents.

12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

13.1 Written Notice

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

13.2 Rights and Remedies

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

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

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

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

13.3 Tests and Inspections

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

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

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

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

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

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

13.4 Non-discrimination and Applicable Federal and State Requirements

13.4.1 In connection with the furnishing of equipment, supplies, and/or services under the Contract, the Contractor and all subcontractors shall not discriminate against any recipients of services or employees or applicants for employment on the basis of race, color, national origin, ancestry, religion, sex, pregnancy, age, disability, protected veteran status, or any other status protected by applicable state or federal law and federal funds, if any, may not be used for programs that discriminate based on any such protected status.

13.4.2 The University serves from time to time as a contractor for and/or receives grant funding from the United States government and/or State of Missouri. Accordingly, the Contractor shall comply with all applicable state and federal laws, rules, regulations, and executive orders applicable to subcontractors of government contractors or to contractors of grant recipients, including those relating to non-discrimination, as each may be amended from time to time. Contract clauses required by the United States government or State of Missouri in such circumstances are incorporated herein by reference.

13.5 SDVE and HDVE Participation Goals

13.5.1 The Contractor shall provide participation of SDVE and HDVE Firms in the Project, through self-performance, if an SDVE or HDVE Firm, or by subcontracting with SDVE or HDVE Firms as Subcontractors, suppliers or manufacturers, in an amount that is no less than the percent of the Contract Sum that was promised in the Contractor's bid and/or the amount accepted by the Owner.

13.5.2 If the Contractor must remove any SDVE or HDVE Firm as a Subcontractor, supplier or manufacturer under the Contract, the Contractor shall replace the SDVE or HDVE Firm with one or more SDVE or HDVE Firms, as applicable, in an amount equal to the dollar value of the work awarded to the SDVE or HDVE Firm that was removed. The Contractor shall immediately notify the Owner's Representative in writing of the Contractor's intent to remove any SDVE or HDVE Firm as a Subcontractor, supplier or manufacturer, and the Contractor's plan to provide the promised amount of SDVE Participation. All changes of an SDVE or HDVE Firm as a Subcontractor of any tier, supplier or manufacturer under the Contract shall be approved by the Executive Director of Facilities Planning and Development.

13.5.3 If the Contractor fails to meet or to maintain the promised amount of SDVE or HDVE Participation, the Contractor shall immediately notify the Owner's Representative and the Executive Director of Facilities Planning and Development in writing. Such notice shall include a description of the Contractor's good faith effort to provide the promised SDVE or HDVE Participation.

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

13.5.5 In the enforcement of the non-discrimination and SDVE and HDVE Participation requirements in Section 13.4 and 13.5, the Owner may use any reasonable procedures available, including but not limited to: requests, reports, site visits, and inspection of relevant documents of Contractors and Subcontractors of any tier. The Contractor shall submit a final Affidavit of SDVE/HDVE Participation for each SDVE or HDVE Firm at the end of the project stating the actual amount paid to the SDVE or HDVE Firm.

13.6 Wage Rates (If the Contract amount is less than \$75,000, the requirements of this Section will not apply. Any adjustments that increase the Contract cost above \$75,000 will be subject to this Section, per Section 290.230, RSMo.)

13.6.1 The Contractor and its Subcontractors shall pay all workers performing work under the Contract not less than the prevailing hourly rate of wages or the public works contracting minimum wage, whichever is applicable, as set out in the Annual Wage Order that is attached to and made part of the specifications for work under the Contract, in accordance with Sections 290.210 to 290.340, RSMo (Missouri Prevailing Wage Law) and related regulations. The Annual Wage Order(s) published by the Missouri Department of Labor and

Industrial Relations (MDLIR) for the location where the Work is performed is incorporated into the Contract by this reference. The Contractor shall use applicable MDLIR regulations, including, but not limited to, 8 CSR 30-3.010-3.060, in determining the appropriate occupational titles and rates for workers used in the execution of this Contract. All determinations and/or interpretations regarding wage rates and classification of workers will be made by the office of the University of Missouri Executive Director of Facilities Planning and Development.

13.6.2 If this Project is financed in whole or in part from Federal funds (as indicated in the bid or Contract Documents), then this Contract shall be subject to all applicable federal labor statutes, rules, and regulations, including provisions of the Davis-Bacon Act, 40 U.S.C. § 3141 et seq., and the “Federal Labor Standards Provisions.” Where the Missouri Prevailing Wage Law and the Davis-Bacon Act require payment of different wages for work performed under this Contract, the Contractor and all Subcontractors shall pay the greater of the wages required under either law, on a classification-by-classification basis.

13.6.3 The Contractor will forfeit a penalty to the Owner of \$100 per day (or portion of a day) for each worker that is paid less than the specified rate for any work done under the Contract by the Contractor or by any Subcontractor. The Owner shall deduct from any unpaid amounts then or thereafter due the Contractor under the Contract all sums and amounts due and owing as a result of any violation of Sections 290.210 to 290.340, RSMo. (Section 290.250, RSMo) The Contractor agrees to abide by any decision made by the Owner regarding underpayment of wages to workers and amounts owed them as well as penalties for underpayment of wages.

13.6.4 The prevailing wage rate(s) and public works contracting minimum wage(s) included in the Annual Wage Order(s) include fringe benefits as set forth in Sections 290.219 and 290.257, RSMo. Fringe benefit payments may be made to the worker in cash, or irrevocably made by a Contractor or Subcontractor to a trustee or to a third person pursuant to a fund, plan or program, or pursuant to an enforceable commitment, or any combination thereof, to carry out a financially responsible plan or program which was communicated in writing to the workmen affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the Contractor or Subcontractor is not required by other federal or state law

to provide any of the benefits as referenced in Section 290.210(5), RSMo.

13.6.5 The Contractor shall make full payment of the applicable required wages to workers in legal tender. Pay for travel, mileage, meals, bonuses, or other expenses are not fringe benefits and cannot be considered part of the workers wage rate. The Contractor shall not make any deductions for food, sleeping accommodations, transportation, use of small tools, uniforms, or anything of any kind or description, unless the Contractor and employee enter into an agreement in writing at the beginning of the worker’s term of employment, and such agreement is approved by the Owner as fair and reasonable in accordance with Section 290.315, RSMo.

13.6.6 The Contractor shall submit to the Owner with the Contractor’s periodic pay request, certified payroll records for labor performed by the Contractor and Subcontractors of any tier. The Contractor shall submit all required certified payroll information records electronically in pdf format using the Owner’s web-based payment program. The certified payroll forms shall contain the name, address, personal identification number, and occupational title of the workers as well as the hours they work each day. Do not include personal social security numbers in payroll records. The Owner’s acceptance of certified payroll records does not in any way relieve the Contractor of any responsibility for the payment of prevailing wages to workers on the project. The Contractor shall also maintain copies of the certified payroll records. The Owner may, at any time, request copies of, and/or inspect all of the Contractor’s payroll records for the Work to verify compliance. The Contractor shall furnish the Owner copies of payroll records within ten (10) days of the Owner’s written request. The Contractor shall provide copies of workers I-9 forms within twenty-four (24) hours of written notice. Such payroll records shall be maintained in accordance with Article 13.7.1 and shall be available for inspection for two (2) years after final completion of the Work. Falsification of the certified payroll records may result in the debarment of the Contractor or Subcontractor from future work with the University.

13.6.7 If applicable, the Contractor shall comply with the Copeland “Anti-Kick Act, 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Contract.

13.6.8 The Contractor shall specifically incorporate the obligations of Section 13.6 into the subcontracts, supply agreements and purchase orders for the Work and require the same of any Subcontractors of any tier.

13.6.9 If Contractor fails to comply with the provisions of Section 13.6 of this Contract or with Sections 290.210 to 290.340, RSMo and related regulations, the Owner may, in its sole discretion, immediately terminate the Contract upon written notice. The rights and remedies of the Owner provided

herein shall not be exclusive and are in addition to other rights and remedies provided by law or under this Contract.

13.6.10 The Contractor may pay entry-level workers or federally-registered apprentices fifty percent (50%) of the pay of a journeyman in their same occupational title, in accordance with Section 290.235, RSMo and 8 CSR 30-3.030. Per 8 CSR 30-3.030, an entry-level worker is “[a]ny worker who is not a journeyman and who is not otherwise enrolled in a federally-registered apprenticeship program but is participating in an on-the-job training program provided by the contractor for whom they perform work on a public construction project.” The University of Missouri may require documentation showing, to the University’s sole satisfaction, that an entry-level worker is participating in an on-the-job training program with the Contractor. The combined total of such entry-level workers and federally registered apprentices shall not exceed a one-to-one ratio with the number of journeyman workers in any occupational title on the project.

13.6.11 The Contractor shall post the wage rates for the Contract in a dry, accessible place at the field office on the project or, where there is no field office, at the Contractor’s local office or batch plant so long as a copy is provided to workers upon request, as required by 8 CSR 30-3.050. The wage rates shall be kept in a clearly legible condition for the duration of the project.

13.6.12 Neither the Contractor, nor any Subcontractor of any tier, nor any person hired by them or acting on their behalf, shall request, demand or receive, either before or after such worker is engaged, that such worker pay back, return, donate, contribute, or give any part or all of said worker’s wages, salary, or thing of value, to any person, upon the statement, representation, or understanding that failure to comply with such request or demand will prevent such worker from procuring or retaining employment, and no person shall, directly or indirectly, pay, request or authorize any other person to violate this Section as set forth in Section 290.305, RSMo, the exception being to an agent or representative of a duly constituted labor organization acting in the collection of dues or assessments of such organization. No Contractor or Subcontractor may directly or indirectly receive a wage subsidy, bid supplement, or rebate for employment on this project if such wage subsidy, bid supplement, or rebate has the effect of reducing the wage rate paid by the employer on a given occupational title below the applicable wage rate as provided in the Contract. In the event a wage subsidy, bid supplement, or rebate is provided or received, the entity receiving such subsidy, supplement, or rebate shall report the date and amount of such subsidy, supplement, or rebate to the University within thirty days of receipt of payment. This disclosure report shall be a matter of public record.

13.6.13 The Contractor will pay workers overtime for all hours worked over ten (10) hours per day and forty (40) hours per week in accordance with Section 290.230, RSMo. For all overtime work performed, not less than one and one-half the prevailing hourly rate of wages for work of a similar character in the locality in which the Work is performed or the public works contracting minimum wage, whichever is applicable, shall be paid. For all work performed on a Sunday or holiday, not less than twice the prevailing hourly rate of pay or public works contracting minimum wage will apply in accordance with Section 290.230, RSMo. For purposes of this Section, holidays are as follows: January first, the last Monday in May, July fourth, the first Monday in September, November 11, the fourth Thursday in November, December twenty-fifth. If any holiday falls on a Sunday, the following Monday shall be considered a holiday.

13.7 Records

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

13.8 Codes and Standards

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

- .1** ICC International Building Code and reference standards
- .2** International Plumbing Code
- .3** International Mechanical Code
- .4** NFPA 70 National Electric Code (NEC)
- .5** Americans with Disabilities Act - Standards for Accessible Design.
- .6** American National Standard Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks as published by the American Society of Mechanical Engineers (ASME), American National Standards Institute (ANSI) A17.1
- .7** NFPA 101 Life Safety Code (as noted above)
- .8** American Concrete Institute (ACI)

- .9 American National Standards Institute (ANSI)
- .10 American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE)
- .11 American Refrigeration Institute (ARI)
- .12 American Society for Testing and Materials (ASTM)
- .13 Missouri Standard Specification for Highway Construction, Missouri State Highway Commission
- .14 National Electrical Manufacturers Association (NEMA)
- .15 Underwriter's Laboratories, Inc. (UL), Federal Specifications
- .16 Williams Steiger Occupational Safety and Health Act of 1970 (OSHA)

13.9 General Provisions

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

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

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

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

13.9.5 The Design/Builder agrees that the Owner shall not be liable to Design/Builder for any special, indirect, incidental, or consequential damage whatsoever, whether caused by the Owner's negligence, fault, errors or omissions, strict liability, breach of contract, breach of warranty or other cause or causes whatsoever. Such special, indirect, incidental or consequential damages include, but are not limited to loss of profits, loss of savings or revenue, loss of anticipated profits, labor inefficiencies, idle equipment, home office overhead, and similar types of damages.

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

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

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

13.10 Certification

13.10.1 Suspension and Debarment

The Contractor certifies to the best of its knowledge and belief that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily

excluded from covered transactions by any department or agency in accordance with Federal Executive Orders 12549 (2/18/86) and 12689 (8/15/89).

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

13.10.2 Anti-Discrimination Against Israel Act

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

13.10.3 Byrd Anti-Lobbying Amendment

- .1 If this Contract exceeds \$100,000 and is funded by Federal funding, Contractor agrees to file the required certification, in compliance with 31 U.S.C. § 1352 (as amended).
- .2 Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of any agency, Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352.
- .3 Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

13.10.4 Work Authorization

The Contractor and all subcontractors performing work under this Contract shall enroll and participate in a federal work authorization program operated by the United States Department of Homeland Security, E-Verify or an equivalent federal work authorization program, to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986 (IRCA), P.L.99-603. By executing a contract with The Curators of the University of Missouri, the Contractor shall affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted service and affirm that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. The Contractor shall maintain documentation of its participation in a federal work authorization program and make such documentation available to the University upon request.

14.1 Termination by Owner for Cause

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

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

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

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

14.1.3 The Design/Builder, in the event of a termination under Section 14.1, shall not be entitled to receive any further payments under the Contract until the Work is completed in its entirety. Then, if the unpaid balance under the Contract shall exceed all expenses of the Owner in finishing the Work, including additional compensation for the Owner's Technical

Consultants services and expenses made necessary thereby, such excess will be paid to the Design/Builder; but, if such expenses of the Owner to finish the Work shall exceed the unpaid balance, the Design/Builder and its surety shall be liable for, and shall pay the difference and any damages to the Owner. The obligation of the Design/Builder and its surety for payment of said amounts shall survive termination of the Contract.

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

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

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

14.2 Suspension by the Owner for Convenience

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

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

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

14.3 Owner's Termination for Convenience

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

14.3.2 Upon receipt of a notice of termination for convenience, the Design/Builder shall immediately, in accordance with instructions from the Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this Section:

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

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

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

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

14.3.6 Upon termination of the Contract for any reason, the Design/Builder shall promptly deliver to the Owner all design documents in an electronic copy in the format designated by the Owner, and all sepias and copies of all completed or partially completed drawings, specifications, sketches, models, reports, calculations, tapes, charts, photographs, data, estimates, summaries and such other information and materials as may have been created or accumulated by the Design/Builder or Consultant in connection with the Work, whether completed or in progress.